



Housing Authority of the City of Alameda

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701 Atlantic Avenue • Alameda, California 94501-2161

AGENDA **REGULAR MEETING OF THE BOARD OF COMMISSIONERS**

DATE & TIME **Wednesday, December 16, 2020 –**

Closed Session – 6:00 p.m.

Regular Meeting – 7:00 p.m.

LOCATION

Pursuant to Executive Order Numbers N-29-20 and N-35-20 signed by Governor Gavin Newsom and guidance provided by legal counsel, a local legislative body, such as the Board of Commissioners is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. All requirements in the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or the public as a condition of participation in or a quorum for a public meeting have been waived.

PUBLIC PARTICIPATION

Public access to this meeting is available as follows:

Join Zoom Meeting:

<https://zoom.us/j/93407679443?pwd=RStpdmR5VTVrejRob29FejBYRE8vUT09>

Meeting ID: 934 0767 9443

Passcode: 637803

One tap mobile:

1-669-900-9128, 93407679443#, 0#, 637803# US (San Jose)

1-346-248-7799, 93407679443#, 0#, 637803# US (Houston)

Meeting ID: 934 0767 9443

Passcode: 637803

Find your local number: <https://zoom.us/j/93407679443?pwd=RStpdmR5VTVrejRob29FejBYRE8vUT09>

Persons wishing to address the Board of Commissioners are asked to submit comments for the public speaking portion of the Agenda as follows:

- Send an email with your comment(s) to jpolar@alamedahsg.org and vcooper@alamedahsg.org prior to or during the Board of Commissioners meeting
- Call and leave a message at (510) 871-7435.



When addressing the Board, on agenda items or business introduced by Commissioners, members of the public may speak for a maximum of three minutes per agenda item when the subject is before the Board.

Persons in need of special assistance to participate in the meetings of the Housing Authority of the City of Alameda Board of Commissioners, please contact (510) 747-4325 (voice), TTY/TRS: 711, or jpolar@alamedahsg.org. Notification 48 hours prior to the meeting will enable the Housing Authority of the City of Alameda Board of Commissioners to make reasonable arrangements to ensure accessibility.

PLEDGE OF ALLEGIANCE

1. ROLL CALL - Board of Commissioners
2. Public Comment (Non-Agenda)
3. Closed Session – 6:00 p.m. – Adjournment to Closed Session to Consider:
 - 3-A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.
Property Location: 2217 South Shore Center, Suite 250, Alameda, CA 94501
Assessor's Parcel Numbers: 74-1200-20-5
Agency Negotiators: Vanessa Cooper, Executive Director and Janet Basta, Director of HR and Operations
Negotiating Parties: Housing Authority of the City of Alameda and MGP XII South Shore Center, LLC
Property Owner: MGP XII South Shore Center, LLC
Under Negotiation: Lease of real property, price and terms of payment
 - 3-B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.
Property Location: 1701 – 1707 Shoreline Drive, Alameda CA 94501
Assessor's Parcel Number 74-1250-3-2
Agency Negotiators: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development
Negotiating Parties: Housing Authority of the City of Alameda and Rodica Barad Family Limited Partnership
Property Owner: Rodica Barad Family Limited Partnership
Under Negotiation: Price and Terms of Payment
 - 3-C. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.
Property Location: 1628 Webster Street, Alameda CA 94501
Assessor's Parcel Number 73-418-4-1
Agency Negotiators: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development
Negotiating Parties: Housing Authority of the City of Alameda and Alameda Hospitality, LLC



Property Owner: Alameda Hospitality, LLC
Under Negotiation: Price and Terms of Payment

- 3-D. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.
Property Location: 1825 Poggi Street Alameda, CA 94501
Assessor's Parcel Numbers: 74-451-1-8
Agency Negotiation: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development
Negotiating Parties: Housing Authority of the City of Alameda and Vue Alameda Owner L.P.
Property Owner: Vue Alameda Owner L.P.
Under Negotiation: Investment in Real Property, Price and Terms of Payment
- 3-E. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.
Property: Assessor's Parcel Number 074-0905-10-4 and 074-0905-15-2;
Authority Negotiators: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development;
Negotiating Parties: Building Futures, Alameda Point Collaborative;
Under Negotiation: Price and Terms of Payment: Updated Memorandum of Understanding – North Housing
- 3-F. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.
Property Location: 2800 Fifth Street, Alameda, CA 94501
Property: Assessor's Parcel Number 074-1373-001, 074-1373-002-2, 074-1373-002-3, 074-1373-3-2, and 074-1366-009
Authority Negotiators: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development;
Negotiating Parties: Pulte Home Company, LLC;
Under Negotiation: Price and Terms of Payment
4. CONSENT CALENDAR
- Consent Calendar items are considered routine and will be approved or accepted by one motion unless a request for removal for discussion or explanation is received from the Board of Commissioners or a member of the public.
- 4-A. Approve Minutes of the Board of Commissioners Meeting held November 18, 2020 – **Page 1**
- 4-B. Authorize the Executive Director or Delegate to sign a License Agreement for Commercial Office Space at 2217 South Shore Center, Alameda, CA 94501 and to Negotiate and Sign a Two Year Lease with MGP XII South Shore Center, LLC for a Total Cost Not to Exceed \$80,000 per year; Direct Staff to bring the Signed Lease and License Agreement back to the Board for Ratification in early 2021 – **Page 9**
- 4-C. Approve Fourth Amendment to the Consultant Services Agreement dated 4/15/15 with Island City Development – **Page 11**



5. AGENDA
- 5-A. Direct the Executive Director, or her Designee, to Negotiate and Sign the Regulatory, Purchase Option, and Loan Agreement with Vue Alameda Owner, L.P. for 1825 Poggi – **Page 14**
- 5-B. Authorize the Executive Director or Designee to Execute Necessary Documents and to Purchase Eighteen Below Market Rate Units at 2800 Fifth Street for a Total Cost Not to Exceed \$3,500,000 – **Page 120**
- 5-C. Review the Vacation Pay-Out Policy and Provide Direction to Staff – **Page 123**
6. ORAL COMMUNICATIONS, Non-Agenda (Public Comment)
7. COMMISSIONER COMMUNICATIONS, (Communications from the Commissioners)
8. ADJOURNMENT

* * * Note * * *

- Documents related to this agenda are available on-line at:
<http://www.alamedahsg.org/cms/One.aspx?portalId=3723405&pageId=5912638>
- Know Your RIGHTS Under The Ralph M. Brown Act: Government's duty is to serve the public, reaching its decisions in full view of the public. The Board of Commissioners exists to conduct the business of its constituents. Deliberations are conducted before the people and are open for the people's review. In order to assist the Housing Authority's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the Housing Authority accommodate these individuals.



DRAFT MINUTES

**REGULAR MEETING OF THE BOARD OF COMMISSIONERS
HELD WEDNESDAY, NOVEMBER 18, 2020**

Due to temporary changes in the Brown Act, a Zoom meeting link and call-in number were provided to the public.

PLEDGE OF ALLEGIANCE

1. ROLL CALL - Board of Commissioners

Present: Chair Tamaoki, Vice-Chair Grob; Commissioner Hadid, Commissioner Kay, Commissioner Sidelnikov

Absent: Commissioner Rickard

Vanessa Cooper, Executive Director informed the Board that, after reviewing the conflict of interest status, Commissioner Kuwada resigned due to possible future conflicts of interest with her employment.

2. Public Comment (Non-Agenda)

None.

3. Closed Session – 6:00 p.m. – Adjournment to Closed Session to Consider:

3-A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.

Property Location: 1825 Poggi Street Alameda, CA 94501

Assessor's Parcel Numbers: 74-451-1-8

Agency Negotiation: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development

Negotiating Parties: Housing Authority of the City of Alameda and Lincoln Avenue Capital LLC

Property Owner: Lincoln Avenue Capital LLC

Under Negotiation: Investment in real property, price and terms of payment

3-B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.

Property Location: 2217 South Shore Center, Suite 250, Alameda, CA 94501

Assessor's Parcel Numbers: 74-1200-20-5

Agency Negotiation: Vanessa Cooper, Executive Director and Janet Basta, Director of HR and Operations
 Negotiating Parties: Housing Authority of the City of Alameda and MGP XII South Shore Center, LLC
 Property Owner: MGP XII South Shore Center, LLC
 Under Negotiation: Lease of real property, price and terms of payment

- 3-C. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8.
 Property Location: 501 Mosely Ave, Alameda, CA 94501
 Assessor's Parcel Numbers: 74-905-12-9
 Agency Negotiation: Vanessa Cooper, Executive Director and Sylvia Martinez, Director of Housing Development
 Negotiating Parties: Housing Authority of the City of Alameda and Building Futures and Alameda Point Collaborative
 Property Owner: Housing Authority of the City of Alameda
 Under Negotiation: Price and terms of payment

4. Adjournment of Closed Session

Adjourned 7:03 p.m.

5. RECONVENE REGULAR MEETING – 7:00 p.m.

Regular Meeting reconvened at 7:04 p.m.

6. Announcement of Action Taken in Closed Session, if any.

Chair Tamaoki stated that during the Closed session, item 3-A was tabled, and the Board received report and gave direction on item 3-B. The Board will return to Closed Session, following the Regular Board of Commissioners Meeting to discuss item 3-C.

7. Public Comment (Non-Agenda)

None.

8. CONSENT CALENDAR

- Consent Calendar items are considered routine and will be approved or accepted by one motion unless a request for removal for discussion or explanation is received from the Board of Commissioners or a member of the public.

Items accepted or adopted are indicated by an asterisk.

Commissioner Hadid stated that, due to his absence, he would abstain from voting on Consent Calendar items.

Commissioner Sidelnikov Vadim pulled item 8-R and thanked staff for providing documentation to support items 8 -D and 8-E.



Commissioner Sidelnikov moved to accept the Consent Calendar and Vice-Chair Grob seconded the motion. This meeting took place via Zoom, so a roll call vote was taken and the motion passed unanimously.

Yes	5	Chair Tamaoki, Vice-Chair Grob, Commissioner Kay, Commissioner Sidelnikov
Abstained	1	Commissioner Hadid
Absent	1	Commissioner Rickard

Commissioner Sidelnikov questioned whether item 8-R was a request to amend the Resolution that was adopted during the October 21, 2020 Regular Board of Commissioners Meeting.

Silvia Martinez, Director of Housing Development confirmed that item 8-R is a request to amend the resolution that was adopted on October 21, 2020 to include an increase in funding.

Commissioner Sidelnikov requested that the Resolution presented in item 8-R be amended to clarify that the adoption of the presented Resolution would supersede the Resolution that was adopted on October 21, 2020.

Ms. Cooper stated that the requested clarification language could be included in the motion.

Commissioner Sidelnikov moved to accept the North Housing Project Update Report and approve the resolution for a \$2,408,000 loan amendment from AHA and authorize the President or Designee to Negotiate and Execute the Loan Documents and sign the Carmel Partners Abatement Contract Amendment Change Order in an amount Not to Exceed \$924,000, and in addition that the Resolution adopted on October 21, 2020 is superseded. Vice-Chair Grob seconded the motion.

Yes	5	Chair Tamaoki, Vice-Chair Grob, Commissioner Hadid, Commissioner Kay, Commissioner Sidelnikov
Absent	1	Commissioner Rickard

- *8-A. Approve Minutes of the Board of Commissioners Meeting held October 21, 2020
- *8-B. Accept the Monthly Overview Report for Operations/H.R./I.T.
- *8-C. Approve the 2021 AHA Operations (Holiday and Office Closure) Calendar
- *8-D. Authorize the Executive Director to Negotiate and Approve an Increase in the Contract Amount between the Alameda Housing Authority and Goldfarb & Lipman LLP in the amount of One Hundred Fifty Thousand Dollars and Zero cents (\$150,000.00) up to a total Not to Exceed Amount of Five Hundred Thousand Dollars and Zero cents (\$500,000.00) through October 23, 2021
- *8-E. Authorize the Executive Director to Negotiate and Approve an Increase in the Contract Amount between the Alameda Housing Authority and Liebert Cassidy Whitmore in the Amount of One Hundred Fifty Thousand Dollars and Zero cents (\$150,000.00) up to a



total Not to Exceed Amount of Four Hundred Thousand Dollars and Zero cents (\$400,000.00) through December 31, 2021

- *8-F. Accept the Monthly Overview Report for the Housing Programs Department
- *8-G. Accept the Monthly Overview Report for the Alameda Rent Program
- *8-H. Accept the Monthly Overview Report for Property Operations
- *8-I. Accept the Monthly Overview Report for Housing Development
- *8-J. Accept the Monthly Development Report for North Housing
- *8-K. Accept the Monthly Development Report for Rosefield Village
- *8-L. Accept the Monthly Report on Procurement
- *8-M. Accept the Monthly Financial Report for the Month of September 2020
- *8-N. Authorize the Executive Director to Negotiate and Sign a Contract Extension with the John Stewart Company (JSCo) for Property Management Services for a total Not to Exceed Amount of \$2,167,107 for a 5-Year Contract (3 Years with Two Optional 1-Year Renewals) to include the transfer of a 120 unit property, Esperanza, to third party management on or around January 1, 2021
- *8-O. Accept the Quarterly Financial Overview Report for Asset Management of the LIHTC (Tax Credit) Portfolio
- *8-P. Accept Report on Housing Authority Records Disposition
- *8-Q. Accept Executive Director Update
- *8-R. Accept the North Housing Project Update Report; Approve Resolution for a \$2,408,000 Loan Amendment from AHA; and Authorize the President or Designee to Negotiate and Execute the Loan Documents and sign the Carmel Partners Abatement Contract Amendment Change Order in an amount Not to Exceed \$924,000

9. AGENDA

- 9-A. Accept the 2019 Annual Financial Overview Report for Asset Management

Candace Latigue, Asset Manager presented a PowerPoint presentation that provided an overview and summary of the Annual Financials for the Low Income Housing Tax Credit (LIHTC) Partnership Properties during the period of January 1, 2019 through December 31, 2019.

Chair Tamaoki questioned whether the “Administrative” costs presented for each of the properties includes costs associated with Property Management and Payroll expenses. Ms. Latigue confirmed that Property Management and Payroll expenses were included in the presented “Administrative” costs. Chair Tamaoki requested that in future presentations, costs associated with Property Management and Payroll expenses be identified separately.

In regard to the information presented for Shinsei Gardens, Chair Tamaoki questioned whether the Per Unit Per Year (PUPY) costs includes the hard debt costs.

Ms. Latigue advised that the PUPY costs includes only the operating expenses.

In regard to the Social Services PUPY costs, Commissioner Hadid inquired as to what is considered as “social services.” Ms. Latigue stated that the “social services” costs are for services provided by LifeSTEPS (i.e. counseling services, food bank assistance, etc.).



Commissioner Hadid inquired as to why these costs as Jack Capon were so much higher than at the other LIHTC properties. Ms. Cooper stated that at the two properties where these costs are the highest, there are larger special needs populations. Jack Capon has a large number of developmentally disabled residents that receive a lot of life skills services and at Everett Commons, in addition to the standard LifeSTEPS services, social services are provided for the 5 VASH families.

Chair Tamaoki thanked Ms. Latigue providing the presentation, as it was a really helpful analysis and was very useful to see how properties perform. Chair Tamaoki also asked whether there was a discrepancy between the debt to service ratios, for Park Alameda, on page 79 and the information contained in the presentation. Ms. Latigue confirmed that page 79 did include a discrepancy and the information contained in the presentation is correct.

In regard to the Operation Expenses Per Unit information, listed on page 82, Chair Tamaoki commented that the range of expenses for Jack Capon are considered to be quite high. Understanding that there are many factors that could affect these expenses, in the future it would be helpful for the Board to receive a comparison of how our property expenses compare to other affordable housing properties, and to the extent that they are higher provide an explanation for that.

Ms. Cooper stated that staff could present such a comparison in a future quarterly report.

Chair Tamaoki also requested that, in the future, to the extent that there is a residual cash flow, staff please provide a report on how residual cash flow will be used.

Commissioner Hadid requested that for comparison purposes, in the future, staff include all of the property information in one combined chart at the end of such presentations.

Commissioner Hadid moved to accept the 2019 Annual Financial Overview Report for Asset Management and Commissioner Sidelnikov seconded the motion. This meeting took place via Zoom, so a roll call vote was taken and the motion passed unanimously.

Yes	5	Chair Tamaoki, Vice-Chair Grob, Commissioner Hadid, Commissioner Kay, Commissioner Sidelnikov
Absent	1	Commissioner Rickard

- 9-B. Adopt the Resolution to amend the Housing Authority's revised Employee Policies and Procedures Handbook, last revised 12.21.2016, effective 1.8.2017 to adopt temporary revisions to the Vacation Leave policy of the Housing Authority's Employee Policies and Procedures Handbook



Janet Basta, Director of Human and Operations explained that the Resolution presented in item 9-B is a request to increase the vacation cap of all AHA staff by 100 hours and terminate the “pay-out” option for vacation hours.

