AGENDA

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION SPECIAL MEETING

Christina Rodriguez, Chair
Tara Beasley-Stansberry, Vice Chair
Robert Bryant
Ylonda Calloway
S. Bre Jackson
Christina Long
Antoinisha Waddell

THURSDAY, NOVEMBER 12, 2020
7:00 P.M
VIA TELECONFERENCE

IMPORTANT NOTICE REGARDING NOVEMBER 12, 2020 HOUSING AND COMMUNITY DEVELOPMENT COMMISION MEETING

These meetings are being conducted using teleconference and electronic means consistent with the State of California Executive Order N-29-30 regarding the COVID-19 pandemic. In accordance with Executive Order N-29-30, the public may only view the meetings on television and/or online and not in the Council Chamber.

PUBLIC COMMENT: Members of the Public may provide public comments during the Commission Meeting via ZOOM (https://ZoomRegular.Cityofvallejo.net), or via phone, by dialing (669) 900-6833. For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment

VIEW THE MEETING: There are three different ways you can view this public meeting:

- Watch Vallejo local channel 28
- Stream from the City website: www.cityofvallejo.net/Streaming
- Join the Zoom webinar: https://ZoomRegular.Cityofvallejo.net

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Like us on Facebook https://www.facebook.com/cityofvallejo)
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Sign up to receive City updates and get connected with your neighbors on Nextdoor (www.nextdoor.com)

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at dawn.abrahamson@cityofvallejo.net Notification at least 48 hours prior to a meeting will enable the City to make reasonable arrangements to ensure accessibility to that meeting. [28 CFR.35.102.35.104 ADA Title II]. The Vallejo Housing and Community Development Division may be contacted as follows: Tel: (707) 648-4507, Fax: (707) 648-5249, or e-mail: chari.barrera@cityofvallejo.net. The hearing impaired may call the California Relay Service at (800) 735-2922 without a TTY/TDD, or (800) 735-2929 with a TTY/TDD.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. APPROVAL OF AGENDA

5. APPROVAL OF MINUTES

6. REPORT OF PRESIDING OFFICER AND MEMBERS OF THE COMMISSION

7. SECRETARY'S REPORT

8. COUNCIL LIAISON'S REPORT

9. COMMUNICATIONS AND PRESENTATIONS

10. COMMUNITY FORUM

This is an opportunity for residents to discuss items not on the agenda that are within the purview of the Commission. The Commission may not discuss or take action on these items but may require they be placed on a future agenda. If an item is not within the purview of the Commission, the person may be referred to the appropriate party.

Due to the current Shelter at Home Order and in conformance with the Governor's Executive Order N-29-30, the City of Vallejo has opted to hold this meeting via teleconference. There will be no public access to City Hall for any Commission meetings until further notice.

Any interested members of the public desiring to communicate with the Commission as part of the Community Forum may do so via:

- *ZOOM: (https://ZoomRegular.Cityofvallejo.net),*
- *Phone: Dial (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press * 9 to digitally raise your hand from the phone.*

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment.

11. CONSENT CALENDAR

12. PUBLIC HEARINGS

13. ADMINISTRATIVE ITEMS

Due to the current Shelter at Home Order and in conformance with the Governor's Executive Order N-29-30, the City of Vallejo has opted to hold this meeting via teleconference. There will be no public access to City Hall for any Commission meetings until further notice.

Any interested members of the public desiring to communicate with the Commission as part of the Administrative Items may do so via:

- *ZOOM: (https://ZoomRegular.Cityofvallejo.net),*
- *Phone: Dial (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press * 9 to digitally raise your hand from the phone.*

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment.

A. Amended and Restated Low-and-Moderate Income Housing Asset Fund Loan Agreement

The City selected Eden Housing L.P. (Eden Housing) as developer and the Vallejo Housing Authority Board approved the LMIHAF Loan with Eden Housing in June 2018 to support the permanent supportive housing project.

The LMIHAF Loan must be amended so that it is transferred to Eden Housing's successor in interest, Vallejo PSH, as developer.

For more information, a staff report is enclosed with the agenda.

Recommendation: Authorize the Vallejo Housing Authority Executive Director to execute the attached Amended and Restated Low and Moderate Income Housing Asset Fund (LMIHAF) Loan Agreement by and between the Housing Successor Agency of the City of Vallejo and Vallejo Permanent Supportive Housing (PSH), LP for the Planning, Development, and Construction of Permanent Supportive Housing at 2118 Sacramento Street, and 2134-36 Sacramento Street.

B. HOME Investment Partnerships Program Loan Agreement with Vallejo Permanent Supportive Housing, L.P.

The City acquired the property at 2118 and 2134-2136 Sacramento Street (Property) in June 2018, with a combination of Low- and Moderate-Income Housing Assessor Fund (LMIHAF), Community Development Block Grant (CDBG) Program funds, HOME Investment Partnerships Program funds, and the General Fund, with the intention of developing the site as affordable housing. The City through the Housing and Community Development Commission, the Vallejo Housing Authority Board, and the City Council identified housing objectives for the site that included:

• Provide permanent supportive housing
• Help meet community housing needs
• Support the development of Transit-Oriented revitalization projects in an area near to the site and surrounding areas of the neighborhood.

The draft HOME Loan Agreement originally approved in October 2019 has been updated.

For more information, a staff report is enclosed with the agenda.

Recommendation: Recommend the approval of a HOME Investment Partnerships Program Loan Agreement with the Vallejo Permanent Supportive Housing (PSH), L.P.

14. POLICY ITEMS

15. ADJOURNMENT

AFFIDAVIT OF POSTING

I, Chari Barrera, Housing and Community Development Commission Secretary, do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Housing and Community Development Commission, at the time and in the manner prescribed by law and that this agenda was posted at City Hall, 555 Santa Clara Street, CA at 7:00 p. m. on November 9, 2020.

Dated: 11/09/2020

Chari Barrera

Chari Barrera, Secretary

City of VALLEJO California

DATE: November 12, 2020

TO: Chair and Commissioners
Housing and Community Development Commission

FROM: Judy Shepard-Hall, Housing and Community Development Manager

SUBJECT: AMENDED AND RESTATED LOW- AND MODERATE-INCOME HOUSING ASSET FUND LOAN AGREEMENT

RECOMMENDATION

Authorize the Vallejo Housing Authority Executive Director to execute the attached Amended and Restated Low and Moderate Income Housing Asset Fund (LMIHAF) Loan Agreement by and between the Housing Successor Agency of the City of Vallejo and Vallejo Permanent Supportive Housing (PSH), LP for the Planning, Development, and Construction of Permanent Supportive Housing at 2118 Sacramento Street, and 2134-36 Sacramento Street.

REASONS FOR RECOMMENDATION

The City selected Eden Housing L.P. (Eden Housing) as developer and the Vallejo Housing Authority Board approved the LMIHAF Loan with Eden Housing in June 2018 to support the permanent supportive housing project.

The LMIHAF Loan must be amended so that it is transferred to Eden Housing's successor in interest, Vallejo PSH, as developer.

BACKGROUND AND DISCUSSION

Vallejo Permanent Supportive Housing (PSH), LP will construct 75 new units of permanent supportive housing for individuals and couples who are homeless or at imminent risk of becoming homeless. The project will feature intensive case management and wraparound services to improve housing retention, reduce emergency room visits, and ensure the long-term health and stability of our residents. The project is anticipated to be financed through a mix of 4% tax credits, tax exempt bonds, No Place Like Home funding, Multifamily Housing Program – Supportive Housing funding, City funds (LMIHAF, and HOME), Project-Based Vouchers, and the Community Action Partnership of Solano Joint Powers Authority Partnership healthcare grant.

Resident services will be guaranteed for a minimum period of 20 years through a Capitalized Service Reserve and No Place Like Home Program Capitalized Operating Subsidy Reserve.

Between March 2019 and September 2019, City Staff worked with the Developer and the City Attorney's Office to amend the approved Disposition and Development Agreement (DDA).

The LMIHAF Loan and all other associated funding is necessary for Vallejo PSH to implement the DDA and the associated project. The amendments to the LMIHAF Loan include an updated schedule of performance and a change to the borrower's use of funds. These modifications are being made to align with the deposit requirements set forth in the Factory OS procurement contract.

FISCAL IMPACT

The Housing Successor Agency of the City of Vallejo is considered the lender, with the borrower being Vallejo PSH. There is no fiscal impact to the City's General Fund associated with the LMIHAF Loan. The Housing Authority has already awarded the $1,600,000 through the LMIHAF Loan.

ENVIRONMENTAL REVIEW

An environmental review pursuant to the requirements of the National Environmental Policy Act (NEPA) will be completed by staff prior to the start of construction. Additionally, this action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

The project entitlements associated with the DDA shall be processed and adopted under Senate Bill (SB35) that allows streamline approvals through CEQA. It allows the administrative approval of affordable housing projects when the project does not impact wetlands and meets all local agency regulatory requirements. City staff has deemed the application complete under SB 35 and will finalize entitlements after the DDA approval.

ATTACHMENTS

1. First Amendment to Amended and Restated Loan and LMIHAF Agreement

CONTACT

Judy Shepard-Hall, Housing and Community Development Program Manager, (707) 648-4408,
Judy.Shepard-Hall@cityofvallejo.net

FIRST AMENDMENT TO AMENDED AND RESTATED LOAN AND LOW-AND-MODERATE INCOME HOUSING ASSET FUND (LMIHAF) AGREEMENT

This First Amendment to Amended and Restated Loan Agreement (the "Amendment") is made and entered into as of November ___, 2020, by and between Vallejo PSH, L.P., a California limited partnership ("Borrower") and the City of Vallejo, a municipal corporation (the "City").

RECITALS

A. The City and Borrower entered into that certain Disposition and Development Agreement dated December 18, 2019 (the "DDA"), pursuant to which the City agreed to convey, subject to the terms and conditions set forth therein, the property located at 2118 and 2134-2136 Sacramento Street, Vallejo (the "Property") to Borrower, upon which Borrower intends to construct approximately 75 units of affordable and/or Permanent Supportive Housing (PSH) and one manager unit, interior amenities for residents that are not less than 40,000 square feet of floor area, and an additional minimum 6,000 square feet of floor area that will be used for resident-serving and/or community services (the "Project").

B. In connection with the DDA, the City also agreed to loan Borrower $1,600,000 in Low- and Moderate-Income Housing Asset Funds (the "LMIHAF Loan") to fund costs associated with the Project. In connection with the LMIHAF Loan, Borrower and City entered into that certain Amended and Restated Loan Agreement dated December 18, 2019 (the "Agreement"). Capitalized terms not defined herein shall have meaning given to them in the Agreement.

C. Borrower now intends to pursue modular construction for the Project, and desires to use LMIHAF Loan funds for the initial modular deposits necessary to commence modular unit production. Accordingly, the parties desire to amend the Agreement as described below.

NOW, THEREFORE, the City and Borrower mutually agree to amend the Agreement as follows:

AGREEMENT

1. Section 203 shall be amended by adding the following at the end:

"Notwithstanding the foregoing, Borrower may use up to $400,000 of LMIHAF funds to pay the 5% "Assembly Deposit" for the modular construction units, prior to satisfaction of conditions (a) through (f) set forth in this section 203. In addition, Borrower may use the remaining $200,000 of LMIHAF funds to pay a portion of the 25% "Materials Deposit" for the modular construction units, prior to satisfaction of any of the conditions set forth in this section 203, provided that Borrower satisfy the following conditions precedent: (i) delivery of a cost breakdown for the Factory OS modular contract, which must be approved by the City; (ii) delivery of a draft guaranteed maximum price construction contract; (iii) delivery of the Factory OS modular contract, which must be approved by the City; and (iv) delivery of satisfactory evidence that Borrower has secured all commitments and/or awards for the Project Financing.