The temporary increase to the vacation cap, which was adopted in April, is due to expire at the end of December. Due to COVID a number of staff have not used vacation and have either reached or will reach the vacation cap before the end of December. While the vacation pay-out policy would have been an option to help address the high vacation accruals, the Housing Authority has been advised by legal counsel that utilizing the current policy would have significant tax penalty consequences for all staff, not just those who chose to utilize this option, and therefore, it is proposed that this policy be eliminated as an option.

At Commissioner Sidelnikov’s request, Ms. Basta clarified that prior to the April approval of the vacation cap increase, of 60 hours, the cap was 250 hours. With this approval, the vacation cap for regular staff is now 310 hours. However, even with these additional hours, seven or more employees could be over this cap as of January 1, 2021.

Chair Tamaoki requested clarification on the difference between the vacation pay-out policy and the vacation pay-out at termination. Ms. Basta explained that vacation pay-out at termination is a pay-out of accrued vacation and floating holiday hours that is paid at the end of employment. The vacation pay-out policy allowed staff to sell back 60 hours of vacation, while still employed, in order to keep their vacation hours under the cap.

Chair Tamaoki inquired as to whether staff may have concerns regarding the termination of this policy. Ms. Basta indicated that in order to alleviate any staff concerns about termination she would explain the tax penalties associated with the policy.

Ms. Cooper explained that, while this policy was a useful option for staff that neared and/or had gone over the vacation cap, counsel has advised and clarified that, due to IRS and administrative regulations, all employees would have a tax implication if the Housing Authority continues this policy as an option.

At the request of Commissioner Hadid, Ms. Basta clarified that the discontinuation of this policy means that staff will no longer have the option to cash out vacation hours in order to keep them from going over the vacation cap. This will mean that once the respective vacation cap is reached, staff will stop accruing vacation hours until they have used enough hours to drop below the cap.

At the request of Commissioner Grob, Ms. Cooper informed the Board that she believes the IRS and administrative regulations surround this policy are fairly new. AHA has asked for legal advice twice on this topic.

Understanding the regulations surrounding this policy, Commissioner Grob moved to accept the Resolution as presented.



At the request of Chair Tamaoki, Ms. Basta confirmed that the IRS and administrative regulations surrounding this policy are effective now; there is no grace period. Ms. Cooper informed the Board that, should there be a change in the IRS and administrative regulations, the vacation pay-put policy could be reinstated in the future.

At the request of Commissioner Sidelnikov, Ms. Basta clarified that counsel has advised that, under the IRS and administrative regulations, continuing to allow any employee(s) to take a pay-out of vacation hours, would mean that all employees would have to be taxed on their accrued vacation whether they used it or not; and staff could be taxed a second time when they did take vacation. Essentially, continuing with this policy could cause employees to be double taxed and have a significant financial impact for all employees in the agency.

Ms. Cooper informed the Board that the regulations surrounding this policy could be found in the Construction Receipt Doctrine by the IRS.

Commissioner Sidelnikov requested that this the vacation buyout part of this item be brought back with additional options.

Commissioner Grob revised her motion to accept the Resolution as written and moved to split the removal of the vacation pay-out policy, so that staff could provide additional information in the future and adopt the Resolution to increase the vacation cap and Commissioner Hadid seconded the motion.

Yes	5	Chair Tamaoki, Vice-Chair Grob, Commissioner Hadid, Commissioner Kay, Commissioner Sidelnikov
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Absent	1	Commissioner Rickard
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9-C. Accept Director Nomination for Board Member Position on Island City Development

Ms. Cooper indicated that this item was carried over from the October 21, 2020 Regular Board of Commissioners Meeting.

As Vice-Chair Grob has offered to serve as a member on the Island City Development Board, Ms. Cooper would like to nominate Vice-Chair Grob for the position.

Commissioner Hadid moved to accept the nomination and Commissioner Sidelnikov seconded the motion. This meeting took place via Zoom, so a roll call vote was taken and the motion passed unanimously.

Yes	5	Chair Tamaoki, Vice-Chair Grob, Commissioner Hadid, Commissioner Kay, Commissioner Sidelnikov
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Absent	1	Commissioner Rickard
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10. ORAL COMMUNICATIONS, Non-Agenda (Public Comment)



None.

11. COMMISSIONER COMMUNICATIONS, (Communications from the Commissioners)

Commissioner Hadid provide a brief overview of his background in order to provide clarification on his support of allowing more options for staff use of vacation.

12. CONTINUATION OF CLOSED SESSION OF HOUSING AUTHORITY BOARD OF COMMISSIONERS – IF NEEDED

Chair Tamaoki announced that the Board would return to closed session to continue discussion of item 3-C.

13. Announcement of Action Taken in Closed Session, if any.

Chair Tamaoki stated that during the Closed session, the Board of Commissioners received a report and gave direction on item 3-C.

14. ADJOURNMENT

Chair Tamaoki adjourned the meeting at 9:30 p.m.

* * * Note * * *

- Documents related to this agenda are available on-line at:
<http://www.alamedahsg.org/cms/One.aspx?portalId=3723405&pageId=5912638>
- Know Your RIGHTS Under The Ralph M. Brown Act: Government's duty is to serve the public, reaching its decisions in full view of the public. The Board of Commissioners exists to conduct the business of its constituents. Deliberations are conducted before the people and are open for the people's review. In order to assist the Housing Authority's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the Housing Authority accommodate these individuals.



701 Atlantic Avenue • Alameda, California 94501-2161

To: Honorable Chair and Members of the Board of Commissioners

From: Vanessa M. Cooper, Executive Director

Date: December 16, 2020

RE: Authorize the Executive Director or Delegate to sign a License Agreement for Commercial Office Space at 2217 South Shore Center, Alameda, CA 94501 and to Negotiate and Sign a Two Year Lease with MGP XII South Shore Center, LLC for a Total Cost Not to Exceed \$80,000 per year; Direct Staff to bring the Signed Lease and License Agreement back to the Board for Ratification in early 2021

BACKGROUND

The Housing Authority has not had sufficient seating in the main office to house its full budgeted staff for several years, even in normal operating times, and this has hindered recruitment at times. The quality of the workspace was also an issue raised in the Strategic Plan work done in 2018. The current health crisis has brought the need for improved and additional office space to the forefront.

The Housing Authority serves some of the most vulnerable members of the Alameda Community. The current Corona Virus (COVID-19) pandemic is impacting a wide range of local services and the population that the Housing Authority serves is at particular risk, especially, as over 66% of the Housing Authority's households are elderly or disabled. The Housing Authority continues to respond to the crisis and is seeking to limit exposure for staff, tenants, and participants while still maintaining essential services.

Housing Authority staff are identified as essential workers under the current health ordinances and are working full or part time in the office. Most staff are located at our main office, with 6 staff located at the satellite office for the Rent Program. Property Management staff are working out of the site offices. Some staff are working a hybrid model and are part-time remote and part-time in the office which appears to work well for them. Senior management and supervisors are providing onsite supervision.

Staff has reviewed additional office space available and is proposing to rent additional space on a short term basis to add a third "hub" of office space to address social distancing needs in the current health situation. This will maximize the AHA ability to maintain services to tenants, applicants, and funders, while providing increased office space to its staff. Such a space will increase the number of private offices available to staff and will reduce the impact on operations in the event that one or more staff members test positive and one hub has to be closed for any length of time. Staff



Honorable Chair and
Members of the Board of Commissioners

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reviewed four spaces for lease and is bringing forward the most economic and useable space.

DISCUSSION

The proposed space provides 2,683 sq. feet gross, 2,266 sq. feet net usable and includes 7 private offices, one breakroom, two private ADA bathrooms (and additional shared bathrooms with other suites), and 2-4 cube spaces. The location has adequate parking and is a high quality office space with adjacent amenities, such as coffee shops. Work has started with AHA counsel and the realtor on a license to enable early entry, possibly as soon as December 17, 2020, to install furniture and IT equipment and a lease to start in January, 2021 for two years with two one-year renewals. The site will need to be furnished and AHA would have some initial IT costs to ensure secured access back to main office servers.

FISCAL IMPACT

The expected fiscal impact would be approximately \$80,000 a year plus approximately \$40,000 set up costs, which could be lower if items can be moved from the main office. Cleaning and utilities could be up to \$12,000 per year. The current budget includes \$150,000 for this item, so the estimated costs would fall within this budgeted amount as long as the ongoing lease amount is carried forward to the next budget.

RECOMMENDATION

Authorize the Executive Director or Delegate to sign a License Agreement for Commercial Office Space at 2217 South Shore Center, Alameda, CA 94501 and to Negotiate and Sign a Two Year Lease with MGP XII South Shore Center, LLC for a Total Cost Not to Exceed \$80,000 per year; Direct Staff to bring the Signed Lease and License Agreement back to the Board for Ratification in early 2021.

Respectfully submitted,



Vanessa Cooper
Executive Director





Housing Authority of the City of Alameda

PHONE (510) 747-4300
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701 Atlantic Avenue • Alameda, California 94501-2161

To: Honorable Chair and Members of the Board of Commissioners

From: Sylvia Martinez, Director of Housing Development

Date: December 16, 2020

RE: Approve the Fourth Amendment to the Consultant Services Agreement dated 4/15/15 with Island City Development

BACKGROUND

In 2015, a three-year Consultant Services Agreement was signed by and between ICD and AHA for the delivery of real estate development services. The scope and deliverables include the strategy, financing, and implementation of affordable housing development activities such as rehabilitation and new construction. In addition, ICD is asked to provide technical assistance on affordable housing opportunities in the City of Alameda. This contract has been renewed three times, extending the time period and fee by one year each time. The Third Amendment expires 12/31/2020.

DISCUSSION

ICD continues to be the development arm of the Housing Authority of the City of Alameda and has taken on the financing and development of Littlejohn Commons, Everett Commons, and Rosefield projects in the period of 2015 to the present. The Rosefield project will be in construction until mid-2022. In addition, ICD has implemented entitlement and predevelopment activities on the North Housing site and plans to continue development this site in phases. To support these efforts, staff proposes an extension of the services agreement until 12/21/2021.

FINANCIAL IMPACT

A one-year extension of the contract includes an additional year's fee of \$100,000. Funds to support this fee are obtained through the Services Agreement by and between the City of Alameda and the Housing Authority of the City of Alameda for FY2020-21, which was updated effective August 1, 2020. Thus, there is no net impact on the budget of the Housing Authority.



Honorable Chair and
Members of the Board of Commissioners

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RECOMMENDATION

Approve the Fourth Amendment to the Consultant Services Agreement dated 4/15/15 with Island City Development

Respectfully submitted,

DocuSigned by:
Sylvia Martinez
88FEDACB7D8D461...

Sylvia Martinez
Director of Housing Development

Attachment(s):

1. Draft Fourth Amendment to the Consultant Services Agreement dated 4/15/15 with Island City Development



Attachment 1
**FOURTH AMENDMENT TO THE
CONSULTANT SERVICES AGREEMENT
BETWEEN ISLAND CITY DEVELOPMENT AND
THE HOUSING AUTHORITY OF THE CITY OF ALAMEDA**

THIS FOURTH AMENDMENT to the Consultant Services Agreement (the "Agreement"), entered into this 16th day of December 2020, by and between ISLAND CITY DEVELOPMENT, a California nonprofit public benefit corporation ("ICD) and the HOUSING AUTHORITY OF THE CITY OF ALAMEDA a public body corporation ("AHA"), is made with reference to the following:

- A. On April 15, 2015, the Agreement was entered into by and between ICD and AHA for delivery of real estate development services; and
- B. On December 5, 2017, the Agreement was amended to extend the completion date to December 31, 2018
- C. On December 20, 2018, the Agreement was amended to extend the completion date to December 31, 2019.
- D. On November 8, 2019, the Agreement was amended to extend the completion date to December 31, 2020.
- E. ICD and AHA desire to extend the term of the contract for one year with the same annual contract amount of \$100,000 and a completion date of December 31, 2021.
- F. Consultant compensation shall be increased, pursuant to the Agreement, in the amount of \$100,000 annually for year 2021, for a total contract amount not to exceed \$600,000.

NOW, THEREFORE, in consideration of the foregoing, it is mutually agreed by and between and undersigned parties that paragraphs 1. TERM and 3. COMPENSATION TO CONSULTANT, shall be replaced in whole with the following paragraphs:

1. TERM: The time for Completion set forth in the contract is five years, ending December 31, 2021, unless terminated earlier as set forth herein.
3. COMPENSATION TO CONSULTANT: Consultant shall be compensated for services performed pursuant to this Agreement in the amount of \$100,000 annually, for a contract total not to exceed \$600,000. Payment will be made based upon Consultant's submitted and approved invoice.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

ISLAND CITY DEVELOPMENT

HOUSING AUTHORITY OF THE CITY OF
ALAMEDA

Vanessa Cooper
President

Vanessa Cooper
Executive Director



Housing Authority of the City of Alameda

PHONE (510) 747-4300
FAX (510) 522-7848
TTY/TRS 711

701 Atlantic Avenue • Alameda, California 94501-2161

To: Honorable Chair and Members of the Board of Commissioners

From: Sylvia Martinez, Director of Housing Development

Date: December 16, 2020

Re: Direct the Executive Director, or her Designee, to Negotiate and Sign the Regulatory, Purchase Option, and Loan Agreement with Vue Alameda Owner, L.P. for 1825 Poggi.

BACKGROUND

Jurisdictions throughout the State of California have been working on a three-pronged approach to the affordable housing problem. Preservation of existing affordable homes, especially naturally occurring affordable homes is one of these efforts. The Housing Authority of the City of Alameda was approached this summer by Lincoln Avenue Capital (<https://lincolnavecap.com/>) regarding their recent purchase in the City of Alameda as an opportunity for preservation of affordable rent levels. Lincoln Avenue Capital has preserved 4,100 affordable units since 2016 and now manages over 9,000 properties throughout the country. Their Alameda site is called Rica Vista, formerly known as Vue Alameda, and consists of 186 one- and two-bedroom apartments

The process to restrict the affordability of the apartments will require a regulatory agreement, and a loan agreement for a small loan from AHA. These two documents will provide requirements, reporting, and methods of enforcing compliance in exchange for the ability to claim a welfare exemption from the County of Alameda on behalf of the affordable apartments for 55 years. Drafts of these documents are provided as attachments to this report. Staff has negotiated a long term (i.e., 55 year) covenant that restricts a minimum of 40% of the units but can absorb up to 73% of the units as restricted, and that provides a true benefit to current and future households. In addition, AHA has negotiated a purchase option that will allow AHA to purchase the property at appraised value if the seller decides to sell the property in the future.

DISCUSSION

Staff has examined the benefits of this proposed arrangement to the current and future residents of Alameda.

- 1) Current residents of 1825 Poggi– These residents are currently protected by the City of Alameda Rent Program, ordinance 3250, in terms of “no cause’ eviction, a cap on annual rent increases (currently 1%), and relocation assistance for displacement. A significant number of the residents also have Section 8 vouchers, which limits their rent payments to 30% of their income regardless of an increase in rent. The proposed Regulatory and Loan Agreements will not substantially affect these households as the Regulatory



Honorable Chair and
Members of the Board of Commissioners

December 16, 2020
Page 2 of 2

Agreement mirrors or follows the Rent Program, including the restriction to a lower base rent which caps increases in the future to 1% of base rent.

- 2) Future residents – Future residents (up to 73% of units) may be able to live at 1825 Poggi for rents that are substantially lower than market.

The social benefit of this regulatory agreement is the difference between the benefit of the welfare tax exemption to the owner, and the reduction in rents to the residents. AHA staff analysis shows that the stability of lower rents over time will provide a considerable social benefit to these households. It should be noted that if a resident no longer qualifies at the 80% AMI standard in any given year, the owner will lose the welfare exemption for that unit completely, or until filled by a qualified resident. There is no 'grandfathering' or 'float up to 140% AMI' as is available if the project has tax credits.

Rent and Income Analysis for Existing Tenants

LAC has qualified 47 households and intends to lease the remaining 32 vacancies at or below 80% AMI in order to qualify 79 households, or slightly over 40% of the community for the Regulatory Agreement. Over time, the additional residents will be covered by the regulatory agreement up to a total of 136 one- and two-bedroom units at the restricted rents.

The Regulatory Agreement is binding on future owners for fifty-five years and has provisions to assure similar and ongoing maintenance of the units, quality lease up and tenant lease protocols, monitoring and enforcement.

Lincoln Avenue Capital and AHA staff continue to negotiate any minor issues, but if the major clauses remain substantially in place, staff recommends that the Board approve final negotiations and signing of these documents.

FISCAL IMPACT

AHA has spent staff time and incurred legal costs on evaluating and negotiating these agreements. A loan of \$10,000 to LAC is proposed to provide AHA with lender's rights to enforce compliance. Ongoing monitoring will be covered by the proposed monitoring fee, and 3rd party physical inspection fees will be passed through to LAC.

RECOMMENDATION

Direct the Executive Director, or her designee, to negotiate and sign the Regulatory, Purchase Option, and Loan Agreement with Vue Alameda Owner, L.P. for 1825 Poggi.

Respectfully submitted,

DocuSigned by:

Sylvia Martinez
88FEDACB7D8D461...

Sylvia Martinez
Director of Housing Development

Attachment(s):

1. Draft Regulatory Agreement
2. Draft Loan Agreement
3. Draft Purchase Option Agreement



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NO FEE DOCUMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:Housing Authority of the City of Alameda
701 Atlantic Ave, Alameda, CA 94501
Attn: Executive DirectorNo fee for recording pursuant to
Government Code Section 27383 and 27388.1

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(1825 Poggi Street, Alameda, CA)

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Agreement") is dated _____, 2020, and is between the Housing Authority of the City of Alameda, a public body corporate and politic ("Housing Authority"), and Vue Alameda Owner LP, a California limited partnership ("Borrower").

RECITALS

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

B. Borrower owns that certain real property located at 1825 Poggi Street, City of Alameda, County of Alameda, State of California, as further described in the legal description attached hereto as Exhibit A and incorporated herein ("Property") and the improvements thereon consisting of one hundred and eight-six (186) units of multi-family rental housing (including one (1) manager's unit) comprised of one hundred and twenty-five (125) 1-bedroom units and sixty-one (61) 2 bedroom units, a fitness center, pool, outdoor communal patio, 199 surface parking spaces, and other attendant site improvements (collectively, the "Improvements"). The Property including any Improvements are collectively referred to as the "Development."

C. Owner intends to restrict no fewer than seventy-four (74) units to be rented to and occupied by low-income households for an affordable rent. Owner acquired the Property to preserve naturally-occurring affordable housing in the City of Alameda. The Development consists of the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a project currently occupied by lower income households, as defined in Section 50079.5.

D. The Development is intended to serve as a community resource by providing decent, safe, and sanitary housing for households who would otherwise be unable to afford such housing. The Housing Authority has agreed to provide Owner with financial assistance pursuant to a Loan Agreement dated on or about the date hereof ("Loan Agreement") in the amount of Ten

Thousand Dollars (\$10,000) ("Housing Authority Loan"). The Housing Authority Loan is being provided to help pay for _____ costs associated with the Development.

E. As further consideration for the Housing Authority Loan and to further the public interest of the Housing Authority in seeing the Property maintained as affordable housing, Borrower has agreed to maintain and operate the Development as specified in this Agreement,

F. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development for the benefit of the tenants and the City of Alameda. In order to ensure that the entire Development will be used and operated in accordance with these conditions and restrictions, Housing Authority and Borrower wish to enter into this Agreement.

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

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions.

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

- (a) "80% Units" means the Units which, pursuant to Section 2.1, below, are required to be occupied by 80% AMI Households.
- (b) "80% AMI Household" means a household with an 80% Income Level as published by TCAC, or if TCAC does not publish such level, a household with an Adjusted Income that does not exceed eighty percent (80%) of Area Median Income.
- (c) "Accessibility Requirements" has the meaning set forth in Section 2.1(e).
- (d) "Actual Household Size" means the actual number of persons in the applicable household.
- (e) "Adjusted Income" means with respect to the Tenant of each Housing Authority-Assisted Unit, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by TCAC.
- (f) "Administrative Plan" means the Administrative Plan for the Section 8 Housing Choice Voucher Program of the Housing Authority of the City of Alameda, including any amendments, modifications and supplements.

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

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

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

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

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

(l) "City" means the City of Alameda, California.

(m) "Housing Authority Loan" has the meaning set forth in Recital D.

(n) "Housing Authority-Assisted Units" means the following, (i) for the period from the Effective Date to ten (10) years thereafter shall mean each of the seventy-four (74) Units restricted by the Housing Authority as a condition of loaning the Housing Authority Loan funds, and (ii) commencing on the tenth (10th) year after the Effective until the expiration of the Term shall mean each of the one hundred and thirty-six (136) Units restricted by the Housing Authority as a condition of loaning the Housing Authority Loan funds.

(o) "Deed of Trust" means the deed of trust dated of even date herewith, by and among Borrower, as trustor, _____ Title Company, Inc., as trustee, and the Housing Authority, as beneficiary, to be recorded against Borrower's interest in the Property to secure repayment of the Note and the performance by Borrower under the Loan Agreement and this Agreement.

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

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

(r) "Executive Director" means the Executive Director of the Housing Authority or her designee.

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

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(t) "Improvements" has the meaning set forth in Recital B.

(u) "Investor Limited Partner" shall mean

(v) "Loan Agreement" means the Loan Agreement entered into by and between the Housing Authority and Borrower dated of even date herewith.

(w) "Loan Documents" means the documents executed by Borrower evidencing the Housing Authority Loan including the Note, the Loan Agreement, the Deed of Trust and all other documents evidencing or securing the Housing Authority Loan between Borrower and the Housing Authority or by Borrower for the benefit of the Housing Authority, as each may be amended.

(x) "Marketing Plan" has the meaning set forth in Section 4.4(a).

(y) "Note" means the promissory note executed by Borrower in favor of the Housing Authority, dated of even date herewith, evidencing the Housing Authority Loan.

(z) "Partnership Agreement" has the meaning set forth in Section 1.1 of the Loan Agreement.

(aa) "Payment Standard" means the maximum monthly assistance payment for a family assisted in the Section 8 of the United States Housing Act tenant based housing choice voucher program (before deducting the total payment by the family), as determined by the Housing Authority.

(bb) "Property" has the meaning set forth in Recital B.

(cc) "Rent" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Borrower that are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant (which cannot exceed the utility allowance approved for use by the Housing Authority for units in the Housing Authority's jurisdiction), including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Borrower, and paid by the Tenant.

"Rent Program" means collectively the City of Alameda Rent Program, including, but not limited to all implementing rules, regulations, policies and procedures, and City of Alameda Ordinance No. 3250, codified in Chapter 6-58 of the Alameda Municipal Code, also known as the "City of Alameda Rent Control, Limitations on Evictions and Relocation Payments to Certain Displaced Tenants Ordinance".

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

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(ee) "TCAC 80% Rent" means the maximum rent published by TCAC for a "80% AMI Household" in Alameda County for the applicable bedroom size.

(ff) "Tenant" means a household legally occupying a Unit pursuant to a valid lease with Borrower.

(gg) "Tenant Selection Plan" has the meaning set forth in Section 4.5(a).

(hh) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends on the later of: (i) fifty-five (55) years after the Effective Date, or (ii) December 1, 2075.

(ii) "Unit" means one or all of the one hundred and eight-six (186) units in the Development, including the manager's unit.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements.

(a) 80% Units. During the Term Borrower shall cause a minimum of seventy-four (74) of the Housing Authority-Assisted Units to be rented to and occupied by, or, if vacant, available for occupancy by, 80% AMI Households from year 1 to year 10 of the Term and a minimum of One Hundred and Thirty-Six (136) of the Housing Authority-Assisted Units to be rented to and occupied by, or, if vacant, available for occupancy by, 80% AMI Households from year 10 to the expiration of the Term.

(b) Manager's Unit. One unrestricted (1) Unit is to be available for designation as the manager's unit, which shall be exempt from the occupancy and rent restrictions set forth in this Agreement. The manager's unit is not a Housing Authority-Assisted Unit.

(c) Intermingling of Units. Borrower shall cause the Housing Authority-Assisted Units to be intermingled throughout the Development and be of comparable quality to all other Units. Tenants in all Units shall have equal access to and enjoyment of all common facilities in the Development. The Housing Authority-Assisted Units must be at or above the minimum designated income percentages and of the bedroom size set forth in the following chart during the designated periods:

On and After Year 2021		
	40% of Units	Total Units

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1-Bd.	50	50
2-Bd.	24	24
Total	74	74

On and After Year 2027		
	70% of Units	Total Units
1-Bd.	88	88
2-Bd.	42	42
Total	130	130

On and After Year 2023			On and After Year 2025		
	50% of Units	Total Units		60% of Units	Total Units
1-Bd.	63	63	1-Bd.	75	75
2-Bd.	30	30	2-Bd.	37	37
Total	93	93	Total	112	112
On and After Year 2029				80% of Units	Total Units
			1-Bd.	91	91
			2-Bd.	45	45
			Total	136	136

The occupancy of all Housing Authority-Assisted Units shall adhere to the subsidy standards set forth in the chart below. In the event a Tenant is determined to be over or under housed upon recertification, the affected Tenant household shall be moved to the next available Unit of the appropriate size to achieve the Unit mix required in this Section 2.1(c). If upon recertification a Tenant's household composition exceeds the subsidy standards for a 2-bedroom unit, such Tenant shall be permitted to continue occupying the Unit and upon sixty (60) days written notice, the Unit shall no longer be designated as a Housing Authority-Assisted Unit and Tenant shall pay market rate Rent in an amount that complies with the Rent Program. Borrower shall rent the next available Unit of the appropriate size to an 80% AMI Household to achieve the Unit mix required in this Section 2.1(c) above, at a Rent not exceeding the maximum Rent specified in Section 2.2.

Occupancy Chart

Unit size	Minimum occupancy	Maximum occupancy
1 bedroom	1 person	3 persons
2 bedroom	2 persons	5 persons

(d) Floating Units. The Housing Authority-Assisted Units will be "floating units" and Borrower shall at all times provide the specified number of Housing Authority-Assisted Units designated in the charts contained in Section 2.1 (c) above, but is not required to designate on a permanent basis any particular unit as a Housing Authority-Assisted Unit.

(e) Disabled Persons Occupancy.

(1) Borrower shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of

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1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

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

Section 2.2 Allowable Rent.

(a) 80% Units. Subject to the provisions of Section 2.3 below, Rent paid by Tenants of the 80% Units shall not exceed the TCAC 80% Rent for the applicable bedroom size and shall not exceed the rent amounts required under the Rent Program. Please see Section 6.1 (c) for maximum rents to be charged by Tenants receiving rent subsidies pursuant to housing programs under Section 8 of the United States Housing Act, or its successor.

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

Section 2.3 Rent Increases; Increased Income of Tenants.

(a) Rent Increases. Initial Rents and subsequent Rents for all Housing Authority-Assisted Units are subject to Housing Authority approval. Notwithstanding the foregoing, the Housing Authority's review and approval of Rents and Rent increases shall be limited to determining that such Rents and Rent increases comply with the requirements of this Regulatory Agreement and other applicable laws. All Rent increases for all Housing Authority-Assisted Units are also subject to Housing Authority approval. No later than October 31st of each year, Borrower shall submit to the Housing Authority in writing a schedule of any proposed increase in the Rent charged for Housing Authority-Assisted Units and the date such rent increase shall become effective. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year. Borrower shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant, following completion of the Housing Authority approval process set forth above. Notwithstanding anything contained in this Agreement to the contrary, Borrower shall also be required to comply with the Rent Program and the restrictions set forth in this Agreement. In the event of a conflict, the most restrictive requirement shall apply.

All rent increases for Housing Authority-Assisted Units and non-assisted Units shall be in accordance with Rent Program requirements. Banking of Rent increases shall comply with the Rent Program policy.

(b) Non-Qualifying Households. Subject to Subsection (a), if, upon recertification of the income of a Tenant of a Housing Authority-Assisted Unit, Borrower determines that a Tenant of a Housing Authority-Assisted Unit has an Adjusted Income exceeding the maximum qualifying income for a 80% AMI Household, such Tenant shall be permitted to continue occupying the Housing Authority-Assisted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and Borrower shall rent the next available Unit of the same size to an 80% AMI Household to achieve the Unit mix required in the chart at Section 2.1(c), at a Rent not exceeding the maximum Rent specified in Section 2.2.

(c) Termination of Occupancy. Upon termination of occupancy of a Housing Authority-Assisted Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of such Unit will be redetermined to meet the occupancy requirements of Section 2.1 above.

Section 2.4 Income and Rent Calculations.

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

Section 2.5 Monitoring Fee, HQS Review Fee and Asset Management Fee.

In connection with the restrictions imposed by this Agreement, the Housing Authority shall charge Borrower and Borrower shall pay a monitoring fee in the amount of Three Hundred Dollars (\$300) per Housing Authority-Assisted Unit per year due and payable on the date that Borrower is required to make a Housing Authority Loan payment to the Housing Authority in accordance with the Loan Agreement, which fee shall be increased every five (5) years by the greater of (i) an amount equal to the increase in the Consumer Price Index (CPI), for the San Francisco-Oakland-Hayward, CA. metropolitan area or, provided, however, in no event shall such adjustment result in the reduction of the fee amount, and (ii) the then current monitoring fee charged by the County of Alameda Housing and Community Development Department to developers under its affordable housing programs. In the event a Transfer occurs, including, but not limited to a refinancing, prior to the five (5) year adjustment to the monitoring fee referenced above, the Housing Authority shall have the right at such time to renegotiate the fee to bring it in line with then current market rates for the subject service.

In addition, the Housing Authority shall charge Borrower and Borrower shall pay a Housing Quality Standards (HQS) inspection and re-inspection fee estimated to be in the amount of Thirty-Five Dollars (\$35) for each individual Housing Authority-Assisted Unit every two-years due and payable thirty (30) days prior to the commencement of such biennial HQS inspection. Please note, a separate fee shall be paid for each inspection and re-inspection per unit. Such fee may be increased in the event of a price increase by the third-party vendor providing such HQS inspection services to the Housing Authority-Assisted Units. The Parties acknowledge that the HQS inspection required herein may be replaced with a Uniform Physical Condition

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Standards (UPCS) Inspection protocol if HUD changes its standard inspection requirements. If such a modification by HUD occurs, the Parties shall have the right to amend this Agreement in writing to reflect such change, which amendment shall be subject to approval by Borrower and the Executive Director, or designee, of the Housing Authority.

The Housing Authority shall also charge Borrower and Borrower shall pay to Housing Authority an annual asset management fee in the amount of Ten Thousand Dollars (\$10,000).

Section 2.6 Rent Program and Just Cause. Notwithstanding anything to the contrary contained herein, in addition to all requirements set forth herein the Development shall also be subject to the following: (i) Rent Program (including, but not limited to City of Alameda Ordinance No. 3250, codified in Chapter 6-58 of the Alameda Municipal Code, also known as the "City of Alameda Rent Control, Limitations on Evictions and Relocation Payments to Certain Displaced Tenants Ordinance"), and (ii) California's Tenant Protection Act of 2019 (California Civil Code Section 1946.2 et seq.).

ARTICLE 3 INCOME CERTIFICATION; REPORTING; RECORDS

Section 3.1 Income Certification.

(a) Borrower shall obtain, complete, and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Housing Authority-Assisted Units. Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two (2) or more of the following steps as a part of the verification process: (i) obtain a pay stub for the most recent two (2) months of pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer verifying employment for the last two (2) months; (v) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (vi) if the applicant is unemployed and has no such tax return, obtain another form of independent verification of income. In the event Borrower receives notice that a Tenant's household composition has changed prior to the annual income certification, any additions should lead to immediate recalculation of income, unless such addition is a zero income household member.

In the event a Tenant refuses or fails to income certify during their tenancy, the Tenant's Unit shall no longer be deemed a Housing Authority-Assisted Unit and Tenant shall be required to pay Rent at a market rate, subject to the rent increase restrictions required under the Rent Program.

(b) Borrower shall also complete and/or have the Tenants of the Housing Authority-Assisted Units complete and sign the "Income Computation and Certification" and the "Owner's Certification of Household Income" both of which are attached hereto as Exhibit B, or any other form approved by the Housing Authority, and/or any other

forms related to Tenants' income provided to Borrower by the Housing Authority or that provide income information that is sufficient to determine an applicant's income as required by this Section. The Housing Authority preapproves use of any applicable TCAC forms to satisfy the requirements of this Section. Copies of Tenant income certifications shall be made available to the Housing Authority upon request. Borrower shall make reasonable efforts to deter and prevent fraud in connection with a Tenant's income certification.

Section 3.2 Reserved.

Section 3.3 Resident/Workforce Priority.

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

Section 3.4 Reporting Requirements.