2. Section 204 shall be amended by adding the following at the end of subsection (c):

"Notwithstanding the foregoing, this condition shall not apply to the LMIHAF funds used to pay both the 5% Assembly Deposit and the 25% Materials Deposit."

3. In the event of a conflict between this Amendment and the Agreement, the terms and provisions of this Amendment shall control.

4. In all other respects, the Agreement shall remain unchanged and shall remain in full force and effect.

[*Signatures on following page.*]

IN WITNESS WHEREOF, the City and Borrower have executed this Amendment as of the date written on the first paragraph of this Amendment.

BORROWER:

Vallejo PSH, L.P.,
a California limited partnership

By: Vallejo PSH LLC,
a California limited liability company,
its general partner

By: Eden Development, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: ___________________________
Andre H. Madeira, Senior
Vice President of Real Estate Development

CITY:

CITY OF VALLEJO,
a municipal corporation

By: ______________________________
Greg Nyhoff
City Manager

DATE: _____________________

ATTEST: _____________________

By: ______________________________
Dawn Abrahamson
City Clerk

APPROVED AS TO CONTENT:

____
Judy Shepard-Hall
Housing and Community Development Program Manager

APPROVED AS TO FORM:

____
Veronica Nebb
City Attorney

13.B

DATE: November 12, 2020

TO: Chair and Commissioners
Housing and Community Development Commission

FROM: Judy Shepard-Hall, Housing and Community Development Manager

SUBJECT: HOME INVESTMENT PARTNERSHIPS PROGRAM LOAN AGREEMENT WITH VALLEJO PERMANENT SUPPORTIVE HOUSING, L.P.

RECOMMENDATION

Recommend the approval of a HOME Investment Partnerships Program Loan Agreement with the Vallejo Permanent Supportive Housing (PSH), L.P.

REASONS FOR RECOMMENDATION

The City acquired the property at 2118 and 2134-2136 Sacramento Street (Property) in June 2018, with a combination of Low- and Moderate-Income Housing Assessor Fund (LMIHAF), Community Development Block Grant (CDBG) Program funds, HOME Investment Partnerships Program funds, and the General Fund, with the intention of developing the site as affordable housing. The City through the Housing and Community Development Commission, the Vallejo Housing Authority Board, and the City Council identified housing objectives for the site that included:

- Provide permanent supportive housing
- Help meet community housing needs
- Support the development of Transit-Oriented revitalization projects in an area near to the site and surrounding areas of the neighborhood.

The draft HOME Program Loan Agreement originally approved in October 2019 has been updated.

BACKGROUND AND DISCUSSION

Vallejo PSH will construct 75 new units of permanent supportive housing for individuals and couples who are homeless, chronically homeless, or at imminent risk of becoming homeless. The project will feature intensive case management and wraparound services to improve housing retention, reduce emergency room visits, and ensure the long-term health and stability of our residents. The project is anticipated to be financed through a mix of 4% tax credits, tax exempt bonds, No Place Like Home funding, Multifamily Housing Program -Supportive Housing funding, City funds, Project-Based Vouchers, and the and the Community Action Partnership of Solano Joint Powers Authority funding.

Resident services will be guaranteed for a minimum period of 20 years through a Capitalized Service Reserve and No Place Like Home Program Capitalized Operating Subsidy Reserve.

To date the City Council has:

On August 29, 2017, the City Council gave direction in closed session to enter into a purchase agreement to acquire two adjacent properties on Sacramento Street. The first property, at 2118 Sacramento Street, with 2,676 square feet and a total lot size of 16,866 square feet, is listed at $525,000. The second property, at 2134-2136 Sacramento Street, with 6,000 square feet of building space and a total lot size of 39,892 square feet are listed at $599,000.

On December 5, 2017, the City of Vallejo acquired these properties in order to complete this project. The total purchase price of the two properties is $1,124,000.

These commercial mixed-use properties would be substantially rehabilitated to create studio units to assist in eliminating barriers to obtaining and maintaining long-term housing for Vallejo's homeless. The City is currently developing a Request for Qualifications (RFQ) to retain an established affordable housing developer/property manager to design and deliver a project at the site for approximately 38 – but no more than 72 - affordable residential studios, a community room/classroom, an office and living unit for an onsite staff person, and private meeting space. Both properties will be leased and operated by the affordable housing developer. The developer will be responsible for subleasing to the County, under the terms of the Memorandum of Understanding, to assist Vallejo residents experiencing homelessness. The developer would be responsible for ongoing maintenance, including funding for capital replacement costs. An alternative model under consideration would be for the City to retain a developer to create the units, and master lease the units to the County, who would work with a non-profit affordable housing developer to manage the properties.

Eden Housing was selected as the preferred developer after the completion by staff of a competitive RFQ process which began in February, 2018. Federal Community Development Block Grant (CDBG) Program, federal HOME Investment Partnerships Program, and Participatory Budgeting (Measure B) funds have also been allocated to this effort.

In June 2018, through a developer solicitation the City Council selected Eden Housing, Inc. as Developer for the Property. The Housing Authority Board approved a Loan Agreement with Eden Housing, Inc. in the amount of $1.6 million from the Housing Successor Agency Low- and Moderate-Income Housing Asset Fund (LMIHAF) for the development of permanent supportive housing for homeless persons at 2118 and 2134-36 Sacramento Street.

In December 2018, the City Council authorized the City Manager to execute an Exclusive Negotiating Agreement (ENA) with the Developer for the purpose of negotiating a Disposition and Development Agreement (DDA) for a permanent supportive residential housing development.

In February 2019, a Partnership Healthcare grant was awarded.

Between March 2019 and September 2019, City staff worked with the Developer and the City Attorney's Office to negotiate the proposed Disposition and Development Agreement.

In July 2019, Developer submitted a SB35 permit application.

In March 2020, a No Place Like Home Program grant was awarded.

On September 15, 2020, a Multifamily Housing Program grant application was submitted.

On October 16, 2020, the U.S. Department of Housing and Urban Development authorized the use of the City's HOME Program funds.

FISCAL IMPACT

Associated with the DDA to convey the entitlement of the property at 2118 Sacramento Street and 2134-2136 Sacramento Street to the Developer, the City is granting funding through a HOME Investment Partnerships Program Loan Agreement.

ENVIRONMENTAL REVIEW

The City has compiled with the requirements of the California Environmental Quality Act (CEQA) and applicable state and local implementing guidelines, pursuant to CEQA Guideline section 15378.

ATTACHMENTS

1. HOME Program Loan Agreement by and between the City of Vallejo and Vallejo PSH

CONTACT

Judy Shepard-Hall, Housing and Community Development Manager, (707) 648-4408, Judy.Shepard-Hall@cityofvallejo.net

HOME INVESTMENT PARTNERSHIPS PROGRAM
LOAN AGREEMENT

By and Between

THE CITY OF VALLEJO,
a municipal corporation,

and

VALLEJO PSH, L.P.,
a California limited partner,

for

Permanent Supportive Housing Development
[2118 Sacramento Street, and 2134-36 Sacramento Street]
[$2,186,710.00]

Dated as of November __, 2020

TABLE OF CONTENTS

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EXHIBITS

LOAN AGREEMENT
HOME Investment Partnerships Program
City of Vallejo (Solano County)
2118 Sacramento Street, and 2134-2136 Sacramento Street

THIS LOAN AGREEMENT (the "Agreement") is entered into as of November **__**, 2020, by and between the **CITY OF VALLEJO**, a municipal corporation (the "City"), represented by the City Manager, acting by and through the Housing and Community Development Division (the "HCD Division"), and **VALLEJO PSH, L.P.** a California limited partner (the "Borrower").

RECITALS

A. The City has acquired the real property located at 2118 Sacramento Street, and 2134-36 Sacramento Street, in Vallejo, California (the "Site"). The City desires to use the properties to fund the demolition of the existing buildings on the Site and the construction of up to 74 units of multifamily rental housing, all of which will be affordable to very low- and low-income households (defined as at or below 80 percent of the federal area median income), and one additional unit which will be set aside for a manager's unit (collectively, the "Units"). The Units as described herein constitute the "Project".

B. The City has received an allocation of federal HOME Investment Partnerships Program ("HOME") Program funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the HOME Investment Partnerships Act as set forth at Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, 42 U.S.C. €12701, et. seq., as amended from time to time, and which created the HOME Program. The City has approved a loan of HOME Program funds to the Borrower to assist with the development of the Project.

C. The City has reviewed the Borrower's project proposal and, in reliance on the accuracy of the statements in that application, has approved a loan of Funds to the Borrower (the "Loan") in an amount not to exceed Two Million One Hundred Eighty-Six Thousand Seven Hundred Ten and No/100 Dollars ($2,186,710.00) (the "Funding Amount") under this Agreement to fund a portion of the construction costs of the Project, including but not limited to a portion of the 25% "Materials Deposit" for the Project's modular construction units, and furthermore, certain units shall be regulated in accordance with all applicable laws, rules, and regulations regarding the use of HOME Program Funds for the benefit of very low- and low-income income persons.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1. DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Accounts" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the City in writing. All Accounts must be maintained in accordance with **Article 2.3**.

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Annual Monitoring Report" has the meaning set forth in **Article 10.3**.

“Annual Operating Budget” means an annual operating budget for the Project attached hereto as **Exhibit B-2**, which may not be adjusted without the City's prior written approval.

“Approved Plans” has the meaning set for in **Article 5.2**.

“Approved Specifications” has the meaning set forth in **Article 5.2**.

"Authorization" means any authorization, consent, approval, order, license, permit, exemption or other action by or from, or any filing, registration or qualification with, any Governmental Agency or other person.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company (LLC), a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver, and perform the obligations under the City Documents to which Borrower is a party or by which it is bound.

"Borrower" means VALLEJO PSH, L.P. a California limited partnership, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to the City in their original form and as amended from time to time and be accompanied by a certificate of good standing for the Borrower issued by the California Secretary of State and, if the Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than 90 days before the Agreement Date.

"City" means the City of Vallejo, a municipal corporation, represented by the City Manager, acting by and through the Housing and Community Development Division (the HCD Division). Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by the HCD Division unless otherwise indicated.

"City Documents" means this Agreement, the Promissory Note, the Deed of Trust, the Regulatory Agreement, and any other documents executed or delivered in connection with this Agreement.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

"Completion Date" has the meaning set forth in **Article 5.6**.

"Compliance Term" has the meaning set forth in **Article 3.2**.

“Construction Contract” has the meaning set forth in **Article 5.2**.

“Control of the Site” means Borrower’s acquisition of fee ownership in the Site from the City.

“County” means the County of Solano.

"Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower's performance under this Agreement and the Note, in substantially the form and substance attached hereto as **Exhibit D**.

“Department of Building Inspection” means the Building Division.

"Developer" means VALLEJO PSH, LP. a California limited partner, and its authorized successors and assigns.

"Developer Fees" has the meaning set forth in **Article 15.1**.

"Development Expenses" means all costs incurred by the Borrower and approved by the City in connection with the development of the Project, including: (a) hard and soft development costs; (b) deposits into required capitalized reserve accounts; (c) costs of converting Project financing, including bonds, into permanent financing; (d) the expense of a cost audit; and (e) allowed Developer Fees.