Commencing upon the date this Agreement is recorded in the Official Records of the County of Alameda Borrower shall submit to the Housing Authority quarterly Development status reports for the first year of Development operation no later than ninety (90) days after the end of each quarter. Thereafter, Borrower shall submit to the Housing Authority annual reports in a form that substantially complies with the Form of Annual Report attached hereto as Exhibit C and incorporated herein by this reference, no later than one hundred twenty (120) days after the end of Borrower's fiscal year. The reports shall contain such information as the Housing Authority may require, including, but not limited to, the following:

(a) A statement of the fiscal condition of the Development, including a financial statement indicating surpluses or deficits in operating accounts for the period covered, a detailed itemized listing of income and expenses, and the amounts of any Development reserves. One year after the Effective Date of this Agreement, and on every fifth (5th) year thereafter, the report due in this Subsection 3.4 (a) shall also contain an audited version of this statement. Such audit shall be prepared in accordance with the requirements of the Housing Authority and certified at the Development's expense by an independent Certified Public Accountant licensed by the State of California. Borrower shall also follow audit requirements of the Single Audit Act and 2 C.F.R. Part 200.

(b) The substantial physical defects in the Development, if any, including a description of any major repair or maintenance work undertaken in the reporting period and any City of Alameda code enforcement actions, including warnings, during that period.

(c) The occupancy of the Development indicating:

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

(2) A listing of the Tenants in the preference group identified in Section 3.3 above;

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

(4) General management performance, including Tenant relations and other relevant information, and any California Department of Fair Employment and Housing (DFEH) or HUD complaints or lawsuits relating to the Property; and

(5) a verified copy of the most recent statement issued by _____, Department of _____, evidencing the welfare tax exemption applicable to the Development.

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

Section 3.5 Additional Information.

Borrower shall provide any additional information reasonably requested by the Housing Authority. The Housing Authority shall have the right to examine and make copies of all books, records or other documents of Borrower which pertain to the Development upon reasonable advanced notice of not less than forty-eight (48) hours, except in the event of a request related to a health and safety matter or in connection with a Housing Authority Assisted Unit occupied by a Section 8 Housing Choice Voucher tenant, in which case no advance notice is required.

Section 3.6 Tenant Records.

Borrower shall maintain complete, accurate and current records pertaining to the income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of Borrower and shall be maintained as required by the Housing Authority, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Housing Authority but upon reasonable advance notice of not more than forty-eight (48) hours, except in the event of a request related to health and safety matter or in connection with a

Housing Authority Assisted Unit occupied by a Section 8 Housing Choice Voucher tenant, in which case no advance notice is required. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Housing Authority-Assisted Units for a period of at least five (5) years. The Housing Authority may examine and make copies of all books, records or other documents of Borrower that pertain to the Tenants upon reasonable advanced notice of forty-eight (48) hours, except in the event of a request related to health and safety matter or in connection with a Housing Authority Assisted Unit occupied by a Section 8 Housing Choice Voucher tenant, in which case no advance notice is required, and subject to the Tenants' rights to privacy and confidentiality, as applicable.

Section 3.7 Development Records.

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

- (1) Records providing a full description of the activities undertaken with the use of the Housing Authority Loan funds;
- (2) Records demonstrating compliance with the affordability and income requirements for Tenants;
- (3) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;
- (4) Records demonstrating compliance with applicable relocation requirements which must be retained for at least five (5) years after the date by which persons displaced from the Property have received final payments; and
- (5) Financial and other records as required by 2 C.F.R. Part 200.

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

ARTICLE 4 OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use.

The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing. Borrower shall provide to Tenants and post in a public location at the Development a "Tenants Rights and Responsibilities" and "Tenant Dispute Resolution Procedures" document subject to prior approval by the Housing Authority in its reasonable discretion.

Section 4.2 Compliance with Loan Documents and Regulatory Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Loan Documents; (ii) the City of Alameda's Rent Program requirements pursuant to City of Alameda Ordinance No. 3148 adopted by the City Council of the City of Alameda on March 1, 2016, including payment of all required fees; and (iii) any other regulatory requirements imposed on the Development, if any, and rental subsidies provided to the Development (the "Development Regulatory Documents").

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

Section 4.3 Taxes and Assessments.

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

(b) However, Borrower is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by

appropriate proceedings; and (ii) if requested by the Housing Authority, Borrower deposits with the Housing Authority any funds or other forms of assurance that the Housing Authority in good faith from time to time determines appropriate to protect the Housing Authority from the consequences of the contest being unsuccessful.

(c) In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, will immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

(d) Reserved.

Section 4.4 Marketing Plan.

(a) As a condition precedent to the Housing Authority's execution of this Agreement, Borrower shall submit to the Housing Authority a Housing Authority approved plan for marketing the Development ("Marketing Plan"), to ensure that target populations, local residents and workforce populations will be aware of the housing opportunities in the Development. Specifically, the Marketing Plan must include information on Borrower's plan to: (i) affirmatively market the Development to income-eligible households, (ii) comply with fair housing laws and (iii) meet the targeting and preference requirements of Section 3.3 above. Once approved, any amendments or modifications to the Marketing Plan shall be subject to the prior written approval of the Housing Authority.

(b) If the Marketing Plan is not approved, the Housing Authority shall not execute this Agreement. Borrower and Housing Authority shall reasonably cooperate with each other in developing a Marketing Plan that is acceptable to the Housing Authority.

(c) Borrower shall comply with the approved Marketing Plan during the Term and may not make material modifications to the Marketing Plan without the prior written approval of the Housing Authority, which approval shall not be unreasonably withheld.

Section 4.5 Tenant Selection Plan.

(a) As a condition precedent to the Housing Authority's execution of this Agreement, Borrower shall submit to the Housing Authority a Housing Authority approved policy and criteria for selecting tenants for the Development to ensure that the leasing of the Development will be conducted in a manner that provides fair and equal access under the law ("Tenant Selection Plan"). The Tenant Selection Plan may be part of the Marketing Plan. The Tenant Selection Plan must address, among other things, Tenant screening, immigration status, applications and waitlists, and include information on Borrower's plan to: (i) limit occupancy to income-eligible households, (ii) give notice to applicants of rejection and grounds for rejection, (iii) manage applicants on a wait list for occupancy in the Development, and (iv) comply with fair housing laws. Once approved, any amendments or modifications to the Marketing Plan shall be subject to the prior written approval of the Housing Authority.

(b) If the Tenant Selection Plan is not approved, the Housing Authority shall not execute this Agreement. Borrower and Housing Authority shall reasonably cooperate with each other in developing a Tenant Selection Plan that is acceptable to the Housing Authority.

(c) Borrower shall comply with the approved Tenant Selection Plan during the Term and may not make material modifications to the Tenant Selection Plan without the prior written approval of the Housing Authority, which approval shall not be unreasonably withheld.

Section 4.6 Reserved.

Section 4.7 Lease Provisions.

(a) No later than ____ days after this Agreement is recorded in the Official Records, Borrower shall submit to the Housing Authority Borrower's proposed form of lease agreement for the Housing Authority's review and approval. When leasing Units within the Development, Borrower shall use the form of lease approved by the Housing Authority. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

(1) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, or (ii) to qualify as an 80% AMI Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

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

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

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

(5) Include any provisions to comply with Title VI Limited English Proficiency (LEP) obligations under Executive Order 13166, signed on August 11, 2000, HUD

LEP Guidance Published on December 19, 2003, addressing the needs of the LEP population served and the Language Access Plan (LEP).

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

Section 4.8 Annual Operating Budget; Operating Deficiencies.

(a) Borrower, at least sixty (60) days prior to the end of each of Borrower's fiscal years, shall furnish the Housing Authority a budget for the operation of the Development (the "Annual Operating Budget"). The Housing Authority may request additional information to assist the Housing Authority in evaluating the financial viability of the Development.

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

Section 4.9 Additional Housing Authority Requirements.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities.

Borrower is responsible for all management functions with respect to the Development, including, without limitation, the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Housing Authority shall have no responsibility over management of the Development. Borrower shall retain a professional property management company approved by the Housing Authority in writing in its reasonable discretion to perform Borrower's management duties hereunder. An on-site property management representative is required to reside at the Property.

Section 5.2 Management Agent.

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

Section 5.3 Periodic Performance Review.

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

Section 5.4 Replacement of Management Agent.

If, as a result of a periodic review, the Housing Authority determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the Housing Authority shall deliver written notice to Borrower of its intention to cause replacement of the Management Agent, including the reasons therefor. Within thirty (30) days after receipt by Borrower of such written notice, Housing Authority staff and Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

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

Any contract for the operation or management of the Development entered into by Borrower shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a default under this Agreement, and the Housing Authority may enforce this provision through legal proceedings as specified in Section 6.5 below.

Section 5.5 Approval of Management Policies.

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

Section 5.6 Property Maintenance.

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

(b) Maintenance Requirements. For the entire Term of this Agreement Borrower shall maintain all interior and exterior improvements, including landscaping, on the Property in decent, safe and sanitary condition, and good condition and repair (and, as to landscaping, in a healthy condition), in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, County of Alameda, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Borrower shall cause the Development to be free of all health and safety defects. Borrower shall correct any life-threatening maintenance deficiencies, immediately upon notification. Borrower shall also correct any maintenance deficiencies identified during an HQS inspection no later 24 hours after delivery of notice of such health and safety related deficiencies by Housing Authority to Borrower and no later than 30 days after delivery of notice of all other deficiencies by Housing Authority to Borrower.

(c) Violation of Maintenance Requirements. In the event that Borrower breaches any of the covenants contained in this section and Borrower does not commence to cure such breach within (i) a period of five (5) business days after written notice from Housing Authority (and diligently prosecute such cure to completion within ten (10) business days following such notice), with respect to HQS inspection deficiencies, graffiti, debris, waste material, landscaping and general maintenance or (ii) a period of thirty (30) business days after written notice from the Housing Authority (and diligently prosecute such cure to completion within sixty (60) days following such notice) with respect to landscaping and building improvements, then the Housing Authority, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Development and the Borrower's interest in the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the Housing Authority shall be permitted (but is not required) to enter upon the Development and the Borrower's interest in the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Development and the Borrower's interest in the Property, and to attach a lien on the Development and the Borrower's interest in the Property, or to assess on the Development and the Borrower's interest in the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the Housing

Authority and/or costs of such cure, which amount shall be promptly paid by Borrower to the Housing Authority upon demand. Notwithstanding anything to the contrary contained herein, all cure periods set forth in this Subsection 5.6 (c) shall be superseded by any shorter cure periods required under the Section 8 of the United States Housing Act Housing Choice Voucher program.

Section 5.7 Inspections.

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

(b) After the completion of an inspection, the Housing Authority shall deliver a copy of the inspection report to Borrower. If the Housing Authority determines as a result of such inspection that there are any life-threatening health and safety related deficiencies, Borrower has the obligation to correct such deficiencies immediately. If the Housing Authority determines as a result of the inspection that there are any deficiencies for any of the inspectable items in the Development, Borrower shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. In addition, Borrower acknowledges that the Housing Authority may reinspect the Development to verify all deficiencies have been corrected or rely on third party documentation submitted by Borrower for non-hazardous deficiencies. Notwithstanding anything to the contrary contained herein, all cure periods set forth in this Subsection 5.7 (b) shall be superseded by any shorter cure periods required under the Section 8 of the United States Housing Act Housing Choice Voucher program.

Section 5.8 Asset Management.

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

ARTICLE 6
MISCELLANEOUS

Section 6.1 Nondiscrimination.

(a) Borrower covenants by and for Borrower, its assigns, and all persons claiming under or through Borrower, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, age,

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disability, sex, sexual orientation, marital status, familial status, source of income, ancestry or national origin, Vietnam era veteran's status, political affiliation, HIV/AIDS, or any other arbitrary basis, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b).

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

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

The maximum Rent to be charged to any Unit occupied by a Tenant receiving federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor, shall not exceed the lesser of (i) the TCAC 80% Rent, or (ii) the Payment Standard minus the applicable utility allowance.

Section 6.2 Application of Provisions.

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

Section 6.3 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the Housing Authority, and (iv) a statement that a public hearing may be held by the Housing Authority on

the issue and that the Tenant will receive notice of the hearing at least thirty (30) days in advance of any such hearing. Borrower shall also file a copy of the above-described notice with the Executive Director.

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

Section 6.4 Covenants to Run With the Land.

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

Section 6.5 Enforcement by the Housing Authority.

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

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

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

(c) Remedies Provided Under Loan Documents. The Housing Authority may exercise any other remedy provided under the Loan Documents. The Investor Limited Partner shall have the right but not the obligation to cure any default of Borrower set forth herein, during any applicable cure period described in this Agreement, and the Housing Authority will accept tender of such cure as if delivered by the Borrower.

Section 6.6 Attorneys' Fees and Costs.

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

Section 6.7 Recording and Filing.

The Housing Authority and Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Alameda. This Agreement shall be recorded against the Property in a first priority lien position senior to all deeds of trust securing loans and grants to Borrower for the Development.

Section 6.8 Governing Law.

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

Section 6.9 Waiver of Requirements.

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

Section 6.10 Amendments.

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

Section 6.11 Notices.

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

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Housing Authority:

Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

Borrower:

[Insert]

If to Limited Partner

[insert]

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

Section 6.12 Severability.

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

Section 6.13 Multiple Originals; Counterparts.

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

Section 6.14 Term.

The provisions of this Agreement shall apply to the Property for the entire Term, even if the entire Housing Authority Loan is paid in full prior to the end of the Term. In the event the Property no longer receives welfare exemption under Section 214(g) of the California Revenue and Taxation Code, as such section may be amended, due to actions outside of the control of Borrower, the Housing Authority may work cooperatively and in good faith with Borrower to determine continued use and occupancy requirements, provided the Development continues to be subject to the Rent Program. This Agreement shall bind any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the Housing Authority. The Housing Authority makes the Housing Authority Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

Section 6.15 Insurance Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Before commencing operations under this Agreement, Borrower shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form satisfactory to Housing Authority, evidencing that all required applicable insurance coverage is in effect. The Housing Authority reserves the rights to require the contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to the Housing Authority at the address in Section 6.11, with a copy to the Housing Authority's Risk Management Unit.

Section 6.16 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Borrower and/or the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which

possession of the Development is transferred and Borrower retains title. "Transfer" shall exclude the leasing of any single Unit in the Development to an occupant in compliance with the Regulatory Agreement. The Executive Director is authorized to execute assignment and assumption agreements on behalf of the Housing Authority to implement any approved Transfer.

(b) Except as otherwise permitted in this Section 6.16, no Transfer shall be permitted without the prior written consent of the Housing Authority, which the Housing Authority may withhold in its reasonable discretion. The Housing Authority Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the Housing Authority.

(c) The Housing Authority hereby approves the initial Transfer, if any, of the limited partnership interest in Borrower to the Investor Limited Partner.

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

(e) In the event the general partner of Borrower is removed by the Investor Limited Partner of Borrower for cause following default under the Partnership Agreement, the Housing Authority hereby approves the Transfer of the general partner interest to (i) a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the "Code"), or a limited liability company whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor Limited Partner and approved by the Housing Authority in writing, which approval shall not be withheld unreasonably, or (ii) the Investor Limited Partner, or an affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of clause (i) of this paragraph.

Section 6.17 Indemnification.

Borrower shall indemnify, defend and hold the Housing Authority and its board of commissioners, supervisors, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including, but not limited to, the purchase of the Property,

development, construction, marketing and operation of the Development, except to the extent such claim arises from the gross negligence or willful misconduct of the Housing Authority, its agents, and its employee; provided, however, any gross negligence of or willful misconduct of Housing Authority and the other indemnitees will only affect Borrower's duty to indemnify for the specific act found to be grossly negligent or willfully misconduct, and will not preclude a duty to indemnify for any act or omission of Borrower. This obligation to indemnify survives termination of this Agreement, repayment of the Housing Authority Loan, and the reconveyance of the Deed of Trust.

Section 6.18 Non-Liability of Housing Authority Officials, Employees and Agents.

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

Section 6.19 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 6.20 Discretion Retained By Housing Authority.

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

Section 6.21 Conflict of Interest.

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

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

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

(d) In accordance with Government Code Section 1090 and the Political

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

Section 6.22 Housing Authority Approval.

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

Section 6.23 Recognition of Housing Authority.

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

[Signatures on following page.]

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

HOUSING AUTHORITY:

HOUSING AUTHORITY OF CITY OF ALAMEDA, a public
body corporate and politic

By: _____
Vanessa Cooper,
Executive Director

BORROWER:

[insert signature block]

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

STATE OF CALIFORNIA)
)
HOUSING AUTHORITY OF _____)

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

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

WITNESS my hand and official seal.