"Development Proceeds" means the sum of: (a) funds contributed or to be contributed to the Borrower by the Borrower's limited partner as capital contributions, equity or for any other purpose under the Borrower's limited partnership agreement, if any; and (b) the proceeds of all other financing for the Project.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by the City as described in **Article 4**.

"Distributions" has the meaning set forth in **Article 13.1**.

“Early Retention Release Contractors” means contractors who will receive retention payments upon satisfaction of requirements set forth in **Article 4.7.**

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local, and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits, and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment, or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law) (42 U.S.C. §§ 9601 *et seq*.), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq*.); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (Cal. Health & Safety Code §§ 25300 *et seq*.); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (Cal. Health & Safety Code §§ 25249.2 *et seq*.); and Sections 25117 and 25140 of the California Health & Safety Code.

"Event of Default" has the meaning set forth in **Article 19.1**.

“Excess Proceeds” means Development Proceeds less Development Expenses.

"Funds" has the meaning set forth in **Recital C**.

"Funding Amount" has the meaning set forth in **Recital C**.

“HOME Assisted Units” means the eleven multifamily rental housing units that are required to be occupied by and affordable to very low-income households pursuant to the terms and conditions of this Agreement. The HOME Assisted Units shall be floating units as that term is defined in the HOME Program Regulations.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them; petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"HUD Requirements" has the meaning set forth in **Article 9.2(e).**

"In Balance" means, from and after the closing date of Borrower’s financing for construction or rehabilitation of the Project, that the sum of undisbursed Funds and any other sources of funds that the Borrower has closed or for which the Borrower has firm commitments will be sufficient to complete the construction of the Project, as determined by the City in its sole discretion.

"Income Restrictions" means the maximum household income limits for Qualified Tenants, as set forth in **Exhibit A**.

"Indemnify" means, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), that the Indemnitor will be obligated to defend, indemnify, and protect and hold harmless the Indemnitee, its officers, employees, agents, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; *provided that* no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors.

"Indemnitee" has the specific meaning set forth in **Article 23.1** and the general meaning set forth in the definition of "Indemnify."

"Indemnitor" has the meaning set forth in the definition of "Indemnify."

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency.

"Loan" has the meaning set forth in **Recital C**.

"Loss" or "Losses" includes any loss, liability, damage, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of the City's rights or in defense of any action in a bankruptcy proceeding.

"Maturity Date" has the meaning set forth in **Article 3.1**.

"Median Income" means area median income as determined by HUD for the Vallejo, Solano County area, adjusted for household size.

“Monthly Project Update” has the meaning set forth in **Article 10.2**.

"Note" means the Promissory Note executed by the Borrower in favor of the City in the original principal amount of the Funding Amount.

"Operating Reserve Account" has the meaning set forth in **Article 12.2**.

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to the City and its legal counsel, that Borrower is a duly formed, validly existing limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the City Documents and will be bound by their terms when executed and delivered, and that addresses any other matters the City reasonably requests.

"Out of Balance" means that the sum of undisbursed Funds and any other sources of funds that the Borrower has closed or for which the Borrower has firm commitments will not be sufficient to complete the construction of the Project, as determined by the City in its sole discretion.

"Payment Date" means the May 1st following the Completion Date and each succeeding May 1st until the Maturity Date.

"Permitted Exceptions" means liens in favor of the City, real property taxes, and assessments that are not delinquent, and any other liens and encumbrances the City expressly approves in writing in its escrow instructions.

"Project" means the development described in **Recital A**. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"Project Expenses" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate taxes if applicable, and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages, and any other compensation due and payable to the employees or agents of the Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments, and payment of accounting fees; (c) required payments of interest and principal, if any, on any junior or senior financing secured by the Site and used to finance the Project that has been approved by the City, including but not limited to this Loan; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs, and the fee of any managing agent as indicated in the Annual Operating Budget; (e) required deposits to the Replacement Reserve Account, Operating Reserve Account, and any other reserve account required under this Agreement, the Limited Partnership Agreement of the Borrower or any senior loan documents; and (f) any extraordinary expenses approved in advance by the City (other than expenses paid from any Reserve Account). Project Fees are not Project Expenses.

"Project Fees" means annual partnership management fees in the amount of $25,000 increasing by three and one-half (3.5%) percent per annum, annual asset management fees in the amount of $12,000 increasing by three and one-half (3.5%) percent per annum, and deferred Developer Fees approved by the City.

"Project Income" means all income and receipts in any form received by the Borrower from the operation of the Project, including rents, fees, deposits (other than tenant security deposits, loan proceeds, and capital contributions), any accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established, reimbursements, and other charges paid to the Borrower in connection with the Project. Interest accruing on any portion of the Funding Amount is not Project Income.

"Project Operating Account" has the meaning set forth in **Article 11.1**.

"Qualified Tenant" means a Tenant household earning no more than the maximum permissible annual income level allowed under this Agreement as set forth in **Exhibit A**. The term "Qualified Tenant" includes each category of Tenant designated in **Exhibit A**.

"Regulatory Agreement" means the HOME Program Rent Limitation and Regulation Agreement attached hereto as Exhibit E, that requires the Borrower and the Project to comply with the use restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, or this Agreement terminates.

"Rent" means the aggregate annual sum charged to Tenants for rent and utilities in compliance with **Article 7**, with utility charges to Qualified Tenants limited to an allowance determined by the Housing Authority of the City of Vallejo.

"Rent Restrictions" means the limitations on Rents set forth in **Article 7.3** and **Exhibit A**.

"Replacement Reserve Account" has the meaning set forth in **Article 12.1**.

"Residual Receipts" means Project Income remaining after payment of Project Expenses and Project Fees. The amount of Residual Receipts must be based on figures contained in audited financial statements.

"Retention" has the meaning set forth in **Article 4.6**.

"Section 8/Housing Choice Voucher (HCV)" means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f), or any successor or similar rent subsidy programs.

"Senior Lender" has the meaning set forth in **Article 24.1(c)**.

"Senior Lien" has the meaning set forth in **Article 24.1**.

"Site" means the real property described in **Recital A** of this Agreement.

"Table" means: the Table of Sources and Uses.

"Table of Sources and Uses" means a table of sources and uses of funds attached hereto as **Exhibit B-1**, including a line item budget for the use of the Funding Amount, which table may not be adjusted without the City's prior written approval.

"TCAC" means the California Tax Credit Allocation Committee.

"Tenant" means any residential household in the Project, whether or not a Qualified Tenant.

"Title Policy" means an American Land Title Association (ALTA) extended coverage lender's policy of title insurance in form and substance satisfactory to the City, issued by an insurer selected by the Borrower and satisfactory to the City, together with any endorsements and policies of coinsurance and/or reinsurance required by the City, in a policy amount equal to the Funding Amount, insuring the Deed of Trust as applicable and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

"Twenty Year Cash Flow Pro Forma" means the Twenty Year Cash Flow projections for the Project attached as **Exhibit B-3**.

"Unit" means a residential rental unit within the Project.

"VHA" means the City of Vallejo Housing Authority.

"Work Product" has the meaning set forth in **Section 24.23**.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other City Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months, and years mean calendar days, months, and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific City Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other City Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the City Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

1.3 Websites for Statutory References. The statutory and regulatory materials listed below may be accessed through the following identified websites.

(a) CFR provisions: www.access.gpo/nara/cfr

(b) OMB circulars: www.whitehouse.gov/OMB/circular

ARTICLE 2. FUNDING.

2.1 Funding Amount. The City agrees to lend to the Borrower a maximum principal amount equal to the Funding Amount in order to finance predevelopment and construction costs associated with the Project, including but not limited to funding a portion of the 25% "Materials Deposit" for the Project's modular construction units. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. The Borrower acknowledges that the City's agreement to make the Loan is based in part on the Borrower's agreement to use the Funds solely for the purpose set forth in **Article 2.1**, and agree to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses.

The Borrower shall comply with all applicable requirements of the HOME Program including without limitation the regulations promulgated at 24 CFR Part 92 et seq; all other applicable federal and state statutes, rules, and regulations; such additional regulations, order, rulings, interpretations, and directives for the HOME Program, as may be promulgated or issued by HUD from time to time; such policies and procedures of HUD pertaining to the HOME Program; the applicable provisions of this Agreement; and any and all other requirements of the HOME Program. The Borrower acknowledges that it is familiar with such applicable provisions, and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to comply fully with such provisions at its sole cost.

The Borrower shall use the proceeds of the Loan only for eligible HOME Program costs, pursuant to 24 CFR Part 92.206, and subject to all other applicable HOME Program regulations, incurred for work approved by the City, in its sole discretion, conducted in connection with the construction of the Project. Any expenditure, or other use by Borrower, of HOME Program funds that is not authorized by this Agreement or is found to be ineligible under the HOME Program regulations shall be disallowed, and such funds shall be returned by the Borrower to the City within 30 days of discovery by the City or the Borrower of such noncompliance, unless HUD approves in writing an alternative plan for the City to address the concern. The Borrower agrees that it will not use the HOME Program funds, either directly or indirectly, in order to obtain any other federal funds under any other federal program without the prior written approval of the City.

In accordance with the HOME Program regulations, including without limitation this Agreement, the Borrower shall provide adequate security to ensure completion off the Project, by furnishing the City with performance and payment bonds, or such other security of assurances. In a form and an amount acceptable to the City in its reasonable discretion.

2.3 Accounts; Interest. Each Account to be maintained by the Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to the City as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 Records. The Borrower must maintain and provide to the City upon request records that accurately and fully show the date, amount, purpose, and payee of all expenditures from each Account authorized under this Agreement or by the City in writing and keep all estimates, invoices, receipts, and other documents related to expenditures from each Account. In addition, the Borrower must provide to the City promptly following the Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The City may grant or deny any application by the Borrower for additional financing for the Project in its sole discretion.

2.6 Rent Limitation and Regulatory Agreement. Prior to and as a condition precedent to Borrower acquiring Control of the Site, the Borrower shall execute, in recordable form, and deliver to the City, a Regulatory Agreement in substantially the form attached hereto and incorporated herein as Exhibit E, which shall regulate the HOME Assisted Units to ensure that the HOME Assisted Units are occupied by and affordable to very low-income households. The Regulatory Agreement shall be recorded against the Property in the Official Records of the County of Solano (the “County”). The term of the Regulatory Agreement shall commence upon recordation of the Regulatory Agreement and shall remain in full force and effect through and including the date which is fifteen years following the date of such recordation, even if the Loan is repaid or otherwise satisfied before that date (the “Compliance Term”). The Borrower must comply with all provisions of the City Documents relating to the use of the Site and the Project as set forth in the Regulatory Agreement.

ARTICLE 3. TERMS.

The Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. The Borrower must repay all amounts owing under the City Documents on the date that is the fifty-fifth anniversary of the date a Certificate of Occupancy for the Project is issued (the "Maturity Date"), provided however that if Borrower fails to acquire Control of the Site on or before December 31, 2022 (the "Outside Acquisition Date"), the Maturity Date shall be the Outside Acquisition Date. The City may agree to extend the Outside Acquisition Date in its sole and absolute discretion. Notwithstanding the foregoing, if Borrower's failure to acquire Control of the Site by the Outside Acquisition Date is not caused by Borrower's acts or omissions, whether direct or indirect, and if Borrower has acted in good faith and no event has occurred and is continuing that constitutes an Event of Default or, with the passage of time would become an Event of Default under any of the City Documents, then in such an event, Borrower shall deliver to City all of the Work Product, the Agreement shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligation or liability with respect to this Note and the Loan.

3.2 Intentionally Omitted.

3.3 Interest. The outstanding principal balance of the Loan will bear interest at a rate of three percent per annum, simple interest, as provided in the Note.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Note. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Repayment of Principal. The outstanding principal balance of the Loan will be due and payable on the Maturity Date according to the terms set forth in full in the Note.

3.6 Changes In Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on the Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. The Borrower covenants to give written notice to the City within 30 days of any significant changes in budgeted funding or income set forth in documents previously provided to the City. The City reserves the right to modify the terms of this Agreement based upon any new information so provided, in its reasonable discretion.

3.7 Notification and Repayment of Excess Proceeds. The Borrower must notify the City in writing within 30 days after the Borrower's receipt of Excess Proceeds. Upon the City's demand, the Borrower shall repay all Excess Proceeds to the City. The City shall use such Excess Proceeds to reduce the balance of the Loan.

3.8 Borrower Obligations Upon Acquisition of the Site. Borrower shall cause each of the following requirements to be fully satisfied on or before the date it acquires Control of the Site:

(a) Borrower shall have delivered the Deed of Trust and the Declaration of Restrictions to City, duly executed and acknowledged by Borrower;

(b) Borrower shall have recorded the Deed of Trust and the Declaration of Restrictions in the Official Records, subject only to the Permitted Exceptions;

(c) A title company shall have committed to issue the Title Policy to City, and Borrower shall have delivered all documents reasonably required by such title company to issue the Title Policy. Borrower shall pay all amounts charged by the title company for the issuance of the Title Policy; provided that such amounts may be included in a subsequent Expenditure Request;

(d) The Borrower must have delivered to the City insurance endorsements and, if requested by the City, copies of policies for all insurance required under **Exhibit I** of this Agreement, including performance and completion bonds or other acceptable construction security approved by the City as applicable and meeting the requirements of **Exhibit I**; provided that as an alternative to performance and completion bonds, Borrower may instead obtain security in the form of commercially reasonable insurance that is standard for the modular construction industry; and

(e) The Borrower must have received all land use approvals required to commence construction of the Project.

ARTICLE 4. CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, the City will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of the Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. In the event Borrower does not satisfy all of the conditions to closing within a reasonable time, as determined by the City in its sole discretion, the City may declare this Agreement to be null and void.

4.3 Conditions Precedent to Disbursement. The City will authorize the disbursement of the Loan funds upon satisfaction of the conditions in this Section.

(a) The Borrower must have delivered to the City fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the City: (i) the Note; (ii) this Agreement (in duplicate); (iii) the Authorizing Resolutions; and (iv) any other City Documents reasonably requested by the City.

(b) The Borrower must have delivered to the City the Borrower's Charter Documents.

(c) The Borrower must have delivered to the City evidence satisfactory to the City in its sole discretion that the Borrower has secured commitments of all outstanding/gap financing sufficient to complete construction of the Project.

(d) The Borrower must have delivered to the City a cost breakdown for the Factory OS modular contract, which must be approved by the City.

(e) The Borrower must have delivered to the City the Factory OS modular contract, which must be approved by the City.

(f) The City must have reviewed and approved a draft guaranteed maximum price construction contract for the Project.

4.4 Disbursements. The City's obligation to approve any expenditure of Funds after Loan closing is subject to the Borrower's satisfaction of the following conditions precedent.

(a) The Borrower must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) electronic copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) electronic copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request that covers construction costs, the Borrower must have certified to the City that the Project complies with the Federal Labor Standards set forth in **Exhibit G.1.**, as applicable.

4.5 Loan In Balance. From and after the closing date of Borrower's financing for construction or rehabilitation of the Project, the City may require the Borrower to pay certain costs incurred in connection with the Project from sources of funds other than the Loan at any time the City determines in its reasonable discretion that the Loan is Out of Balance. When the City is satisfied in its reasonable discretion that the Loan is again In Balance, the City will recommence making Disbursements for Expenditure Requests meeting the conditions set forth above.

4.6 Retention. This section will apply only if the Borrower or its affiliate acquires Control of the Site. In addition to the other conditions to Disbursements, the Borrower acknowledges that the amount of hard costs or tenant improvement costs included in any Expenditure Request associated with construction, when added to previously approved costs, may not exceed 90 percent of the approved budgeted costs on a line item basis. The City will retain the remaining ten percent of hard costs or tenant improvement costs associated with construction (the "Retention"). The Borrower may request disbursement of the aggregate amount of the Retention only upon satisfaction of the following conditions, unless otherwise approved in writing by the City: (a) completion of construction of the Project in accordance with the plans and specifications approved by the City, as evidenced by a Certificate of Occupancy or equivalent certification provided by the City's Building Division, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors, and suppliers who provided labor or materials for the Project. After 50 percent of the construction of the Project is complete as determined by the City, and upon the Borrower's written request, the City may elect to reduce the amount of Retention withheld to a level of no less than five percent of the hard costs or tenant improvements, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom the City agrees to release the Retention (the "Early Retention Release Contractors") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City, and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the City; (c) no liens or stop notices have been filed against the Project and no claims are pending; (d) the City determines that the contingency is in balance and adequate to complete the Project; and (e) the Project is on schedule.

4.7 Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to the Borrower under this Agreement exceed the Funding Amount.

ARTICLE 5. CONSTRUCTION. This Article will apply if the Borrower or its affiliate acquires Control of the Site.

5.1 Selection Requirements. In the selection of all contractors and professional consultants for the Project, the Borrower must comply with HUD's procurement requirements and procedures as described in 2 CFR Part 200.

5.2 Plans and Specifications. Before starting any construction on the Site, the Borrower must have delivered to the City, and the City must have reviewed and approved, Plans and Specifications, and the Construction Contract for the Project entered into between the Borrower and the Borrower's general contractor (the "Construction Contract"). The plans approved by the City must also be approved by the City of Vallejo's Building Division (collectively, the "Approved Plans") prior to the start of any demolition or construction on the Site. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. After completion of the Project, the Borrower must retain the Approved Plans as well as "as-built" plans for the Project, the Approved Specifications, and the Construction Contract, all of which the Borrower must make available to the City upon request.

5.3 Change Orders. The Borrower may not approve or permit any change orders to the Approved Plans and Approved Specifications without the City's prior written consent Unless change orders by the Borrower are $25,000 individually and $100,000 in the aggregate. The Borrower acknowledges that the City's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless the City agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose.

5.4 Insurance, Bonds, and Security. Before starting any demolition or construction on the Site, the Borrower must deliver to the City insurance endorsements and bonds or other construction assurance documents as applicable or as described in **Exhibit I;** provided that as an alternative to performance and completion bonds, Borrower may instead obtain security in the form of commercially reasonable insurance that is standard for the modular construction industry which shall be subject to the approval of City. At all times, the Borrower must take prudent measures to ensure the security of the Site.

5.5 Notice to Proceed. No demolition or construction may commence until the Borrower has issued a written notice to proceed with the City's approval.

5.6 Commencement and Completion of Project. Unless otherwise extended in writing, commencement and completion of the Project shall be performed in accordance with the Schedule of Performance in the Disposition and Development Agreement entered into by City and Borrower, as such schedule may be amended from time to time by mutual agreement by City and Borrower.

5.7 Construction Standards. All construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City, and in accordance with all applicable codes. All newly constructed Units must meet the requirements of the CA Building Code Title 24 Ten percent of the units must meet the accessibility requirements under 24 CFR part 8, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the design and construction requirements under 24 CFR § 100.205, and implementing the Fair Housing Act (42 U.S.C. §§ 3601-3619.

ARTICLE 6. MARKETING. This Article will apply if the Borrower or its affiliate acquires Control of the Site.

6.1 Initial Marketing Plan. Not later than six months before the Completion Date, the Borrower must deliver to the City for the City's review and approval an affirmative marketing plan and a written Tenant selection procedure for marketing and renting the Units in compliance with the restrictions set forth in **Exhibit A**, all in form and substance acceptable to the City. The Borrower may request the City's approval of reasonable alterations to the marketing plan. The Borrower must market the Units in the manner set forth in the marketing plan approved by the City. Before marketing any Units, the Borrower must provide the City with updated implementation and contact information.

6.2 Affirmative Marketing Elements. The Borrower's marketing plan must include as many of the following elements as are appropriate to the Project, as determined by the City:

(a) The marketing plan must include a reasonable accommodations policy that indicates how the Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying for vacant Units, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

(b) The Borrower must advertise vacant Units in local neighborhood newspapers, community-oriented radio stations, and other media that are likely to reach low-income households. All advertising must display the Equal Housing Opportunity logo.

(c) The Borrower must provide notice of vacant Units to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.

(d) The Borrower must provide notice of vacant Units to VHA.

(e) To the extent practicable, and subject to all applicable fair housing, tax credit , and funding program requirements, the Borrower must work with the City to develop a program that will give preferences to potential tenants that are included on the Vallejo Housing Authority Project Based Voucher wait list. The Borrower shall work collaboratively with the City to develop such a preference program, and the final program shall be subject to review and written approval by the City and the other Project lenders and Borrower’s tax credit investor.

6.3 Ongoing Marketing. The Borrower must keep a written plan for ongoing Tenant selection that describes all relevant procedures, including grievance procedures, on file at the Project at all times.

6.4 Marketing Records. The Borrower must keep records of: (a) activities implementing the affirmative marketing plan; (b) advertisements; and (c) other community outreach efforts.

ARTICLE 7. AFFORDABILITY AND OTHER LEASING RESTRICTIONS. This Article will apply if the Borrower or its affiliate acquires Control of the Site.

7.1 Rental Agreement.

(a) Leases of HOME Program Assisted units must comply with all applicable HOME Program regulations, including without limitation 24 CFR 92.253. as summarized below:

(i) Tenant leases must be for an initial term of not less than one year unless by mutual agreement between the tenant and the Borrower.

(ii) Any termination of tenancy or refusal to renew a lease must be preceded by 30 days' written notice specifying the grounds for the action by the Borrower.

(iii) Leases shall be in writing and may not contain the following prohibited clauses:

. Agreement by the Tenant to be sued.

. Statement that the Borrower can confiscate Tenant's property.

. Statement excusing the Borrower from legal responsibility.

. Statement that the Borrower does not have to give notice when instituting a lawsuit.

. Agreement by the Tenant to waive rights to a jury trial.

. Agreement by the Tenant to waive rights to appeal a court decision.

. Agreement by the Tenant to pay attorneys' fees if the Tenant wins a court case.

. Agreement by the Tenant to waive rights to a civil court proceeding to defend eviction.

7.2 Term of Leasing Restrictions. The Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect: (a) for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of a Deed of Trust; (b) for any Unit that has been subject to a Regulatory Agreement with TCAC, for a period ending three years after the date of any transfer of the Project by foreclosure or deed-in-lieu of foreclosure; and (c) with respect to any Unit occupied by a Qualified Tenant at expiration of either the Compliance Term or the three year period referred to in **Subsection (b)** above, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. The requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

7.3 Borrower's Covenant.

(a) The Borrower covenants to rent all Units (except one Unit reserved for the manager of the Project) at all times to households certified as Qualified Tenants at initial occupancy, as set forth in **Exhibit A.**

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in

Article 7.4. After the over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualified Tenants as provided in **Article 7.2**.

7.4 Rent Restrictions.

(a) The Maximum Rent charged to each Qualified Tenant may not exceed the amounts set forth in **Exhibit A**, *provided that* the Maximum Rent for Qualified Tenants or Units for which Housing Choice Voucher/Section 8 assistance is available is the fair market rent established by VHA, HUD or another Governmental Agency with jurisdiction over the rental subsidy program.