Name: _____

Notary Public

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

STATE OF CALIFORNIA)
)
 HOUSING AUTHORITY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

 Name: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Land referred to herein below is situated in the City of Alameda, County of Alameda, State of California, and is described as follows:

BEING A PORTION OF PARCEL 3 AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED MARCH 23, 2010 IN DOCUMENT NO. [2010-074484](#), OFFICIAL RECORDS OF ALAMEDA COUNTY, AND ALSO BEING A PORTION OF THE LANDS GRANTED TO PUR ATLANTIC LLC DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED ON OCTOBER 20, 2017 IN DOCUMENT NO. [2017-232301](#), OFFICIAL RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID PUR ATLANTIC LLC PARCEL; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL AND ITS NORTHERLY EXTENSION NORTH 02° 36'57" EAST, 553.32 FEET; THENCE SOUTH 87° 02' 16" EAST, 306.43 FEET TO THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO THE CITY OF ALAMEDA, RECORDED IN [REEL 1688, IMAGE 890](#), OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG LAST SAID LINE SOUTH 02° 51' 49" WEST, 544.93 FEET TO THE SOUTHERLY LINE OF SAID PUR ATLANTIC LLC PARCEL; THENCE ALONG LAST SAID LINE NORTH 88° 37' 00" WEST, 304.14 FEET TO THE POINT OF BEGINNING.

THE LEGAL IS MADE PURSUANT TO THAT CERTIFICATE OF COMPLIANCE RECORDED APRIL 05, 2018 AS INSTRUMENT NO. [2018069189](#) OF OFFICIAL RECORDS.

APN 074-0451-001-08

DRAFT

EXHIBIT B

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

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

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

Signed: _____ Date: _____
Head of Household

* The anticipated annual Income as determined by Attachment A.

Owner's Certification of Household Income

Household Name _____

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

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

Owner/Management Agent

Date

EXHIBIT C
FORM OF ANNUAL REPORT
(behind this page)

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LOAN AGREEMENT
(Rica Vista Apartments)

This LOAN AGREEMENT ("Agreement") is entered into as of December ____, 2020 ("Effective Date"), by and between the Housing Authority of the City of Alameda, a public body corporate and politic ("Housing Authority"), and Vue Alameda Owner LP, a California limited partnership ("Borrower"). Housing Authority and Borrower shall be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

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

B. Borrower owns that certain real property located at 1825 Poggi Street, City of Alameda, Housing Authority of Alameda, State of California, as further described in the legal description attached hereto as Exhibit A and incorporated herein ("Property") and the improvements thereon consisting of one hundred and eight-six (186) units of multi-family rental housing (including one (1) manager's unit) comprised of one hundred and twenty-five (125) 1-bedroom units and sixty-one (61) 2 bedroom units, a fitness center, pool, outdoor communal patio, 199 surface parking spaces, and other attendant site improvements (collectively, the "Improvements"). The Property including any Improvements are collectively referred to as the "Development."

C. Owner acquired the Property to preserve naturally-occurring affordable housing in the City of Alameda. The Development consists of the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a project currently occupied by lower income households, as defined in Section 50079.5. The Development is intended to serve as a community resource by providing decent, safe, and sanitary housing for households who would otherwise be unable to afford such housing. All rehabilitation of the Improvements has been completed.

D. The Housing Authority is making a loan to be used to maintain the affordability of the Development in the amount of Ten Thousand Dollars (\$10,000.00) ("Housing Authority Loan"). On _____, 2020 the Housing Authority approved the Authority Loan. The Housing Authority Loan will be disbursed subject to the terms of this Agreement.

E. The Housing Authority Loan will be evidenced by this Agreement, the Note, and secured by the Regulatory Agreement and the Deed of Trust.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

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

- (a) "Accessibility Requirements" has the meaning set forth in Section 4.6 below.
- (b) "Agreement" means this Loan Agreement.
- (c) "Annual Operating Expenses" means with respect to a particular calendar year, the costs reasonably and actually incurred for operation and maintenance of the Development, to the extent that they are consistent with the annual operating budget for the Development approved by the Housing Authority pursuant to the Regulatory Agreement and an annual independent audit performed by a certified public accountant using generally accepted accounting principles.
- (d) "Applicable Governmental Approvals" means the Housing Authority, City, and other governmental permits and approvals necessary for the operation of the Development, including but not limited to CEQA and NEPA approvals, and any required operating licenses.
- (e) "Borrower" has the meaning set forth in the first paragraph of this Agreement.
- (f) "City" means the City of Alameda, California.
- (g) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as trustor, _____ Title Company, as trustee, and the Housing Authority, as beneficiary, which will encumber the Borrower's interest in the Property to secure repayment of the Housing Authority Loan and performance of the covenants of the Loan Documents, the form of which is attached hereto as Exhibit C and incorporated herein by this reference.
- (h) "Default" has the meaning set forth in Section 6.1 below.
- (i) "Default Rate" means the lesser of the maximum rate permitted by law or ten percent (10%) per annum.
- (j) "Development" has the meaning set forth in Recital B.
- (k) "Effective Date" means the date first written above.
- (l) "Executive Director" means the Executive Director of the Housing Authority or his or her designee.
- (m) "Force Majeure" means the occurrence of one or more of those events described in Section 7.14, permitting an extension of time for performance of obligations under this Agreement.

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

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

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

(q) "Housing Authority" has the meaning set forth in the first paragraph of this Agreement.

(r) "Housing Authority Closing" means the closing of escrow on the Housing Authority Loan.

(s) "Housing Authority-Assisted Units" means each of the one hundred and thirty-six (136) Units restricted by the Housing Authority, as further set forth in the Regulatory Agreement.

(t) "Housing Authority Loan" has the meaning set forth in Recital D.

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

(v) "Improvements" has the meaning set forth in Recital B.

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

(x) "Monitoring Fee" means the monitoring fee paid to the Housing Authority in the amount of Three Hundred Dollars (\$300) per Unit per year;

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

(z) "Parties" means the Housing Authority and Borrower.

(aa) "Partnership Agreement" means the Partnership Agreement, including any amendments or modifications thereto, governing the operation and organization of Borrower executed by the partners of Borrower.

(bb) "Property" has the meaning set forth in Recital B.

(cc) "Purchase Option" means the Purchase Option Agreement between Housing Authority and Borrower wherein Borrower grants Housing Authority the right to purchase the Property, the form of which is attached hereto as Exhibit E and incorporated herein by this reference.

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

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

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

(gg) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends on the later of (i) fifty-five (55) years after the effective date of the Regulatory Agreement or (ii) December 1, 2075.

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

(ii) "Unit" means one (1) of the one-hundred and eighty six (186) rental units in the Development, including the manager's unit.

Section 1.2 Exhibits

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

- EXHIBIT A: Legal Description of the Property
- EXHIBIT B: Form of Promissory Note
- EXHIBIT C: Form of Deed of Trust
- EXHIBIT D: Form of Regulatory Agreement
- EXHIBIT E: Form of Purchase Option

ARTICLE 2 HOUSING AUTHORITY LOAN PROVISIONS

Section 2.1 Housing Authority Loan.

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

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, the Housing Authority Loan will bear interest at the rate of 3% per annum based on a 365-day year from the date of disbursement.

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

Section 2.3 Use of Housing Authority Loan Funds.

(a) Housing Authority Loan. Borrower shall use the Housing Authority Loan to benefit the Development, subject to the disbursement conditions set forth in Section 2.6 below.

(b) No Other Uses. Borrower shall not use the Housing Authority Loan for any other purposes without the prior written consent of the Housing Authority.

Section 2.4 Security.

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

Section 2.5 Subordination.

(a) Any agreement by the Housing Authority to subordinate the Deed of Trust to financing approved in writing by the Housing Authority (each a "Senior Loan"), or any loan obtained by Borrower to refinance a Senior Loan, is subject to the satisfaction of the following conditions:

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

(2) Borrower demonstrates to the Housing Authority's reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate financing to ensure the viability of the Development, including the operation of a portion of the Development as affordable housing, as required by the Loan Documents.

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

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

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

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

Section 2.6 Conditions Precedent to Disbursement.

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

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement, or under any other agreement between the Housing Authority and Borrower;

(b) Borrower has delivered to the Housing Authority copies of all of Borrower's organizational documents, and a copy of an authorizing resolution authorizing Borrower's execution of the Loan Documents, any amendments thereto, and the transactions contemplated by this Agreement;

(c) Borrower has executed and delivered to the Housing Authority the Loan Documents, and has caused all other documents, instruments, and policies required under the Loan Documents to be delivered to the Housing Authority;

(d) The Deed of Trust and the Regulatory Agreement are recorded against the Borrower's interest in the Property, with the Regulatory Agreement senior to any Senior Loan deed of trust;

(e) Borrower has furnished the Housing Authority with current evidence of the insurance coverage meeting the requirements of Section 4.12 below; and

(f) A title insurer reasonably acceptable to the Housing Authority is unconditionally and irrevocably committed to issuing a Lender's Policy of title insurance, insuring the priority of the Deed of Trust in the amount of the Housing Authority Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Housing Authority, and containing such endorsements as the Housing Authority may reasonably require.

Section 2.7 Reserved.

Section 2.8 Repayment Schedule.

The Housing Authority Loan shall be repaid as follows:

(a) Payment in Full. All principal and accrued interest on the Housing Authority Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the Housing Authority, (ii) the date of any Default, and (iii) the expiration of the Term.

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

Section 2.9 Reserved.

Section 2.10 Non-Recourse.

Except as provided below, neither Borrower nor its partners shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Housing Authority Loan. Following recordation of the Deed of Trust, the sole recourse of the Housing Authority with respect to the principal of, and interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Housing Authority thereunder, or (ii) be deemed in any way to impair the right of the Housing Authority to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note. Nothing contained herein is intended to relieve Borrower of its obligation to indemnify the Housing Authority under the Loan Documents, and Borrower shall be fully and personally liable for: (i) loss or damage of any kind resulting from waste, fraud, gross negligence, or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; (iv) willful or grossly negligent violation of applicable law; and (v) the

misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

Section 2.11 Process for Disbursement of Housing Authority Loan Proceeds.

Housing Authority shall disburse the entire Housing Authority Loan amount to Borrower at the Housing Authority Closing.

Section 2.12 Reserved.

ARTICLE 3 RESERVED

ARTICLE 4 HOUSING AUTHORITY LOAN REQUIREMENTS

Section 4.1 Information.

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

Section 4.2 Housing Authority Audits.

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

Section 4.3 Hazardous Materials.

(a) Borrower shall keep and maintain the Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property to be in violation of any Hazardous Materials Law. Borrower may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in operation of projects like the Development or kept and used in and about residential property of this type.

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

(c) The Housing Authority has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the Housing Authority (or counsel of its

own choice if a conflict exists with Borrower) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

(d) Borrower shall indemnify and hold harmless the Housing Authority and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 4.3, and Section 5.1. Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the Housing Authority in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify survives termination of this Agreement, repayment of the Housing Authority Loan and the reconveyance of the Deed of Trust, and will not be diminished or affected in any respect as a result of any notice, disclosure, or knowledge, if any, to or by the Housing Authority of Hazardous Materials.

(e) Without the Housing Authority's prior written consent, which will not be unreasonably withheld, Borrower may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Housing Authority's judgment, impair the value of the Housing Authority's security hereunder; provided, however, that the Housing Authority's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Housing Authority's consent before taking such action, provided that in such event Borrower shall notify the Housing Authority as soon as practicable of any action so taken. The Housing Authority agrees not to withhold its consent, where such consent is required hereunder, if: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower

establishes to the satisfaction of the Housing Authority that there is no reasonable alternative to such remedial action which would result in less impairment of the Housing Authority's security hereunder; or (iv) the action has been agreed to by the Housing Authority.

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

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

Section 4.4 Maintenance and Damage.

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

(b) Subject to the requirements of Senior Lenders and if economically feasible in the Housing Authority's judgment after consultation with Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the Housing Authority with such changes as have been approved by

the Housing Authority. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the Housing Authority in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance or condemnation proceeds, and is to be complete within one (1) year thereafter. Any insurance or condemnation proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance or condemnation proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance or condemnation proceeds collected for such damage or destruction are to be promptly delivered by Borrower to the Housing Authority as a special repayment of the Housing Authority Loan, subject to the rights of the Senior Lenders.

Section 4.5 Mechanics Liens, Stop Notices, and Notices of Completion.

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

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

(c) In addition to the obligation set forth in Section 4.5(b), Borrower shall file a valid notice of cessation or Notice of Completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the Housing Authority, without any obligation, to record any notices of completion or cessation of labor, or any other notice that the Housing Authority deems necessary or desirable to protect its interests.

Section 4.6 Accessibility.

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

Section 4.7 Prevailing Wages.

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

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

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

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

(4) cause contractors and subcontractors rehabilitating any improvements to be registered as set forth in California Labor Code Section 1725.5;

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

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

(ii) the construction work is subject to compliance monitoring and enforcement by the DIR.

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

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

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

(b) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Housing Authority) the Housing Authority against any claim for

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

Section 4.8 Notices.

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

- (a) Any litigation known to Borrower materially affecting Borrower, or the Property and of any claims or disputes that involve a material risk of litigation;
- (b) Any written or oral communication Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property or Improvements fail in any respect to comply with any applicable governmental law;
- (c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods);
- (d) Any material adverse change in Borrower's financial condition, any material adverse change in Borrower's operations, or any change in the management of Borrower;
- (e) That any of the statements in Section 5.1(l) regarding Hazardous Materials are no longer accurate;
- (f) Any (i) Default or (ii) event which, with the giving of notice or the passage of time or both, would constitute a Default; and
- (g) Any other circumstance, event, or occurrence that results in a material adverse change in Borrower's ability to timely perform any of its obligations under any of the Loan Documents.

Section 4.9 Operation of Development as Affordable Housing.

Borrower shall operate the Development (i) in accordance with all applicable laws, codes, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (ii) as a housing development consistent with: (1) the Regulatory Agreement attached hereto as Exhibit D and incorporated

herein by this reference, and (2) any other regulatory requirements imposed on Borrower, and rental subsidies provided to the Development.

Section 4.10 Nondiscrimination.

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

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

Section 4.11 Transfer.

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

(b) Except as otherwise permitted in this Section 4.11, no Transfer shall be permitted without the prior written consent of the Housing Authority, which the Housing Authority may withhold in its reasonable discretion. The Housing Authority Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the Housing Authority.

(c) The Housing Authority hereby approves the initial Transfer, if any, of the limited partnership interest in Borrower to the Investor Limited Partner.

(d) The Investor Limited Partner may Transfer, or cause or permit the Transfer, of all or any portion of its interests and to substitute its assignee in its place as a

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

(e) In the event the general partner of Borrower is removed by the Investor Limited Partner of Borrower for cause following default under the Partnership Agreement, the Housing Authority hereby approves the Transfer of the general partner interest to (i) a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the "Code"), or a limited liability company whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor Limited Partner and approved by the Housing Authority in writing, which approval shall not be withheld unreasonably, or (ii) the Investor Limited Partner, or an affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of clause (i) of this paragraph.

Section 4.12 Insurance Requirements.

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

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

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

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

(d) Property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Housing Authority,

naming the Housing Authority as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

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

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

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

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

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

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

(k) Acceptance of Borrower's insurance by the Housing Authority does not relieve or decrease the liability of Borrower under the Loan Documents. The insurance required

to be procured by Borrower pursuant to this Section does not reduce or limit Borrower's contractual obligation to indemnify and defend the Housing Authority as provided in this Agreement.

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

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

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

Section 4.13 Covenants Regarding Approved Financing and Partnership Agreement.

(a) Borrower shall promptly pay the principal and interest when due on any Senior Loans.

(b) Borrower shall promptly notify the Housing Authority in writing of the existence of any default under the Partnership Agreement and any default under documents evidencing any loans secured against the Property whether or not a default has been declared by the lender, and provide the Housing Authority copies of any notice of default.

(c) Borrower shall provide the Housing Authority copies of all amendments, modifications, and supplements to the Partnership Agreement and any document related to any Senior Loan.

(d) Borrower may not incur any indebtedness of any kind or encumber the Development with any liens (other than liens for financing approved by the Housing Authority) without the prior written consent of the Housing Authority.

(e) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the Housing Authority Loan, this Agreement will control.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the Housing Authority as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 5 shall be deemed to be continuing during all times when any or all of the Housing Authority Loan remains outstanding:

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

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

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

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

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

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

(f) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially

affect Borrower's ability to repay the Housing Authority Loan or impair the security to be given to the Housing Authority pursuant hereto.

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

(h) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the Housing Authority fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower from that shown by such financial statements and other data and information.

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

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

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Events of Default.

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

(a) Default Under Regulatory Agreement. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of the Regulatory Agreement, and such failure having continued uncured for the applicable notice and cure periods set forth in the Regulatory Agreement.

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

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Housing Authority to Borrower or, if the breach cannot be cured within thirty (30) days, Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

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

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

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

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

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

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

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

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

Section 6.2 Remedies.

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

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

Section 6.3 Specific Performance. The Housing Authority shall have the right to specific performance, mandamus, or other suit, action or proceeding at law or in equity to require

Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

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

Section 6.5 Right of Contest.

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

Section 6.6 Remedies Cumulative.

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

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

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

Section 7.2 No Claims.

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

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties hereto. The Executive Director is authorized to execute on behalf of the Housing Authority amendments to the Loan Documents as long as any material change in the amount of the Housing Authority Loan or terms of this Agreement is approved by the Housing Authority Board of Commissioners. Any legal fees incurred due to any amendment of the Loan Documents shall be paid for by the Borrower.

Section 7.4 Indemnification.

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

Section 7.5 Non-Liability of Housing Authority Officials, Employees and Agents.

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

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.7 Discretion Retained By Housing Authority.

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

Section 7.8 Conflict of Interest.

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

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

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

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

Section 7.9 Notices, Demands and Communications.

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

Housing Authority:

Housing Authority of the City of Alameda
701 Atlantic Avenue

DRAFT

Alameda, CA 94501
 Attention: Executive Director

Borrower:

Vue Alameda Owner LP
 c/o Lincoln Avenue Capital
 401 Wilshire Blvd., Suite 1070
 Santa Monica, CA 90401
 Attention: Mr. Jonathan Gruskin

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

Section 7.10 Applicable Law.

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

Section 7.11 Parties Bound.

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

Section 7.12 Reserved.

Section 7.13 Severability.

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

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, court order, national, state or local emergencies or disasters, epidemics or pandemics. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of

the notice. In no event shall the Housing Authority be required to agree to cumulative delays in excess of ninety (90) days.

Section 7.15 Housing Authority Approval.

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

Section 7.16 Waivers.

Any waiver by the Housing Authority of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Housing Authority to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Housing Authority to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Housing Authority's written consent to future waivers.

Section 7.17 Title of Parts and Sections.

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

Section 7.18 Entire Understanding of the Parties.

The Loan Documents constitute the entire understanding and agreement of the Parties with respect to the Housing Authority Loan.

Section 7.19 Multiple Originals; Counterpart.

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

Section 7.20 Recognition of Housing Authority.

Borrower will publicly recognize the funding provided by the Housing Authority in all newspaper articles and any other public relations opportunities related to the Development.

[Signatures on following page]

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

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body corporate and politic

By: _____
Vanessa Cooper,
Executive Director

BORROWER:

VUE ALAMEDA OWNER LP,
a California limited partnership

By: Vue Alameda GP LLC,
a Delaware limited liability company,
its Administrative General Partner

By: _____
Name: _____
Title: _____

By: AOF Pacific CA LAC LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing
Corp., a California nonprofit public
benefit corporation, its Sole Member
and Manager

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Land referred to herein below is situated in the City of Alameda, County of Alameda, State of California, and is described as follows:

BEING A PORTION OF PARCEL 3 AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED MARCH 23, 2010 IN DOCUMENT NO. [2010-074484](#), OFFICIAL RECORDS OF ALAMEDA COUNTY, AND ALSO BEING A PORTION OF THE LANDS GRANTED TO PUR ATLANTIC LLC DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED ON OCTOBER 20, 2017 IN DOCUMENT NO. [2017-232301](#), OFFICIAL RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID PUR ATLANTIC LLC PARCEL; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL AND ITS NORTHERLY EXTENSION NORTH 02° 36'57" EAST, 553.32 FEET; THENCE SOUTH 87° 02' 16" EAST, 306.43 FEET TO THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO THE CITY OF ALAMEDA, RECORDED IN [REEL 1688, IMAGE 890](#), OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG LAST SAID LINE SOUTH 02° 51' 49" WEST, 544.93 FEET TO THE SOUTHERLY LINE OF SAID PUR ATLANTIC LLC PARCEL; THENCE ALONG LAST SAID LINE NORTH 88° 37' 00" WEST, 304.14 FEET TO THE POINT OF BEGINNING.

THE LEGAL IS MADE PURSUANT TO THAT CERTIFICATE OF COMPLIANCE RECORDED APRIL 05, 2018 AS INSTRUMENT NO. [2018069189](#) OF OFFICIAL RECORDS.

APN 074-0451-001-08

EXHIBIT B

FORM OF PROMISSORY NOTE

EXHIBIT C
FORM OF DEED OF TRUST

EXHIBIT D
FORM OF REGULATORY AGREEMENT

EXHIBIT E

FORM OF PURCHASE AGREEMENT

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LOAN AGREEMENT

RICA VISTA APARTMENTS

Between

The Housing Authority of the City of Alameda

and

Vue Alameda Owner LP

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Housing Authority of the City of Alameda
701 Atlantic Ave, Alameda, CA 94501
Attn: Executive Director

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

DEED OF TRUST
WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(1825 Poggi Street, Alameda, CA)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of December____, 2020, by and among VUE ALAMEDA OWNER LP, a California limited partnership ("Tristor"), _____Title Company, a California corporation, ("Trustee"), and the HOUSING AUTHORITY OF THE CITY OF ALAMEDA, public body, corporate and politic ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Tristor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Tristor's interest in that certain property located at 1825 Poggi Street, Alameda, California, also known as Assessor's Parcel Number _____("Property"). The Property is more specifically described in Exhibit A attached hereto and incorporated herein by reference.

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Tristor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of Tristor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

DRAFT

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Section 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or will be attached to said building or buildings in any manner;

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing; and

TOGETHER WITH all funds in all operating, replacement and transition reserve accounts created in connection with the development and operation of the Property and any improvements thereon.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS ("Secured Obligations"):

(a) Payment to Beneficiary of all sums at any time owing under or in connection with the Housing Authority Loan Note (defined in Section 1.1 below) until paid in full or cancelled and any other amounts owing under the Loan Documents (defined in Section 1.1 below). Principal and other payments are due and payable as provided in the Housing Authority Loan Note or other Loan Documents, as applicable. The Housing Authority Loan Note and all its terms are incorporated herein by reference, and this Deed of Trust secures any and all extensions thereof, however evidenced;

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents; and

(d) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1 DEFINITIONS

Section 1.1 In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

(a) "Housing Authority Loan" means the loan made by Beneficiary to Trustor in the amount of Ten Thousand Dollars (\$10,000.00).

(b) "Housing Authority Loan Note" or "Note" means the promissory note in the principal amount of Ten Thousand Dollars (\$10,000.00) of even date herewith, executed by Trustor in favor of Beneficiary, as it may be amended or amended or restated, the payment of which is secured by this Deed of Trust. A copy of the Housing Authority Loan Note is on file with Beneficiary and terms and provisions of the Housing Authority Loan Note are incorporated herein by reference.

(c) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.

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(d) "Housing Authority Loan" means the loan made by Beneficiary to Trustor in the amount of Ten Thousand Dollars (\$10,000.00).

(e) "Housing Authority Loan Note" or "Note" means the promissory note in the principal amount of Ten Thousand Dollars (\$10,000.00) of even date herewith, executed by Trustor in favor of Beneficiary, as it may be amended or amended or restated, the payment of which is secured by this Deed of Trust. A copy of the Housing Authority Loan Note is on file with Beneficiary and terms and provisions of the Housing Authority Loan Note are incorporated herein by reference.

(f) "Loan Agreement" means that certain Loan Agreement between Trustor and Beneficiary, dated of even date herewith, as such may be amended from time to time, providing for Beneficiary to loan to Trustor the Housing Authority Loan for the acquisition of affordability covenants on the Property.

(g) "Loan Documents" means this Deed of Trust, the Regulatory Agreement, Housing Authority Loan Note, the Loan Agreement, the Purchase Option, and any other agreements, debt, loan or security instruments between Trustor and Beneficiary relating to the Housing Authority Loan.

(h) "Principal" means the collective amount required to be paid under the Housing Authority Loan Note.

(i) "Purchase Option" means the Purchase Option Agreement of even date herewith by and between Beneficiary and Trustor.

(j) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith by and between Beneficiary and Trustor and recorded against the Borrower's interest in the Property concurrently herewith.

(k) "Senior Lender" means a lender making a loan to Trustor to which the Housing Authority has subordinated this Deed of Trust.

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

ARTICLE 2
MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, Trustor will, at Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. Beneficiary has no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security or any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file or record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary exercises its rights as agent of Trustor only in the event that Trustor fails to take, or fails to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary specifies upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained requires Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Alameda County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities, including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law, and as approved, in writing, by Beneficiary.

Section 2.3 Assignment of Rents.

(a) As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of

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any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable, subject to the rights of Senior Lenders. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred and is continuing, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section as the same becomes due and payable, including, but not limited to, rents then due and unpaid, and all such rents will immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor contains a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

(b) Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, other than as security to other approved lenders, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenants that, so long as the Secured Obligations are outstanding, Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

(c) Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, and subject to any applicable notice and cure period, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof, including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of

contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver will be entitled to receive a reasonable fee for so managing the Property.

(d) All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents are to be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this Deed of Trust. Beneficiary or the receiver is to have access to the books and records used in the operation and maintenance of the Property and will be liable to account only for those rents actually received. Beneficiary is not liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section.

(e) If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes will become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts are payable by Trustor to Beneficiary upon notice from Beneficiary to Trustor requesting payment thereof and will bear interest from the date of disbursement at the Default Rate.

(f) Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein will not cure or waive any default under this Deed of Trust or invalidate any other right or remedy of Beneficiary under applicable law or under this Deed of Trust. This assignment of rents of the Property will terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3 TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company that are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor is not required to pay and discharge any such tax, assessment, charge or levy so long as (i) the legality thereof is promptly and actively contested in good faith and by appropriate proceedings, and (ii) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section. With respect to taxes, special assessments or other similar

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governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (ii) of the first sentence of this paragraph, the provisions of this Section may not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor fails to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but is under no obligation to) pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, will become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all Secured Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages are to be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, are to be delivered to Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances.

In the event Trustor fails to maintain the full insurance coverage required by this Deed of Trust or fails to keep the Security in accordance with the Loan Documents, Beneficiary, after at least seven (7) days prior notice to Trustor, may (but is under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced by Beneficiary will become part of the Secured Obligations (together with interest as set forth below) and will be secured hereby, which amounts Trustor agrees to pay on the demand of Beneficiary, and if not so paid, will bear interest from the date of the advance at the Default Rate.

ARTICLE 4 DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

Subject to the rights of Senior Lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (i) the taking of all or any part of or any

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interest in the Property by or under assertion of the power of eminent domain, (ii) any damage to or destruction of the Property or in any part thereof by insured casualty, and (iii) any other injury or damage to all or any part of the Property (collectively, the "Funds") are hereby assigned to and are to be paid to Beneficiary by a check made payable to Beneficiary. Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary determines at its sole option. Beneficiary is entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. Application of all or any part of the Funds collected and received by Beneficiary or the release thereof will not cure or waive any default under this Deed of Trust.

ARTICLE 5
AGREEMENTS AFFECTING THE PROPERTY; FURTHER
ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Reserved.

Section 5.3 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Default (as defined in Section 7.1) hereunder, and if Beneficiary employs attorneys or incurs other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of Trustor in this Deed of Trust, Trustor agrees that it will, on demand therefor, pay to Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by Beneficiary (including, but not limited to, other professional service fees and costs); and any such amounts paid by Beneficiary will be added to the Secured Obligations, and shall bear interest at the Default Rate from the date such expenses are incurred.

Section 5.4 Payment of the Principal.

Trustor shall pay to Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.5 Personal Property.

To the maximum extent permitted by law, items of personal property subject to this Deed of Trust are deemed to be fixtures and this Deed of Trust constitutes a fixture filing under the California Commercial Code. As to any personal property not deemed or permitted to be a

fixture, this Deed of Trust constitutes a security agreement under the California Commercial Code. Trustor hereby grants Beneficiary a security interest in such personal property.

Section 5.6 Perfection of Security Interests.

Trustor shall execute any and all documents or instruments as are required to convey to Beneficiary a valid perfected security interest in the Security. Trustor authorizes Beneficiary to file financing statements and any other such documents in any jurisdiction(s) as may be necessary or desirable to perfect or protect Beneficiary's security interests in the Security. Trustor agrees to perform all acts that Beneficiary may reasonably request so as to enable Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. Trustor shall pay all costs of filing such documents and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for liens and releases thereof, as Beneficiary may reasonably require. Except as otherwise required by a Senior Lender, Trustor shall not create or cause to be created pursuant to the California Commercial Code any other security interest in the Security, including replacements and additions thereto, without the prior written consent of Beneficiary.

Section 5.7 Operation of the Security.

Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.8 Inspection of the Security.

At any and all reasonable times, Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, have the right, without payment of charges or fees, to inspect the Security, provided, however, that any such inspection shall not unreasonably disturb any tenants or other occupants of the Property.

Section 5.9 Nondiscrimination.

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

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Nothing in this Section prohibits Trustor from requiring Housing Authority -Assisted Units in the Development to be available to and occupied by eligible households in accordance with the Regulatory Agreement.

ARTICLE 6 HAZARDOUS WASTE

Section 6.1 Trustor shall keep and maintain the Property (including, but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and shall not cause or permit the Property to be in violation of any Hazardous Materials Law (defined below). Trustor may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law (collectively referred to hereinafter as "Hazardous Materials"), except such of the foregoing as may be customarily used in construction or operation of a multi-family residential development.

Section 6.2 Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

Section 6.3 Beneficiary has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to Beneficiary (or counsel of its own choice if a conflict exists with Trustor) in, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims, and to have its reasonable attorneys' fees in connection therewith paid by Trustor.

Section 6.4 Trustor shall indemnify and hold harmless Beneficiary and its Board of Commissioners, directors, officers, employees, agents, successors and assigns from and against

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

Section 6.5 Without Beneficiary's prior written consent, which may not be unreasonably withheld, Trustor may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment, impairs the value of Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor notifies Beneficiary as soon as practicable of any action so taken.

Section 6.6 Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

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Section 6.7 Trustor hereby acknowledges and agrees that (i) this Article is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

Section 6.8 In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1), then, without otherwise limiting or in any way affecting Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Trustor will be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate until paid, will be added to the indebtedness secured by this Deed of Trust and will be due and payable to Beneficiary upon its demand made at any time following the conclusion of such action.

Section 6.9 Trustor is aware that California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following are events of default following the expiration of any applicable notice and cure periods included in the Loan Agreement (each a "Default"): (i) failure to make any payment to be paid by Trustor under the Loan Documents; (ii) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including,

without limitation, the provisions concerning discrimination; (iii) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any Secured Obligations, which default is not cured within the times and in the manner provided therein; and (iv) failure to make any payments or observe or perform any of Trustor's covenants, agreements or obligations under any other debt instrument or regulatory agreement secured by the Property, which default is not cured within the time and in the manner provided therein.

Section 7.2 Acceleration of Maturity.

If a Default has occurred and is continuing, then at the option of Beneficiary, the amount of any payment related to the Default and all unpaid Secured Obligations are immediately due and payable, upon written notice by Beneficiary to Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of Beneficiary to exercise such option when entitled to do so will be construed as a waiver of such right.

Section 7.3 Beneficiary's Rights and Remedies.

If a Default has occurred and is continuing, Beneficiary may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value or marketability of the Security and the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security will not cure or waive any Default or Notice of Sale (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary will be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Default, including the right to exercise the power of sale;
- (b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
- (c) Deliver to Trustee a written declaration of Default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Alameda County; or
- (d) Exercise any or all rights and remedies provided for by the California Commercial Code or other applicable law against any personal property security; or
- (e) Exercise all other rights and remedies provided herein, in the instruments by which Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the Secured Obligations.

Section 7.4 Foreclosure by Power of Sale.

(a) Should Beneficiary elect to foreclose on the Property by exercise of the power of sale herein contained, Beneficiary shall deliver to Trustee the Notice of Sale and will deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which will be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(b) Upon receipt of the Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as is then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after the lapse of that amount of time as is then required by law and after recordation of such Notice of Sale as required by law, sell the Security, at the time and place of sale set forth in the Notice of Sale, whether as a whole or in separate lots or parcels or items, as Trustee deems expedient and in such order as it determines, unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts will be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(c) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor, as may be consistent with California Civil Code Section 2924k.

(d) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If a Default occurs and is continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, has the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers will have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided

herein, and will continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy will be cumulative and concurrent and will be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of Beneficiary to exercise any right, power or remedy accruing upon any Default will exhaust or impair any such right, power or remedy, or will be construed to be a waiver of any such Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to Beneficiary may be exercised from time to time and as often as may be deemed expeditious by Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of Trustor hereunder will not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of Trustor hereunder. Failure on the part of Beneficiary to complain of any act or failure to act or to declare a Default, irrespective of how long such failure continues, will not constitute a waiver by Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Default by Trustor.