(b) intentionally omitted.

(c) Subject to **Article 7.4(d)**, annual Rent increases for Units will be limited as follows:

(i) for Units with HCV/Section 8 or similar rental assistance, annual Rent increases may be up to the maximum amount approved by HUD or the VHA, for as long as rental assistance is available; and

(ii) for all other Units, except as permitted under **Article 7.4(c)(iii)** and **Article 7.4(d)** below, annual Rent increases will be limited to the lesser of: (a) the amount which would result in a Rent equal to the Maximum Rent permitted for the unit under **Section 7.4(a)** or **(b)** the amount which corresponds to the percentage of the annual increase in Median Income published by HUD; and,

(iii) for Units occupied by over-income Tenants, rent charged may not exceed 30 percent of the over-income Tenant's adjusted family income.

(d) With the City's prior written approval and in accordance with Maximum Rent limitations set forth in **Article 7.4(a)** and all applicable restrictions, Rent increases for Units exceeding the amounts permitted under **Article 7.4(c)(ii)** will be permitted in order to recover increases in Project Expenses, but in no event may single or aggregate increases exceed ten percent per year, unless such an increase is contemplated in a City-approved temporary relocation plan or is necessary due to the expiration of HCV/Section 8 or other rental subsidies. The City's approval for such rent increases that are necessary to meet all approved project expenses and financial obligations shall not be unreasonably withheld.

7.5 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to the Borrower a certification in the form shown in **Exhibit E** in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by the City to substantiate the prospective Tenant's income. Certifications provided to and accepted by the VHA will satisfy this requirement.

(b) Each Qualified Tenant in the Project must recertify to the Borrower on an annual basis his/her household income.

(c) Income certifications with respect to each Qualified Tenant who resides in a Unit or resided therein during the immediately preceding calendar year must be maintained on file at the Borrower's principal office, and the Borrower must file or cause to be filed copies thereof with the City promptly upon request by the City.

7.6 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification. The form of lease must also comply with 24 CFR § 92.253.

7.7 Nondiscrimination. The Borrower agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. The Borrower agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

7.8 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable federal regulations, state law, and this Agreement. Any security deposits collected must be segregated from all other funds of the Project in an Account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust Account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.

ARTICLE 8. <u>MAINTENANCE AND MANAGEMENT OF THE PROJECT</u>. This Article will apply if the Borrower or its affiliate acquires Control of the Site.

8.1 <u>Borrower's Responsibilities</u>.

(a) Subject to the rights set forth in **Article 8.2**, the Borrower will be specifically and solely responsible for causing all maintenance, repair, and management functions performed in connection with the Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs, and replacement of capital items. The Borrower must maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building, and housing codes, California Health and Safety Code 17920.10, the applicable provisions of 24 CFR Part 35, and all applicable federal requirements.

8.2 <u>Contracting With Management Agent</u>.

(a) The Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in **Article 8.1(a)**, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between the Borrower and the management agent, *provided, however,* that the arrangement will not relieve the Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing the Borrower to terminate the contract without penalty upon no more than 30 days' notice. The City hereby agrees that Eden Housing Management, Inc. is an approved management agent.

(b) The City will provide written notice to the Borrower of any determination that the contractor performing the functions required in **Article 8.1(a)** has failed to operate and manage the Project in accordance with this Agreement. If the contractor has not cured the failure within a reasonable time period (but in all events in not less than 30 days), as determined by the City, the Borrower must exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in **Article 8.1(a)**, subject to the City's approval.

8.3 <u>Borrower Management</u>. The Borrower may manage the Project itself only with the City's prior written approval. The City will provide written notice to the Borrower of any determination that the Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, the City may require the Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in **Article 8.1(a**).

ARTICLE 9. GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. The Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction or operation of the Project, including those set forth in **Exhibit H.** The Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Section to **Article 23.1,** this Article does not prohibit the Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings. Construction-related requirements will not apply until Borrower has acquired Control of the Site.

9.2 Additional Federal Requirements.

(a) Compliance With Laws. The Borrower agrees to abide by all applicable Laws, including HUD regulations, pertaining to this Agreement and to any contracts pertaining to the Project. In the event HUD formally amends, waives or repeals any HUD administrative regulation previously applicable to the Borrower's performance under this Agreement, the City's Housing and Community Development Division expressly reserves the right, upon giving notice to HUD and the Borrower, to require the Borrower's performance as though the regulation were not amended, waived or repealed, subject only to written and binding objection by HUD.

(b) Drug-Free Workplace. The Borrower acknowledges that under the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 *et seq*.), the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on its premises. The Borrower agrees that any violation of this prohibition by the Borrower, its employees, agents or assigns will be deemed an Event of Default under this Agreement.

(c) Restrictions on Lobbying Activities.

(i) This Agreement is subject to 31 U.S.C. Section 1352, which provides in part that, with specified exceptions, no appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay any person for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

(ii) If the Funding Amount exceeds $100,000.00, the Borrower must file with the City's Housing and Community Development Division at the beginning of the Compliance Term and promptly after the occurrence of any change in the facts certified or disclosed:

(A) a certification substantially the same as that attached hereto as **Exhibit J**, and otherwise, in form and content satisfactory to the City and to HUD, that the Borrower, and its employees, officers, and agents have not made, and will not make, any payment prohibited by **Subsection (i)** above; and

(B) a disclosure form, Federal Standard Form-LLL, "Disclosure of Lobbying Activities," if the Borrower, and its employees, officers or agents have made or agreed to make any payment using funds from a source other than the Funds that would be prohibited under **Subsection (i)** above if payment were made with the Funds. The City will file the disclosure form with HUD and retain the certification for the City's records as required by Law.

(d) Debarment or Suspension. The Borrower must certify in form and content substantially the same as that attached hereto as **Exhibit J** that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, the Borrower will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of $100,000.00 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

(e) Other HUD Requirements. The following federal requirements are applicable to all activities funded under this Agreement:

(i) the requirements of OMB Circular A-122, relating to allowable costs chargeable to the Funds, and OMB Circular A-110, relating to contractual requirements for nonprofit organizations, as applicable;

(ii) the provisions of 24 CFR Part 84, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR Part 92, "HOME Investment Partnerships Program"; and

(iii) the provisions of 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards".

ARTICLE 10. PROJECT MONITORING, REPORTS, BOOKS, AND RECORDS.

10.1 Generally.

(a) The Borrower understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. The Borrower acknowledges that, if and after Borrower acquires Control of the Site, the City may also conduct periodic on-site inspections of the Project upon reasonable written notice to the Borrower. Notwithstanding the foregoing, nothing in this Article shall be construed to limit the City's full access to the Site as granted pursuant to **Article 5.2** of this Agreement prior to the Completion Date. The Borrower must cooperate with the monitoring by the City and ensure full access to the Project and all information related to the Project as reasonably required by the City.

(b) The Borrower must keep and maintain books, records, and other documents relating to the receipt and use of all Funds, including all documents evidencing any Project Income and Project Expenses. The Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility, and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) The Borrower must provide written notice of the replacement of its Managing General Partner, as well as the Managing General Partner's Chief Executive Officer, Senior Vice President of Real Estate Development, Vice President of Property Management, or any equivalent position within 30 days after the effective date of such replacement.

10.2 Monthly Reporting. During the construction of the Project, the Borrower must submit monthly reports (the "Monthly Project Update") describing progress toward developing the Project with respect to: obtaining necessary approvals from other City departments; procuring architects, consultants, and contractors; changes in scope, cost or schedule; and significant milestones achieved in the past month and expected to be achieved in the coming month. The Monthly Project Update must be submitted by email until such time as the Project Completion Report is submitted to the City pursuant to **Article 10.5** below.

10.3 Annual Reporting.

(a) The Borrower must file with the City annual report forms (the "Annual Monitoring Report") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Project Fees (if any), Residual Receipts and any Distributions made, evidence of required insurance, and a completed "Management and Maintenance Report" form that includes a description of marketing activities and a rent roll, no later than 120 days after the end of the Borrower's fiscal year. The Annual Monitoring Report must be in substantially the form attached as **Exhibit E** or as later modified during the Compliance Term.

(b) If the source of Funds is federal, the Borrower must also provide an annual accounting of program income, as defined in applicable federal regulations.

(c) The Borrower must deliver to the City copies of any annual operating and financial reports provided to other lenders for the Project promptly after submittal.

10.4 Capital Needs Assessment. The Borrower must deliver to the City an updated CNA every five years after the Completion Date for approval. The updated CNA must include an analysis of the Borrower's actual expenditures for capital needs compared to the most recently approved CNA, the Borrower's Twenty Year Cash Flow Pro Forma, initial Annual Operating Budget, and its then-current Annual Operating Budget.

10.5 Project Completion Report. Within the specific time periods set forth below after the completion of construction, and the lease-up or permanent financing of the Project, as applicable, the Borrower must provide to the City the reports listed below certified by the Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, the Borrower shall provide to the City information or documents reasonably requested by the City to assist in the City's review and analysis of the submitted reports:

(a) within 180 days after completion of construction, a cost certification project completion performed by an independent certified public accountant identifying the sources and uses of all Project Funds;

(b) within 180 days after completion of construction, a report on the use of minority and women owned enterprises including race, ethnicity or gender, the type of work, and the dollar value of such work;

(c) within 60 days after 75 percent occupancy, and 100 percent occupancy, respectively, a report on the lease-up of the Units including the number of leases by race, ethnicity, and single-headed household by gender, and also indicating the Units by income category; and

(d) within 180 days after completion of construction, a report demonstrating compliance with all requirements regarding HUD Section 3, including documentation of total labor hours worked on the Project, total Section 3 hours worked, total wages paid, total Section 3 wages paid, and the names of all individuals employed to comply with Section 3 goals, including the total hours worked for each individual and total wages paid to each individual.

10.6 Response to Inquiries. At the request of the City, its agents, employees or attorneys, the Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations, and condition of the Project, the status of any mortgage encumbering the Project, and any other requested information with respect to the Borrower or the Project.

10.7 Delivery of Records. At the request of the City, made through its agents, employees, officers or attorneys, the Borrower must provide the City with copies of each of the following documents, certified in writing by the Borrower to be complete and accurate:

(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board, or the California State Board of Equalization on behalf of the Borrower and any general partner or manager of the Borrower;

(b) all certified financial statements of the Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to the City; and

(c) any other records related to the Borrower's ownership structure and the use and occupancy of the Site.

10.8 Access to the Project and Other Project Books and Records. In addition to the Borrower's obligations under **Articles 2.4, 10.1, 10.2, 10.3, 10.4 10.5, 10.6,** and any other obligations to provide reports or maintain records in any City Document, the Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the Compliance Term to monitor the progress of work on the Project and compliance by the Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit, and examine all books, records and other documents the Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under **Article 10.9.**

10.9 Records Retention. The Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 11. USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) The Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "Project Operating Account") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with the City's approval. The Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees. Withdrawals from the Project Operating Account (including accrued interest) for other purposes may be made only with the City's express prior written approval.

(b) The Borrower must keep accurate records indicating the amount of Project Income deposited into and withdrawn from the Project Operating Account and the use of Project Income. The Borrower must provide copies of the records to the City upon request.