(b) If Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligations, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission will not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor will any such act or omission preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Default then made or of any subsequent Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary will the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

Beneficiary has the power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be

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unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor, its creditors or its property, Trustee or Beneficiary, to the extent permitted by law, will be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

ARTICLE 8
MISCELLANEOUS

Section 8.1 Amendments.

This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full upon expiration of the term of the Regulatory Agreement, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

(a) If at any time after the execution of this Deed of Trust it becomes necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication must be in writing and is to be served personally, by reputable overnight delivery service (which provides a delivery receipt), or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary is to be addressed to:

Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

and (2) if intended for Trustor shall be addressed to:

Vue Alameda Owner LP
c/o Lincoln Avenue Capital

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401 Wilshire Blvd., Suite 1070
 Santa Monica, CA 90401
 Attention: Mr. Jonathan Gruskin

With a copies to:

[insert]

Copies of notices to Trustor from Beneficiary shall also be provided by Beneficiary to any limited partner of Trustor who requests such notice in writing and provides Beneficiary with written notice of its address in accordance with this Section.

(b) Any notice, demand or communication will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation will also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of Trustor and a transferee, such obligation will be deemed to be a joint and several obligation of Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor will be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity will not affect the balance of the terms and provisions hereof, which terms and provisions will remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, will be considered to have been first

paid or applied to the full payment of that portion of the debt that is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust is governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular includes the plural and the masculine includes the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage also refers to a deed of trust and any reference to a deed of trust also refers to a mortgage.

Section 8.10 Actions.

Trustor shall appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter will be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution is to be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, will be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions.

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Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Security encumbered by this Deed of Trust, the following rule contained in 26 U.S.C. Section 42(h)(6)(E)(ii), as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Regulatory Agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Internal Revenue Code.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

VUE ALAMEDA OWNER LP,
a California limited partnership

By: Vue Alameda GP LLC,
a Delaware limited liability company,
its Administrative General Partner

By: _____
Name: _____
Title: _____

By: AOF Pacific CA LAC LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing
Corp., a California nonprofit public
benefit corporation, its Sole Member
and Manager

By: _____
Name: _____
Title: _____

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

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EXHIBIT A**LEGAL DESCRIPTION OF PROPERTY**

The Land referred to herein below is situated in the City of Alameda, County of Alameda, State of California, and is described as follows:

BEING A PORTION OF PARCEL 3 AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED MARCH 23, 2010 IN DOCUMENT NO. [2010-074484](#), OFFICIAL RECORDS OF ALAMEDA COUNTY, AND ALSO BEING A PORTION OF THE LANDS GRANTED TO PUR ATLANTIC LLC DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED ON OCTOBER 20, 2017 IN DOCUMENT NO. [2017-232301](#), OFFICIAL RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID PUR ATLANTIC LLC PARCEL; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL AND ITS NORTHERLY EXTENSION NORTH 02° 36'57" EAST, 553.32 FEET; THENCE SOUTH 87° 02' 16" EAST, 306.43 FEET TO THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO THE CITY OF ALAMEDA, RECORDED IN [REEL 1688, IMAGE 890](#), OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG LAST SAID LINE SOUTH 02° 51' 49" WEST, 544.93 FEET TO THE SOUTHERLY LINE OF SAID PUR ATLANTIC LLC PARCEL; THENCE ALONG LAST SAID LINE NORTH 88° 37' 00" WEST, 304.14 FEET TO THE POINT OF BEGINNING.

THE LEGAL IS MADE PURSUANT TO THAT CERTIFICATE OF COMPLIANCE RECORDED APRIL 05, 2018 AS INSTRUMENT NO. [2018069189](#) OF OFFICIAL RECORDS.

APN 074-0451-001-08

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PROMISSORY NOTE
(Rica Vista Apartments)

\$10,000.00

Alameda, California
December ____, 2020

FOR VALUE RECEIVED, the undersigned Vue Alameda Owner LP, a California limited partnership ("Borrower"), promises to pay to the Housing Authority of the City of Alameda, a public body, corporate and politic ("Holder") the principal sum of up to Ten Thousand Dollars (\$ 10,000.00), plus interest thereon pursuant to Section 2 below ("Housing Authority Loan").

1. Borrower's Obligation. This Note evidences Borrower's obligation to pay the Holder the principal amount of Ten Thousand Dollars (\$ 10,000.00), with interest for the funds loaned to Borrower by Holder to pay costs to maintain the Improvements pursuant to that certain Loan Agreement between Borrower and the Holder of even date herewith (the "Loan Agreement"). All capitalized terms used but not defined in this Note have the meanings set forth in the Loan Agreement.

2. Interest. The Housing Authority Loan will bear simple interest at the rate of 3% per annum based on a 365-day year from the date of disbursement. If a Default occurs, interest on the principal balance will begin to accrue as of the date of Default (following expiration of applicable notice and cure periods) and continue until such time as the Housing Authority Loan funds are repaid in full or the Default is cured, at the Default Rate.

3. Term and Repayment Requirements. Principal and interest under this Note are due and payable in accordance with this Note and as set forth in Section 2.8 of the Loan Agreement. In any event, the unpaid principal balance, together with any accrued interest, is due and payable not later than (i) fifty-five (55) years from the effective date of the Regulatory Agreement or (ii) December 1, 2075.

4. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of Holder, except as may be otherwise set forth in the Loan Agreement.

5. Security. This Note is secured by the Regulatory Agreement and the Deed of Trust wherein Borrower is the trustor and Holder is the beneficiary.

6. Terms of Payment.

(a) Borrower shall make all payments due under this Note in currency of the United States of America to Holder at the Housing Authority of the City of Alameda, 701 Atlantic Avenue, Alameda, California 94501, Attention: Executive Director, or such other place as Holder may from time to time designate.

(b) All payments on this Note are without expense to Holder. Borrower shall pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of Holder, incurred in connection with the enforcement of this Note and the release of any security hereof.

(c) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest that exceeds the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate will automatically be deducted from the principal balance owing on this Note, so that in no event is Borrower obligated under the terms of this Note to pay any interest that would exceed the lawful rate.

(d) The obligations of Borrower under this Note are absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

(e) Upon recordation of the Deed of Trust this Note will become nonrecourse to Borrower and its partners, pursuant to and except as provided in Section 2.10 of the Loan Agreement, which Section 2.10 is hereby incorporated into this Note.

7. Default.

(a) Upon the occurrence of a Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust, will at the option of Holder, become immediately due and payable without further demand.

(b) Holder's failure to exercise the remedy set forth in Subsection 7(a) above or any other remedy provided by law upon the occurrence of a Default does not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Holder of any payment that is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

8. Waivers.

(a) Borrower waives: (i) demand, presentment, protest, notice of demand, notice of non-payment, notice of dishonor, notice of protest, and all other demands and notices in connection with the delivery, acceptance, performance, and enforcement of this Note; and (ii) any and all lack of diligence or delays by Holder in collection or enforcement hereof. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

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(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note must not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

9. Miscellaneous Provisions.

(a) All notices to Holder or Borrower are to be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note is governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder are to be strictly construed, time being of the essence.

(f) The Loan Documents, of which this Note is a part, contain the entire agreement between the parties as to the Housing Authority Loan and the provisions of the Loan Documents are incorporated herein by reference. This Note may not be modified except upon the written consent of the parties.

[Signature on following page.]

IN WITNESS WHEREOF, this Promissory Note is executed by Borrower as of the day and year first written above.

BORROWER:

Vue Alameda Owner LP,
a California limited partnership

By: Vue Alameda GP LLC,
a Delaware limited liability company,
its Administrative General Partner

By: _____
Name: _____
Title: _____

By: AOF Pacific CA LAC LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing
Corp., a California nonprofit public
benefit corporation, its Sole Member
and Manager

By: _____
Name: _____
Title: _____

PURCHASE OPTION AGREEMENT

(Rica Vista Apartments)

This PURCHASE OPTION AGREEMENT (the “Agreement”) is dated as of November ____, 2020, and is between the Housing Authority of the City of Alameda, a public body corporate and politic (the “Housing Authority”) and Vue Alameda Owner LP, a California limited partnership (the “Owner”).

Recitals

A. The Owner is the owner of that certain real property located at 1825 Poggi Street, City of Alameda, County of Alameda, State of California, as further described in the legal description attached hereto as Exhibit A and incorporated herein (the “Property”) and the improvements thereon consisting of one hundred eighty-six (186) units of multifamily rental housing (including one (1) manager’s unit), a fitness center, pool, outdoor commercial patio, 199 surface parking spaces and other attendant site improvements (collectively, the “Improvements”). The Property including any Improvements are collectively referred to herein as the “Development”.

B. The Development is assisted with a mortgage loan (the “Housing Authority Loan”) from the Housing Authority and is or will be subject to a regulatory agreement (the “Regulatory Agreement”) with the Housing Authority restricting the use of certain units within the Development as low-income housing for a term of 55 years.

C. As a condition to the Housing Authority Loan and the recordation of the Regulatory Agreement, the Housing Authority desires to have the right to acquire the Development pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the Housing Authority Loan, the Regulatory Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Capitalized Terms. Capitalized terms used herein unless otherwise defined shall have the definitions for them set forth in the Regulatory Agreement.

Section 2. Grant of Option. During the Term of the Regulatory Agreement, the Owner hereby grants to the Housing Authority an option (the “Option”) to purchase the real estate, fixtures, and personal property comprising the Development or associated with the physical operation thereof and owned by the Owner at the time of purchase (the “Property”) on the terms and conditions set forth in this Agreement.

Section 3. Purchase Price. The purchase price pursuant to the Option (the “Option Price”) shall be an amount equal to the fair market value of the Property appraised as low-income housing assuming the Property is affordable for the period of the Regulatory Agreement and subject to the restrictions in the Rent Program (the “Appraised Fair Market Value of the Property”). The above-referenced appraisal shall be made by a licensed appraiser who is a member of the

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Master Appraiser Institute (“MAI”) and who has experience in the geographic area in which the Property is located. The Appraised Fair Market Value of the Property shall be determined by a MAI appraiser selected by the Owner, with the prior consent of the Housing Authority. The appraisal shall be paid for by the Owner. If the parties are unable to agree upon a MAI appraiser, the Appraised Fair Market Value of the Property shall be determined by a MAI appraiser agreed upon by a MAI appraiser selected by the Owner and a MAI appraiser selected by the Housing Authority, which appraisal shall be paid for by the Owner.

Section 4. As soon as practicable following Owner’s decision to sell the Property during the Term of the Regulatory Agreement, Owner shall deliver to the Housing Authority a written notice regarding Owner’s intention to sell (“Notice to Sell”). The Owner shall pay the broker’s fees and expenses selected pursuant to this Section 4.

Section 5. Exercise of Option. Within 30 business days of the Housing Authority’s receipt of Owner’s Notice to Sell, the Housing Authority shall provide the Owner with written notice of its intent to exercise its Option if the Housing Authority desires to purchase the Property pursuant to the Option (the “Option Exercise Notice”). Failure of the Housing Authority to deliver the Option Exercise Notice within such 30 business days of the Housing Authority’s receipt of Owner’s Notice to Sell shall be deemed to be the Housing Authority’s election to not exercise its Option and the Option shall automatically terminate and be of no further force or effect.

Section 6. Contract and Closing. Upon determination of the Option Price and in the event the Housing Authority exercises its Option by delivery of the Option Exercise Notice, the Housing Authority shall deliver a refundable deposit equal to three percent (3%) of the Option Price (the “Housing Authority Deposit”) to an escrow company mutually agreed to by the Owner and the Housing Authority within seven (7) business days after the Housing Authority’s delivery of Option Exercise Notice to the Owner. The Housing Authority Deposit is refundable to the Housing Authority in the event the Close of Escrow does not occur, and shall be credited towards the purchase price of the Property in the event the Close of Escrow does occur. Concurrently, the Owner and the Housing Authority shall enter into a written contract for the purchase and sale of the Property in accordance with the terms of this Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Property is located providing for a closing not later than 60 business days after the Option Price has been determined, or such additional time as may be mutually agreed upon by the parties (the “Closing Date”). In the absence of any such contract, this Agreement shall be specifically enforceable upon the exercise of the Option.

Section 7. Conveyance and Condition of the Property. The Owner’s right, title and interest in the Property shall be conveyed by quitclaim deed, subject to such liens, encumbrances and parties in possession as shall exist as of the date of closing. The Optionee shall accept the Property “AS IS, WHERE IS” and “WITH ALL FAULTS AND DEFECTS,” latent or otherwise, without any warranty or representation as to the condition thereof whatsoever, including without limitation, without any warranty as to fitness for a particular purpose, habitability, or otherwise and no indemnity for hazardous waste or other conditions with respect to the Property will be provided. Closing costs associated with the purchase and sale of the Property shall be allocated in accordance with the county custom.

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Section 8. Termination. This Agreement shall automatically terminate upon (i) the termination of the Regulatory Agreement (including without limitation, the expiration of the Term of the Regulatory Agreement), (ii) failure to exercise the Option in accordance with Section 4 of this Agreement, or (ii) the transfer of the Property to a lender in total or partial satisfaction of any loan.

Section 9. Notices. Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given and received (i) two (2) business days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) business day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopier or other facsimile transmission, answer back requested, or (iv) on the day delivered personally, in each case, to the parties at their respective addresses set forth below, or at such other addresses as such parties may designate by notice to the other party and, in any case, with copies to with copies to Goldfarb & Lipman LLP, 550 South Hope Street, Suite 2685, Los Angeles, CA 90071, Attn: Jhaila J. Brown, Esq. and Downs Pham & Kuei LLP, 235 Montgomery Street, 30th Floor, San Francisco, CA 94104, Attention: Irene C. Kuei, Esq.

To the Housing Authority: Housing Authority of the City of Alameda
 701 Atlantic Avenue
 Alameda, CA 94501
 Attention: Executive Director

To the Owner: Vue Alameda Owner LP
 c/o Lincoln Avenue Capital
 401 Wilshire Blvd., Suite 1070
 Santa Monica, CA 90401
 Attention: Mr. Jonathan Gruskin

Section 10. Severability of Provisions

Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

Section 11. Binding Provisions

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

Section 12. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

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Section 13. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.

Section 14. Headings

All headings in this Agreement are for convenience of reference only. Masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

Section 15. Amendments

This Agreement shall not be amended except by written agreement between the Owner, and the Housing Authority.

Section 16. Time

Time is of the essence with respect to this Agreement, and all provisions relating thereto shall be so construed.

Section 17. Legal Fees

Except as otherwise provided herein, in the event that legal proceedings are commenced by the Owner against the Housing Authority or by the Housing Authority against the Owner in connection with this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses.

Section 18. Commission. Each party to this Agreement represents to the other party that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement.

Section 19. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Housing Authority shall be personally liable to the Owner in the event of any default or breach of this Agreement by the Housing Authority, or for any amount that may become due to Owner or any of its successors in interest.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the parties have executed this Purchase Option Agreement as of the date first set forth hereinabove.

OWNER:

Vue Alameda Owner LP,
a California limited partnership

By: Vue Alameda GP LLC,
a Delaware limited liability company,
its Administrative General Partner

By: _____
Name: _____
Title: _____

By: AOF Pacific CA LAC LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing
Corp., a California nonprofit public
benefit corporation, its Sole Member
and Manager

By: _____
Name: _____
Title: _____

HOUSING AUTHORITY:

Housing Authority of City of Alameda,
a public body corporate and politic

By: _____
Vanessa Cooper
Executive Director

EXHIBIT A
LEGAL DESCRIPTION



Housing Authority of the City of Alameda

PHONE (510) 747-4300
FAX (510) 522-7848
TTY/TRS 711

701 Atlantic Avenue • Alameda, California 94501-2161

To: Honorable Chair and Members of the Board of Commissioners

From: Richard Yoshida, Project Manager

Date: December 16, 2020

RE: Authorize the Executive Director to Execute Necessary Documents and to Purchase Eighteen Below Market Rate Units at 2800 Fifth Street for a Total Cost Not to Exceed \$3,500,000

BACKGROUND

The City of Alameda municipal code 30-16, Inclusionary Housing Requirements for Residential Projects, requires that all residential development of five (5) or more units provide and restrict at least fifteen percent of the total units to very low-, low- and moderate-income households. For residential units of nine (9) or fewer units, the developer may satisfy the requirements by paying a fee in lieu of providing units.

Both Stargell Commons and Littlejohn Commons were constructed to satisfy the affordable housing requirement. When the City enters into an Affordable Housing Agreement with a developer, the Agreement contains an option for the Housing Authority to purchase one or more of the very low and low income affordable units at a purchase price equal to the Affordable Sales Price. At Mulberry Commons, the Housing Authority acquired four units that were developed and sold through the Program.

In many of these development projects, the units that are priced for moderate incomes are sold, and the units that are restricted for low and very low are developed as rental properties. However, a small number of the low and very low-income homes are for sale.

Once sold, a BMR unit is subject to a deed of trust that restricts the resale to another eligible buyer at the then affordable price for at least 59 years. If a home is sold, the 59-year period restarts.

Further, buyers must sign a promissory note for the difference between the market price and the BMR price. The restriction documents also include a "right of first refusal" clause for the Housing Authority to purchase a BMR home. In the past, the Housing Authority has assisted with the resale of several homes but has not exercised this right.



DISCUSSION

Financial Overview

When the BMR program was initiated and for many years, the difference in value between the appraised value of a home and the restricted affordable price was not extreme. For example, a home was sold in the year 2000 to a low-income buyer for \$160,000 and the appraised value was \$240,000. The buyer had a first mortgage for \$145,000 and signed a promissory note for \$80,000 for the 'soft' second mortgage with the City. No payment of the second mortgage is due unless the home is rented or sold.

Since then, median income has increased modestly but home values have increased extremely. Currently, the difference between the affordable sale price and the average selling price is over \$900,000 for homes sold at the very-low price level. A buyer who purchases a BMR home would be required to sign a promissory note for this amount and City's deed of trust will be recorded against the property.

Another change since earlier BMR homes were sold is the average amount of monthly HOA fees that must be paid by owners. In 2000, average HOA fees were \$150 per month. In 2020, the estimated monthly HOA and assessment fee will be around \$300. The target income to purchase a 2 Bedroom unit is \$58,750 for a very low-income buyer and \$82,250 annually for a low-income buyer.

Staff has evaluated the facts related to the sale of these high value homes and has concerns about long-term feasibility and the impact on potential low-income buyers. For buyers who purchase condominiums, they may be unable to pay for the cost of assessments that are unknown at the time of initial purchase. For many owners, their net worth may always be negative because of the extremely high second mortgage. The ability to secure credit for other purposes may be affected because of overall debt to income ratio. There is a tax benefit for owners that itemize deductions, but this has a small value based on the size of the first mortgage. Further, the equity building benefit of homeownership that can offset a high sale price for non-subsidized buyers is not available to low income buyers because the resale price is restricted to the same income level. For these reasons, staff believes that low and very low-income BMR units are often better operated as low income rental units by AHA than as owner-occupied, especially at a time when affordable rentals are extremely scarce. The rental units will also be subject to a 59-year affordability restriction, which would restart if the units are sold for homeownership. AHA has been operating multiple units in this manner, utilizing third party property management, and can absorb additional units.

2800 Fifth Street

Pulte Home Company, LLC has been working with the Planning Board on approval of the development plan for 357 residential units. Of these, there are 11 units very low-income and 7 units low-income set aside as part of the Inclusionary Housing Requirements.

The sale price of the home is set according to the very low or low-income affordability level. The estimated sale price (2 Bedroom) of the very low units is \$134,606 and the estimated price of the low units is \$234,867. At a total of \$3,500,000 (including a 12% buffer), the average per unit



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investment of \$194,444 is very reasonable if compared to AHA investment in other properties under development. The return on investment will be secure whether the units are rented or resold. This is a significantly lower cost than if the AHA were to construct the units, and the homes will be available to occupy earlier than units that are built through the tax credit program or that could be self-built. The very-low and low income units will be phased in and available over the next 2-4 years. Once purchased, AHA will rent to income-qualified tenants. The home can be sold by AHA at any time to an income eligible buyer who would be subject to all BMR program guidelines.

FINANCIAL IMPACT

The source of funds for the property purchase shall be Housing Authority funds from agency Reserves that are reserved for housing development. This activity would be included within the budget for FY 21-22. The affordable rents collected are expected to exceed all operating costs such as insurance, HOA fees, inspections, and routine maintenance. Should the Board go forward with the purchase, staff will review to ensure that payback is within a reasonable time frame. Yard maintenance will be performed by the HOA and the units will be subject to an annual inspection by the Housing Authority. Funds will also be deposited into a dedicated HOA reserve account for major maintenance and repairs.

RECOMMENDATION

Authorize the Executive Director to Execute Necessary Documents and to Purchase Eighteen Below Market Rate Units at 2800 Fifth Street for a Total Cost Not to Exceed \$3,500,000.

Respectfully submitted,

DocuSigned by:

Richard Yoshida

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Richard Yoshida
Project Manager





Housing Authority of the City of Alameda

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To: Honorable Chair and Members of the Board of Commissioners

From: Janet Basta, Director of Human Resources and Operations

Date: December 16, 2020

RE: Review the Vacation Pay-Out Policy and Provide Direction to Staff

BACKGROUND

The Housing Authority became an autonomous agency in 2012 and adopted new personnel policies that replaced the City's Employee Handbook and the ACEA and MCEA Memorandums of Understanding. In drafting the 2012, Personnel Policies staff sought guidance from a variety of sources and perspectives. Sample personnel policies from the Housing Authority Risk Retention Pool (HARRP) provided a good starting place. Subsequently, Liebert Cassidy Whitmore completed a thorough review of the AHA Personnel Policies to certify legal compliance at both the state and federal levels on November 4, 2014. Various changes have triggered legal or policy changes since then and have been approved by the Board. The Employee Handbook was most recently revised and approved on December 21, 2016.

DISCUSSION

In November 2020, AHA Management proposed eliminating the Vacation Pay-Out provision included in the Vacation Leave policy, among other changes to the policy impacting caps on vacation accrual. It was explained that offering a vacation pay-out would have been an option to address high vacation accrual balances, but legal counsel had provided updated guidance that there would be significant tax implications to all employees should any employees participate in a pay-out that might be offered. At that time, the Board elected to not adopt that portion of the proposed policy changes that addressed the vacation pay-out provision. Additional information about the vacation pay-out program is being provided this month as a follow-up. The vacation pay-out policy was added in December 2016 (effective January 2017) to assist those employees who were reaching their vacation cap. Legal counsel reviewed those changes at that time.

Under Federal Regulations, compensation is included in an employee's gross income in the year it is received, whether it is actually received or constructively received. Constructive receipt of incomes occurs when compensation is credited to an employee's account or otherwise made available so that the employee could have drawn upon it during the taxable year if notice of intention to withdraw had been given. This is true even if the employee never actually withdraws the funds (i.e. in this case, requests a pay-out of vacation leave).



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However, income is not constructively received if the employee's control of its receipt is "subject to substantial limitations or restrictions." (26 C.F.R § 1.451-2(a).) Legal counsel has advised that the current AHA Vacation Pay-Out Policy does not contain the substantial limitations or restrictions required to avoid constructive receipt, and thus all employees could face tax implications should a pay-out opportunity be made available to staff.

AHA offered vacation pay-out opportunities in 2017, 2018, and 2019. Participation was as follows:

- 2017: four employees participated; two sold the maximum of 60 hours, two others sold smaller amounts in conjunction with implementation of a revised vacation cap.
- 2018: two employees participated; both sold 60 hours
- 2019: four employees participated; all sold 60 hours

Thus, in any given year, fewer than 7.5% of employees participated in the program. Further, employees tended to repeat participation. For example, both employees who "sold" hours in 2018 also sold in 2019. In total just five employees have accessed this program; two of these employees are current employees. AHA has not offered a vacation pay out since January 2019.

While the IRS's requirements have existed for some time, they have come to the forefront more recently and become more relevant as the IRS has increased audits of public agencies, and during these audits, agencies have been found to be out of compliance with the constructive receipt doctrine. To legal counsel's knowledge, no public agency has been penalized yet, but the IRS has requested that those agencies stop the cash out process or develop a process that complies with the constructive receipt doctrine. Liebert Cassidy Whitmore initially flagged this provision as an issue last year when the Agency was revising some of its leave policies, and management subsequently proposed that it be removed from the Employee Handbook and has elected not to offer a pay-out opportunity in the meantime.

Under the constructive receipt regulations, if a buyout is offered, employees that do not elect a vacation pay-out when it is offered will be taxed on the value of the maximum pay-out allowed (in this case 60 hours) even though they do not actually receive the payment for those hours. For illustrative purposes, the practical implications of this for staff in various positions, assuming compensation in the middle of the range and a federal tax rate of 20%, are payroll deductions in the form of additional tax payments of:

- Program Assistant (range 14): \$427.68
- Housing Specialist II (range 22): \$519.96
- Management Analyst or Supervisor (range 33): \$680.16
- Senior Analyst/Project Manager/Controller (range 42): \$846.84

If the Agency does not tax all employees as required, the IRS could assess penalties on the Agency for not withholding taxes properly. Additionally, AHA would likely need to consult with a tax professional on the tax implications for those employees who do not cash out leave, but then use leave in subsequent years. Since they will be taxed in the current year, it is unclear whether they will be taxed again when they actually used their leave, or what happens if their rate of pay is different when they use their leave in the future. This is one example of the potential implications that would need to be explored with tax counsel if the Agency were to proceed under its current program.



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Based on the above analysis, AHA Management does not intend to offer a vacation pay-out opportunity in 2020 due to the financial implications to employees and the administrative burden that would be placed on payroll processes.

AHA Management is seeking direction from the Board on whether or not to propose a policy that would meet the substantial limitations and restrictions regulations. Due to the complexity of this type of policy, Management is asking for direction only at this point. If AHA wanted to be able to have a vacation pay-out plan, but avoid the constructive receipt issue, it would need to create a plan that is "subject to substantial limitations or restrictions."

One option, which is used by other public agencies, is a plan where employees elect in the current calendar year how much vacation they want to cash out in the subsequent year. The election must be irrevocable, and only leave accrued during the calendar year when the cash-out occurs is eligible to be cashed out. For example, to cash out leave in calendar year 2022, an employee would need to make an irrevocable election to cash out X hours of leave in 2021, and only leave earned in 2022 would be eligible to be cashed out. Due to the irrevocable nature of this type of program, it is difficult to predict if program usage would stay the same or be reduced; it is unlikely, however, that usage levels would increase substantially.

Other options may be available, and would require further research. Additionally, prior to developing and proposing any policy, Management would need to seek outside guidance from a tax specialist as well as determine the administrative implications of implementing the proposed policy.


FINANCIAL IMPACT

This item is for discussion only. In the event that the Board gives direction that further research needs to be done, additional staff time and outside legal and tax advice will be needed.

RECOMMENDATION

Review the Vacation Pay-Out Policy and Provide Direction to Staff.

Respectfully submitted,

DocuSigned by:

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Janet Basta
Director of Human Resources and Operations

Attachment(s):

1. Vacation Leave Policy of the Housing Authority's Employee Policies and Procedures Handbook approved November 18, 2020



Attachment 1

PART FIVE: PAID TIME OFF**Vacation Leave**

The Housing Authority provides paid vacation time to regular full-time employees and part-time employees so that they may take time off to relax, recuperate and recharge.

Accrual

Vacation leave is earned by eligible full-time regular employees in accordance with years of service. Vacation credit is accrued to each eligible employee beginning with the first day of regular employment up to a maximum yearly accrual according to the following schedule:

MAXIMUM VACATION ACCRUAL					
Years of Service	Paid Days of Vacation	Years of Service	Paid Days of Vacation	Years of Service	Paid Days of Vacation
1 through 4	10	12	18.5	19	22
5	15	13	19	20	22.5
6	15.5	14	19.5	21	23
7	16	15	20	22	23.5
8	16.5	16	20.5	23	24
9	17	17	21	24	24.5
10	17.5	18	21.5	25 or more	25
11	18				

The Executive Director may grant an increase in the annual maximum accrual up to a total of 20 working days of vacation with pay upon employment to recognize previous applicable experience. The employee shall continue to earn an additional 0.5 working days of vacation per year for every year completed up to the maximum accrual of 25 days.

Regular part-time employees will accrue a pro-rata leave balance based upon actual hours worked. No other classification of employees earns paid vacation time.

Employees on Leave without Pay status do not earn vacation leave. Employees who are on paid leave will continue to earn vacation leave, though the amount earned will be prorated based on the number of hours the employee is being paid by AHA from the employee's accrued leave.

No employee may have an accrued vacation bank of more than 250 hours at any time. From December 1, 2020 through December 31, 2021, the vacation accrual cap shall be raised by 100 hours, so that employees can accrue a maximum of 350 hours during this time period. Once the employee hits the cap, no additional vacation will accrue until the employee takes sufficient vacation to bring his/her vacation bank below the cap. Any accrued unused vacation time will be rolled over into the following year, up to the cap. If an employee has accrued more than 250 hours on December 31, 2021, the accrued unused vacation time will be rolled over into the following year but no additional vacation will be accrued until the balance of vacation leave is below the cap of 250 hours that will be in place effective January 1, 2022.

Scheduling

For newly hired probationary employees, no accrued vacation time can be taken until three months after the first day of employment.

All vacation time must be requested and approved in advance through the electronic timekeeping system and according to the guidelines below:

<u>Amount of Vacation Leave Requested</u>	<u>Advance Notice Required</u>
2 days or less	2 business days
3 or 4 days	5 business days
5 days or more	10 business days

The only exceptions to the above will be when time off is required for unforeseen or emergency circumstances. Due to the impact of unplanned time off on Agency operations, supervisors may require documentation of the need for unforeseen or emergency leaves, particularly when this occurs frequently or an employee has a pattern of poor attendance.

All approvals for vacation leave requests are subject to the availability of adequate leave at the time of leave usage. Employees are not generally entitled to time off without pay unless authorized by law, Housing Authority policy, or by authorization of the Executive Director. Accordingly, employees who do not have adequate vacation leave available for their approved time off may be required to modify the request to conform with the employee's available balance of vacation leave or cancel their requests. Employees are encouraged to plan ahead and monitor their leave balances to ensure they have enough paid leave to cover any planned time off.

Vacation leave will be scheduled at times mutually convenient to the Housing Authority and employee. Employees are encouraged to submit their requests as early as possible; requests for vacation leave will be considered up to 12 months in advance and are generally handled on a first come, first served basis. However, to facilitate scheduling during periods when it is anticipated that multiple employees may request time off (e.g., 4th of July or December holiday periods), AHA may, at its sole discretion, notify employees of a designated timeframe that requests for these times must be submitted for consideration. In the case of conflicting requests, the supervisor will talk with the employees to try to work out a mutually-agreeable arrangement. If that cannot be done, priority for leave will be based on seniority. Department Directors may establish separate guidelines for the number of employees and types of positions that can be on vacation concurrently to ensure adequate coverage of their department's work functions.

Requests to cancel vacation leave of five days or more must be submitted no less than three business days in advance of the date that the leave was to commence, and must be approved by the employee's supervisor. The supervisor and/or the Agency reserve the right to require an employee to use requested vacation leave, particularly in cases where other staffing arrangements have been made to cover the employee's time off.

Sick Leave During a Scheduled Vacation Period

An employee who is ill or injured while on vacation may be able to use accumulated paid sick leave, if any, instead of paid vacation upon presentation of satisfactory medical documentation to his/her supervisor.

Payment

The Housing Authority does not make any advance payments of vacation time (i.e., employees will not be paid for vacation time before it is accrued). AHA strongly recommends that employees arrange for direct deposit of his/her pay checks so that vacation pay that is requested in advance through the timekeeping system can be automatically paid and deposited. No responsibility can be taken by AHA for live checks provided to an employee.

Vacation Pay-Out

The Housing Authority encourages employees to use their accrued vacation time. Employees may, however, request to receive a vacation pay-out for some of their accrued and unused vacation in lieu of taking paid time off work. Vacation pay-out is limited to 60 hours in any calendar year under this policy, and employees who request a vacation pay-out are required to have 80 hours of vacation leave remaining after the pay-out. The Executive Director shall determine the time(s) that vacation pay-out is offered. Additional criteria include:

- Vacation pay-out is available to full-time regular employees who have completed their probationary period; no other employees are eligible to participate in this program.
- Employees who wish to sell vacation leave must have used a minimum of 60 hours of vacation leave in the prior 15 months.
- Vacation pay-out requests must be in one hour increments.
- An employee may request a vacation pay-out no more than one time per calendar year, even in the event that the Executive Director offers an opportunity for vacation pay-out more than one time in the year.
- Vacation pay-out is a final transaction, i.e., vacation leave may not be reinstated once it has been paid out to the employee.

Vacation Pay at Termination

Upon termination of employment, employees will be paid for any accrued and unused vacation at his or her rate of pay at the time of separation, and will be paid on the next regular pay date.