ARTICLE 12. REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing no later than 60 days after the Completion Date, or any other date the City designates in writing, the Borrower must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the fifteenth day of each month following establishment of the Replacement Reserve Account, the Borrower must make monthly deposits from Project Income into the Replacement Reserve Account in the amount required by Borrower's senior lender and tax credit investor. The Borrower may request adjustments every five years based on its most recently approved CNA. The City may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary.

(b) The Borrower may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project, such as replacing or repairing structural elements, furniture, fixtures or equipment at the Project that are reasonably required to preserve the Project. The Borrower may not withdraw funds (including any accrued interest) from the Replacement Reserve Account for any other purpose without the City's prior written approval.

12.2 Operating Reserve Account.

(a) Commencing no later than 60 days after the Completion Date, or any other date the City designates in writing, the Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "Operating Reserve Account") by depositing funds in an amount equal to 25 percent of the approved budget for Project Expenses for the first year of operation of the Project.

No less than annually after establishing the Operating Reserve Account and continuing until the Compliance Term has expired, the Borrower must make additional deposits, if necessary, to bring the balance in the Operating Reserve Account to an amount equal to three months' reserve of the prior year's actual Project Expenses

(b) The Borrower may withdraw funds from the Operating Reserve Account solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies, and other expenses that vary seasonally or from month to month in the Project. The Borrower may not withdraw funds (including any accrued interest) from the Operating Reserve Account for any other purpose without the City's prior written approval.

In the event that the Borrower withdraws funds from the Operating Reserve Account as permitted by this Article such that the balance of the Operating Reserve Account is less than the initial capitalized amount deposited into the Operating Reserve Account, the Borrower shall fully replace any withdrawals from the Operating Reserve Account using available Project Income prior to the use of such Project Income to pay any deferred Developer Fee, Partnership Management Fee, or Distributions, as applicable, pursuant to this Agreement.

ARTICLE 13. DISTRIBUTIONS.

13.1 Definition. "Distributions" refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to the Borrower or any party having a beneficial interest in the Project, but does not include reasonable payments for property management, asset management, approved deferred Developer Fee, or other services performed in connection with the Project.

13.2 Conditions to Distributions. Distributions for a particular fiscal year may be made only following: (a) City approval of the Annual Monitoring Report submitted for that year; (b) the City's determination that the Borrower is not in default under this Agreement or any other Agreement entered into with the City of Vallejo or the Housing Successor Agency of the City for the Project; and (c) the City's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The City will be deemed to have approved the Borrower's written request for approval of a proposed Distribution unless the City delivers its disapproval or request for more information to the Borrower within 30 business days after the City's receipt of the request for approval.

13.3 Prohibited Distributions. No Distribution may be made in the following circumstances:

(a) when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default has not been cured; or

(b) when the City determines that the Borrower or the Borrower's management agent has failed to comply with this Agreement; or

(c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or

(d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded as required by this Agreement; or

(e) if the Loan is to be repaid from Residual Receipts, the Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or

(f) during the pendency of an uncured Event of Default (including the Borrower's failure to provide its own funds at any time from and after the closing date of Borrower’s financing for construction or rehabilitation of the Project that the City determines the Loan is Out of Balance) under any City Document.

13.4 Borrower's Distribution. Beginning in the year of the initial Payment Date, and subject to the limitations in this Article, Borrower may retain as a Distribution a portion of Residual Receipts in an amount equal to fifty percent (50%) of Residual Receipts.

ARTICLE 14. SYNDICATION PROCEEDS.

14.1 Distribution and Use. If the Borrower is a limited partnership or limited liability company, and unless otherwise approved by the City in writing, the Borrower must allocate, distribute, and pay or cause to be allocated, distributed, and paid all net syndication proceeds and all loan and grant funds as specified in the Table of Sources and Uses of Funds attached hereto as Exhibit B. The Borrower must notify the City of the receipt and disposition of any net syndication proceeds received by the Borrower during the term of this Agreement.

ARTICLE 15. DEVELOPER FEES.

15.1 Amount. Unless otherwise agreed to in writing by the City, the maximum cash Developer Fee (net of any general partner capital contributions) that may be paid from development sources shall not exceed the maximum amount allowed under TCAC regulations.

ARTICLE 16. TRANSFERS.

16.1 Permitted Transfers/Consent. The Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in the Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases or occupancy agreements to occupants of Units in the Project; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by the City in its reasonable discretion; (c) transfers of any limited partner interest of the Borrower; (d) transfers of the general partnership or manager's interest in the Borrower to a nonprofit public benefit corporation approved in advance by the City; (e) the grant or exercise of an option agreement between the Borrower and the Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project; or (f) a transfer of the managing general partner of the Partnership or a replacement of the general partner with the limited partner of the Borrower or an affiliate (as defined in the limited partnership agreement) thereof, when such replacement occurs pursuant to the terms of the Borrower’s limited partnership agreement

("Affiliate"), provided that: (1) no default exists hereunder, (2) the Affiliate agrees in writing to assume all obligations of the Borrower under the Loan Documents, and (3) the Affiliate agrees in writing to seek the City's prior written approval of any and all of its management or ownership agreements, such approval may only be granted by City Council.. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute an Event of Default under this Agreement. The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

ARTICLE 17. INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, the Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as applicable and as set forth in **Exhibit I** from the date the Deed of Trust is recorded in the Recorder's Office of Solano County until the expiration throughout the Compliance Term of this Agreement at no expense to the City.

ARTICLE 18. GOVERNMENTAL APPROVALS.

18.1 Compliance. The Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state, and local governmental approvals required by Law to be obtained for the Project. Subject to **Article 23.1**, this Article does not prohibit the Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 19. DEFAULT.

19.1 Event of Default. Any material breach by the Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the City Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any City Document will constitute an "Event of Default," including the following:

(a) the Borrower fails to make any payment required under this Agreement within ten days after the date when due; or

(b) from and after the date Borrower acquires Control of the Site, any lien is recorded against all or any part of the Site or the Project without the City's prior written consent, whether prior or subordinate to the lien of the Deed of Trust if applicable or Regulatory Agreement, and the lien is not removed from title or otherwise remedied to the City's satisfaction within 30 days after the Borrower's receipt of written notice from the City to cure the default or, if the default cannot be cured within a 30 day period, the Borrower will have 60 days to cure the default, or any longer period of time deemed necessary by the City, *provided that* the Borrower commences to cure the default within the 30 day period and diligently pursues the cure to completion; or

(c) the Borrower fails to perform or observe any other term, covenant or agreement contained in any City Document, and the failure continues for 30 days after the Borrower's receipt of written notice from the City to cure the default or, if the default cannot be cured within a 30 day period, the Borrower will have 60 days to cure the default, or any longer period of time deemed necessary by the City, *provided that* the Borrower commences to cure the default within the 30 day period and diligently pursues the cure to completion; or

(d) any representation or warranty made by the Borrower in any City Document proves to have been incorrect in any material respect when made; or

(e) from and after the date Borrower acquires Control of the Site, all or a substantial or material portion of the improvements on the Site is damaged or destroyed by fire or other casualty, and the City has determined upon restoration or repair that the security of the Deed of Trust if applicable has been impaired or that the repair, restoration or replacement of the improvements in accordance with the requirements of any Deed of Trust is not economically practicable or is not completed within two years of the receipt of insurance proceeds; or all or a substantial or material portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency or subject to any action or other proceeding instituted by any non-City Governmental Agency for any purpose with the result that the improvements cannot be operated for their intended purpose; or

(f) the Borrower is dissolved or liquidated or merged with or into any other entity; or, if the Borrower is a corporation, partnership, limited liability company or trust, the Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of California for any period of more than 30 days; or, if the Borrower is an individual, the Borrower dies or becomes incapacitated; or all or substantially all of the assets of the Borrower are sold or otherwise transferred except as permitted under **Article 16.1**; or

(g) without the City's prior written consent, the Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under **Article 16.1**; or

(h) without the City's prior written consent, the Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in the Borrower or of its right, title or interest in the Project or the Site except as permitted under **Article 16**; or

(i) without the City's prior written consent, the Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) from and after the date Borrower acquires Control of the Site, either the Deed of Trust or the Regulatory Agreement ceases to constitute a valid and indefeasible perfected lien on the Site and improvements, subject only to Permitted Exceptions; or

(k) the Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or the Borrower applies for or consents to the appointment of any receiver, trustee or similar official for the Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for 60 days); or the Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to the Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than 60 days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of the Borrower and is not released, vacated or fully bonded within 60 days after its issue or levy; or

(l) any material adverse change occurs in the financial condition or operations of the Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

(m) from and after the date Borrower acquires Control of the Site, the Borrower fails to make any payments or disbursements required to bring the Loan In Balance after the City determines that the Loan is Out of Balance; or

(n) After the date Borrower acquires Control of the Site but before a Certificate of Occupancy is issued for the Project, the Borrower ceases construction of the Project for a period of thirty consecutive working days, and the cessation is not excused under **Article 19.3**; or

(o) the Borrower is in default of its obligations with respect to any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(p) the Borrower is in default of its obligations under any other Agreement entered into with the City of Vallejo, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City Document or at law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) the City at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which the Borrower expressly waives; or

(b) the City at its option may terminate all commitments to make Disbursements or to release the Site from the Deed of Trust or Regulatory Agreement, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Site from the Deed of Trust or Regulatory Agreement upon terms and conditions satisfactory to the City in its sole discretion; or

(c) the City may perform any of the Borrower's obligations in any manner, in the City's reasonable discretion; or

(d) the City, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action the City deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project the City deems appropriate; or

(e) the City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct the Borrower's noncompliance with this Agreement; and

(f) upon the occurrence of an Event of Default described in **Article 19.1(k)**, the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents will become due and payable automatically; and

(g) all costs, expenses, charges, and advances of the City in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless the Borrower reimburses the City within ten days of the City’s demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of the City or the Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty; and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse the Borrower's performance only in the event that the Borrower has provided notice to the City within 30 days after the occurrence or commencement of the event or events, and the Borrower's performance will be excused for a period ending 30 days after the termination of the event giving rise to the delay.

ARTICLE 20. REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for the City to enter into this Agreement, the Borrower represents and warrants as follows:

(a) The execution, delivery, and performance of the City Documents will not contravene or constitute a default under or result in a lien upon assets of the Borrower under any applicable Law, any Charter Document of the Borrower or any instrument binding upon or affecting the Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting the Borrower.

(b) When duly executed, the City Documents will constitute the legal, valid, and binding obligations of the Borrower. The Borrower hereby waives any defense to the enforcement of the City Documents related to alleged invalidity of the City Documents.

(c) No action, suit or proceeding is pending or threatened that might affect the Borrower or the Project adversely in any material respect.

(d) The Borrower is not in default under any Agreement to which it is a party, including any lease of real property.

(e) None of the Borrower, the Borrower's principals or the Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has the Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency. Further, the Borrower certifies that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, the Borrower will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of $100,000.00 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

(f) All statements and representations made by the Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

ARTICLE 21. NOTICES.

21.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, facsimile (if followed within one business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five days after mailing, *provided that* any notice that is received after 5:00 p. m. Pacific Standard Time (PST) on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

To the City: Housing and Community Development Division
200 Georgia Street
Vallejo, CA 94590
Attn: Housing and Community Development Manager

To Borrower: Vallejo PSH, LP.
22645 Grand Street
Hayward, CA 94541
Attn: Director of Real Estate Development

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Article.

21.2 Required Notices. The Borrower agrees to provide notice to the City in accordance with **Article 21.1** of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on the Borrower's operation of the Project or ability to repay the Loan.

21.3 Notice to Limited Partner. The City agrees to deliver a copy of any notice of default to Borrower's limited partner at the address provided by Borrower's limited partner at the same time and in the same manner as notice is delivered to Borrower. The City's failure to deliver notice under this Section will not affect or impair the City's right to enforce its rights at law or in equity arising by reason of an Event of Default.

ARTICLE 22. HAZARDOUS SUBSTANCES.

22.1 Borrower's Representations. The Borrower represents and warrants to the City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct except as disclosed in the applicable environmental reports or otherwise in writing: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

22.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, the Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Article will prevent the Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; *provided further* that prior to the date Borrower acquires Control of the Site, compliance under 22.2(a) shall apply only to the actual activities of Borrower or Borrower's agents, employees, contractors and invitees in connection with the Site and the Project; and (b) deliver to the City notice of the discovery by the Borrower of any event rendering any representation contained in this Section incorrect in any respect promptly following the Borrower's discovery.

ARTICLE 23. INDEMNITY.

23.1 Borrower's Obligations. The Borrower must Indemnify the City and its respective officers, agents, and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of: (a) any default by the Borrower in the observance or performance of any of the Borrower's obligations under the City Documents (including those covenants set forth in **Article 22** above); (b) any failure of any representation by the Borrower to be correct in all respects when made; (c) from and after the date Borrower acquires Control of the Site, injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of the Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, or maintenance or any other condition or otherwise; (d) from and after the date Borrower acquires Control of the Site, any claim of any surety in connection with any bond relating to the construction or of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Site (from and after the date Borrower acquires Control of the Site) or the Project or any transaction contemplated by, or the relationship between the Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, from and after the date Borrower acquires Control of the Site until the expiration of the Compliance Term, of any Environmental Activity or any failure of the Borrower or any other person to comply with all applicable Environmental Laws relating to the Project or the Site; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring from and after the date Borrower acquires Control of the Site before the expiration of the Compliance Term; (h) any liability of any nature arising from the Borrower's contest of or relating to the application of any Law, including any contest permitted under **Articles 9.1, 18.1,** and **22.2**; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Article for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which the Borrower has indemnified the Indemnitees, upon written notice, the Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at the Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or the termination of this Agreement.

23.2 No Limitation. The Borrower's obligations under **Article 23.1** are not limited by the insurance requirements under this Agreement.

ARTICLE 24. GENERAL PROVISIONS.

24.1 Subordination. The Deed of Trust and/or Regulatory Agreement shall be subordinated to other financing secured by and used for the development of the Project (in each case, a "Senior Lien"), but only if *all* of the following conditions are satisfied:

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

(b) The terms of the proposed Senior Lien and any Subordination Agreement must be reviewed and approved by the City and approved as to form by the City Attorney's Office.

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

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

(e) The Subordination Agreement(s) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, any Subordination Agreement must provide the City with adequate rights to cure any defaults by the Borrower, including: (i) providing the City or its successor with copies of any notices of default within a reasonable period and in the same manner as provided to the Borrower; and (ii) providing the City with a cure period at least equal to that provided to the Borrower to cure any default.

(f) The subordination(s) described in this Article may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City and for any refinancing of the Senior Loan provided that such refinancing is for not more than the then-outstanding amount due under the Senior Loan.

(g) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure.

(h) Following review and approval by the City and approval as to form by the City Attorney's Office, the City’s Housing and Community Development Division Program Manager or his/her successor or designee will be authorized to execute the approved Subordination Agreement/s without the necessity of any further action or approval.

24.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of a third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and the Borrower or the Borrower's agents, employees or contractors.

24.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the City by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. The Borrower must include this requirement as a provision in any contracts for the development of the Project.

24.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by the City and the Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the City or the Borrower.

24.5 City Obligations. The City's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to the Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents.

24.6 Borrower Solely Responsible. The Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance contemplated under this Agreement. The Borrower is solely responsible for: (a) its own acts and those of its agents, employees, and contractors and all matters relating to their performance, including compliance with Social Security, withholding, and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by the Borrower, any of its contractors or subcontractors, and the City and its officers, representatives, agents, and employees on account of any act, error or omission of the Borrower in the performance of this Agreement or any other City Document and the development and operation of the Project; and (c) all costs and expenses relating to the Borrower's performance of obligations under the City Documents, the delivery to the City of documents, information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing, and/or recording of any City Document or document required under any City Document.

24.7 No Inconsistent Agreements. The Borrower warrants that it has not executed and will not execute any other Agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

24.8 Inconsistencies in City Documents. In the event of any conflict between the terms of this Agreement and any other City Document, the terms of this Agreement control unless otherwise stated; *provided, however,* that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

24.9 Governing Law. This Agreement is governed by California law without regard to its choice of law rules.

24.10 Joint and Several Liability. If the Borrower consists of more than one person or entity, each is jointly and severally liable to the City for the faithful performance of this Agreement.

24.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This provision does not relieve the Borrower of its obligation under the City Documents to obtain the City's prior written consent to any assignment or other transfer of the Borrower's interests in the Loan, the Site or the ownership interests of the Borrower.

24.12 Attorneys' Fees. If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of a suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of Vallejo in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

24.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

24.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

24.15 Further Assurances. The Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by the City from time to time to confirm or otherwise carry out the purpose of this Agreement.

24.16 Binding Covenants. The provisions of the City Documents constitute covenants running with the land and will be binding upon the Borrower and the Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants), in or to any part of the Property, except that the same will terminate and become void automatically at the expiration of the Compliance Term of this Agreement. Any attempt to transfer any right, title or interest in the Property in violation of these covenants will be void.

24.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any City Document, that party agrees not to withhold or delay its consent or approval unreasonably.

24.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one Agreement.

24.19 Borrower's Personnel. The Project shall be implemented only by competent personnel under the direction and supervision of the Borrower.

24.20 Borrower's Board of Directors. The Borrower shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in the Borrower's bylaws and other governing documents, and shall adhere to applicable provisions of federal, state, and local laws governing nonprofit corporations. The Borrower's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by the Borrower of its obligations under this Agreement.

24.21 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS

A	Schedule of Income and Rent Restrictions
B-1	Table of Sources and Uses of Funds
B-2	Annual Operating Budget
B-3	Twenty Year Cash Flow Pro Forma
C	Form of HOME Program Loan Note
D	Form of HOME Program Deed of Trust
E	Form of HOME Program Rent Limitation and Affordability Agreement
F	Form of Annual Monitoring Report
G	Section 3 Requirements and Numerical Goals
H	Governmental Requirements
I	Insurance Requirements
J	Lobbying/Debarment Certification Form
K	Schedule of Performance

24.22 City's Recourse. The City's recourse against the Borrower following an Event of Default is limited as set forth more specifically in the Note.

24.23 Ownership of Results. Any interest of Borrower or any sub-borrower, in the modular units, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the services to be performed under this Agreement, or acquired through the use of any Loan proceeds ("Work Product"), is hereby pledged to City as security for Borrower's obligations under this Agreement and the Note, and upon an Event of Default, shall become the property of and be promptly transmitted by Borrower to the City. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities.

This Agreement constitutes a security agreement under the California Uniform Commercial Code, as it may be amended from time to time, and Borrower authorizes City to file any financing statements City elects and deems necessary to perfect its security interest in the Work Product.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Vallejo, California as of the date first written above.

THE CITY:

CITY OF VALLEJO, a municipal corporation

By: ___________________________________
Greg Nyhoff, City Manager

Date: _________________________________

ATTEST:

By: ___________________________________
Dawn G. Abrahamson, City Clerk

(City Seal)

APPROVED AS TO INSURANCE REQUIREMENTS:

By: _________________________________
Carmen Valdez, Interim Risk Manager

APPROVED AS TO FORM:

By: ___________________________________
Veronica Nebb, City Attorney

APPROVED AS TO CONTENT:

By: ___________________________________
Judy Shepard-Hall, Housing and
Community Development Division
Program Manager

BORROWER:

Vallejo PSH, L.P., a California limited partnership

By: Vallejo PSH LLC, a California limited liability company, its general partner

By: Eden Development, Inc., a California nonprofit public benefit corporation,
its sole member/manager

By: ____________________________
Andre H. Madeira, Senior Vice President of Real Estate Development

EXHIBIT A

Schedule of Income and Rent Restrictions

<u>**EXHIBIT B-1**</u>

<u>Table of Sources and Uses of Funds</u>

TO BE PROVIDED BY THE BORROWER.

EXHIBIT B-2

Annual Operating Budget

TO BE PROVIDED BY THE BORROWER.

EXHIBIT B-3

Twenty Year Cash Flow Pro Forma

[This Pro Forma must include the same line items as the Annual Operating Budget shown in Exhibit B-2.]

TO BE PROVIDED BY THE BORROWER.

EXHIBIT C
Form of HOME Program Loan Note

(Sacramento Street Permanent Supportive Housing Development)

Principal Sum Not to Exceed: Date: ____________________________
$2,186,710 __________ Vallejo, California

FOR VALUE RECEIVED, VALLEJO PSH, L.P. a California limited partner (the "Maker" or "Borrower"), having an address at 22645 Grant Street, Hayward, California 94541. Promises to pay THE CITY OF VALLEJO ("Payee" or "City"), a principal sum not to exceed Two Million One Hundred Eighty-Six Thousand Seven Hundred Ten Dollars and No Cents ($2,186,710.00), or so much of such principal as may be advanced, with interest at the rate of three percent per annum. Interest shall be simple interest only.

1. Purpose. This Note is made and delivered pursuant to and in implementation of that certain Loan Agreement entered into between the City and the Borrower, dated _________________, 2020 (the "Loan Agreement), which provides for the term "Site" means that real property located at and described as **2118 Sacramento Street, and 2134-2136 Sacramento Street, Vallejo, California 94590.**

2. Housing Project. The Maker will plan, develop, construct, and operate a 75-unit permanent supportive housing community on the Site (the "Project"). The 75 units that are contained in the Project are referred to herein as the "Housing Units".

3. Maturity Date. The Note shall be due and payable in full 55 years after the date the Project obtains its final Certificate of Occupancy (the "Maturity Date"), provided however that if Borrower fails to acquire Control of the Site on or before December 31, 2022 (the "Outside Acquisition Date"), the Maturity Date shall be the Outside Acquisition Date. The City may agree to extend the Outside Acquisition Date in its sole and absolute discretion. Notwithstanding the foregoing, if Borrower's failure to acquire Control of the Site by the Outside Acquisition Date is not caused by Borrower's acts or omissions, whether direct or indirect, and if Borrower has acted in good faith and no event has occurred and is continuing that constitutes an Event of Default or, with the passage of time would become an Event of Default under any of the City Documents, then in such an event, Borrower shall deliver to City all of the Work Product, the Agreement shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligation or liability with respect to this Note and the Loan.

4. Payment. Beginning at the end of the Maker's first fiscal year immediately following the date the Project obtains its final Certificate of Occupancy, the

Maker shall make annual payments of principal and interest to the Payee in an amount equal to the "City Share of Residual Receipts", hereinafter defined from the Payee's preceding fiscal year. Payment shall be made within 150 calendar days of the end of each fiscal year of the Maker.

"Residual Receipts" shall mean the sum of money computed as follows:

All rents, revenues, consideration or income (of any form but excluding capital contributions, tenants' security deposits, loan proceeds, financing or refinancing proceeds, partner advances, or similar advances) derived by the Maker in connection with or relating to the operation of the residential units of the Housing Project, including any revenue derived from any refinancing of the Housing Project, less all of the following:

On an annual basis, Debt Service (as defined below); all costs and expenses reasonably and actually incurred for operation, maintenance, and administration of the Housing Project, including but not limited to: premiums for property damage and liability insurance; utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and others; any annual license or Certificate of Occupancy fees required for the operation of the Housing Project; general administrative expenses, including but limited to advertising and marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and others; supportive services fees paid to the supportive services provider; asset management fees paid to the limited partner of the Maker (the "Limited Partner") in a total amount not to exceed $12,000 annually, increasing 3.5% percent annually; partnership management fees in a total amount not to exceed $25,000 annually, payable to the general partners, increasing 3.5% percent annually; deferred development fees to the developer(s); repayment of any advances made by the managing general partner of the Maker, the co-general partner of the Maker, or the Limited Partner of the Maker under the terms of the partnership agreement governing the Maker (the "Partnership Agreement"); payment of any "Adjustment Amount" to the Limited Partner that is required under the Partnership Agreement; property management fees and reimbursements including on-site manager expenses, in an amount not to exceed fees and reimbursements which are standard in the industry and are pursuant to a management contract approved by the Limited Partner and the City; cash deposited into reserves required by lenders, tax credit investor/s, or by the terms of the Partnership Agreement; and capital replacements of Project Improvements. Expenses shall also not include the following: depreciation, amortization, depletion, or other non-cash expenses. Project Fees are not Project Expenses.

As used herein, "Debt Service" means regularly scheduled mandatory payments of principal and interest made in a calendar year pursuant to the financing approved pursuant to **Article 2.1** of the Loan Agreement which has been obtained for the development of the Housing Project, but excluding payments made pursuant to this Note.

Beginning with the first year of operation of the Project by the Maker after the Project obtains its final Certificate of Occupancy, the Maker shall deliver to the Payee each year an annual audited financial statement in order to determine the amount of Residual Receipts. The Payee shall have the right to inspect and audit the Maker's financial books and records concerning the calculation of Residual Receipts upon reasonable notice and during regular business hours. Any amount owed under this Note and not paid due to insufficient Residual Receipts shall be carried over to the next year and added to the amount owed for the following year, but shall not be compounded. Payments made from the Maker shall be credited first to pay interest, and then to pay principal.

Each year until all principal and interest hereunder is paid in full, 50 percent of the Residual Receipts shall be paid for the repayment of this Note, to be shared pro rata with any other Residual Receipts loans provided in accordance with the approved Project Financing ("the City HOME Program Share of Residual Receipts").

5. Payment Location. Payment shall be made in lawful money of the United States to Payee, care of the City of Vallejo Housing and Community Development Division, 200 Georgia Street, Vallejo, California 94590. The place of payment may be changed from time to time as the Payee may from time to time designate in writing.

6. Default. The occurrence of any of the following shall constitute an event of default under this Note:

   a. the Maker fails to pay any amount due hereunder within 30 days of its due date; or
   b. any default by the Maker under this Note, any City Deed of trust, the HOME Program Loan Agreement, or any Affordability Agreement recorded against the Site after the expiration of all applicable cure periods; or
   c. any default by the Maker under any other obligation of the Maker recorded against the Site after the expiration of all applicable cure periods.

The Maker shall not be considered in default under this Note until the expiration of all notice and cure periods provided to the maker. Any cure of any default made or tendered by one of the Maker's Limited Partners, as approved by the City, shall be deemed to be a cure by the Maker and shall be accepted or rejected on the same basis as if made or tendered by the Maker.

Upon the occurrence of any uncured event of default, or at any time thereafter, at the option of the Payee hereof, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one of more installments thereafter shall not constitute a waiver of the Payee's option. The Payee's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. The Payee's failure to exercise any other right or remedy hereunder or under any other Agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. Default Interest Rate. At all times when the Maker is in default hereunder by reason of the Maker's failure to pay the principal due under this Note within applicable cure periods, the interest rate on the sums as to which the Maker is in default (including the principal, if the Payee has elected to declare it immediately due and payable), shall be at the highest rate then allowed by law as of the date of the default, or ten percent, whichever is lower.

8. Waivers. The Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, and any such extension or release as may be made without notice to any of said parties, and without in any way affecting or discharging this liability.

9. Costs. The Maker agrees to pay immediately upon demand all costs and expenses of the Payee, including reasonable attorneys' fees, if:

   a. after default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection; or
   b. after a default hereunder or under any City Deed of Trust or Loan Agreement and after the expiration of all notice and cure periods the Payee funds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against the Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, any City Deed of Trust, the HOME Program Loan Agreement or any other loan document executed in connection with this Project; or
   c. the Payee seeks to have the Site abandoned or be reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note, or prohibiting the enforcement of any City Deed of Trust, or any other Agreement evidencing or securing this Note lifted by any bankruptcy or other court.

If the Payee shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Site or the title thereto or the interest of the Payee under any City Deed of Trust including, without limitation, any form of condemnation or eminent domain proceeding, the Payee shall be reimbursed by the Maker immediately upon demand for all costs, charges, and reasonable attorneys' fees incurred by the Payee in any such case, and the same shall be secured by any City Deed of Trust as a further charge and lien upon the Site.

10. Notices. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

11. Successors. This Note shall be binding upon the Maker, its successors, and assigns.

12. California Law. This Note shall be construe in accordance with and be governed by the laws of the State of California.

13. Severability. If any provision of this Note shall be determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

14. Nonrecourse. This Note is a nonrecourse obligation of the Maker. Neither the Maker nor any of its officers, directors or general and limited partners shall have any personal liability for repaying the principal or interest of this Note. In any action to enforce the obligations of the Maker under this Note, any City Deed of trust or any other instrument or Agreement evidencing, securing or relating to the indebtedness evidenced by this Note, the judgement or decree shall be enforceable against the Maker solely and only to the extent of its interest in the property described in this Note or any City Deed of Trust or its interest in any other security loaned by the Maker as security for this Note, and the Payee shall not seek any deficiency judgement against the Maker. The foregoing provisions shall not prevent recourse to the collateral security for the Loan or constitute a waiver, release or discharge of or otherwise affect the obligation to pay any indebtedness evidenced by the loan documents executed in connection with this Project, or limit the right of any person to name the Maker or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the loan documents executed in connection with this Project, so long as no deficiency judgement shall be sought against the Maker.

    The foregoing limitation shall not apply to any and all loss, damage, liability, action, case of action, cost or expense (including, without limitation, reasonable attorney's fees and expenses), to the extent incurred by the Payee as a result of any:

    a. fraud or material misrepresentation under or in connection with the loan or any loan document executed in connection with this Project; or
    b. intentional bad faith waste of the Site by the Maker; or

c. losses resulting from the Maker's failure to maintain insured as required by this Note or any Deed of Trust; or
d. misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds by the Maker derived from any collateral security.

If any of the events listed in the foregoing (a) through (d) occurs, the Payee shall have the right to proceed directly against the Maker at the time the event giving rise to the recourse liability occurred to recover any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses), incurred by the Payee.

15. <u>Nonliability of Maker and Payee Officials and Employees.</u>

a. No member, official or employee of the Payee shall be personally liable to the Maker in the event of any default or breach by the City or on any obligations under the terms of this Note.
b. No member, official o employee of the Maker shall be personally liable to the Payee in the event of any default or breach by the Maker or for any amount which may become due to the Payee or on any obligations under the terms of this Note.

Vallejo PSH, L.P.,
a California limited partnership

By: Vallejo PSH LLC,
a California limited liability company,
its general partner

By: Eden Development, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: ______________________________
Andre H. Madeira, Senior
Vice President of Real Estate Development

Exhibit E
Form of HOME Program Rent Limitation and Affordability Agreement –
Permanent Supportive Housing Development, Sacramento Street

RECORDING REQUESTED BY:

THE CITY OF VALLEJO
200 Georgia Street
Vallejo, CA 94590

WHEN RECORDED, MAIL DOCUMENT TO:

THE CITY OF VALLEJO
200 Georgia Street
Vallejo, CA 94590
Attn: Judy Shepard-Hall

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code € 27383

HOME PROGRAM RENT LIMITATION AND REGULATORY AGREEMENT

This Rent Limitation and Regulatory Agreement (this **"Agreement"**) is made as of ____________________, by and between the City of Vallejo (hereinafter called the **"City"**) and VALLEJO PSH, L.P. a California limited partner (hereinafter called the **"Borrower"**).

WITNESSETH:

In consideration of a loan in the amount of TWO MILLION ONE HUNDRED EIGHTY- SIX THOUSAND FOUR HUNDRED FORTY-EIGHT THOUSAND SEVEN HUNDRED TEN DOLLARS AND NO CENTS ($2,186,710.00) (the **"Loan")** from the

City pursuant to the HOME Investment Partnerships Program (**“HOME Program”**) and of promises hereinafter contained, the City and the Borrower, for itself and its successors and assigns, covenant and agree as follows:

1. PURPOSE.

1.1. This Agreement is made in implementation of that certain HOME Investment Partnerships Program Loan Agreement (the **“Loan Agreement”**), dated **____________**, 2019, between the City and the Borrower.

1.2. Pursuant to the Loan Agreement, the City has provided the Loan to the Borrower as evidenced by a promissory note (the **“Note”**) executed by the Borrower in favor of the City regarding real property (the **“Site”**) located in the City of Vallejo, State of California, described in **Attachment A** attached hereto and incorporated herein by reference. The HOME Program Loan is conditioned upon, among other requirements, the Borrower’s execution and delivery to the City of this Rent Limitation and Regulatory Agreement, and the Borrower’s express agreement that the Borrower, and its successors and assigns, shall comply with this Agreement.

1.3. The Loan funds provided by the City for the development and construction of the Property as described in the Loan Agreement are funds allocated to the City under the HOME Program, for purposes of expanding the community’s supply of decent, safe, sanitary, and affordable housing with primary attention to rental housing for very low-income households as defined at 24 CFR Part 92,1., et seq.

1.4. The City approved the HOME Program Loan on the basis that the Borrower shall develop on the Site up to a 76-unit multi-family housing development, and that eleven of the Project’s Units (the **“Assisted Units”** or **“HOME Assisted Units”**) shall be rented at an affordable rent to and occupied by very low-income households (as such terms are defined herein), all in accordance with this Agreement and the HOME Program Regulations (as defined herein).

1.5. As an inducement to the City to make the Loan, the Borrower has agreed to enter into this Agreement in accordance with the terms, conditions, and covenants set forth below, and consents to be regulated and restricted by the authority as herein provided and as provided for in the HOME Program Regulations any and all as the same may be amended and supplemented from time to time, and as applicable.

2. FURTHER COVENANTS.

2.1. The Borrower shall not, without the prior written approval of the City:

(a) Convey, transfer, or encumber, or permit the conveyance, transfer or Encumbrance of the Project or the Site (collectively, the **“Property”**), unless such assignee, transferee, or encumbrance has agreed in writing and inform suitable for recordation, to be bound by the terms of this Agreement, and receive written approval from the City pursuant to Section 8.1. below.

(b) Add to, reconstruct, or demolish any part of the Property or improvements thereon, except as provided by the Loan Agreement.

(c) Permit the use of the Assisted Units for any purpose except those set forth in this Agreement.

(d) Rent any Assisted unit for less than one year, unless otherwise mutually agreed to in writing by the Borrower and the Tenant in accordance with the HOME Program Regulations.

(e) Enter into any contracts or agreements that, to the best of the Borrower's knowledge, would result in a conflict of interest between any of the parties to such contracts and its City, its elected and appointed officials, officers, employees, agents, or members of their immediate families.

2.2. <u>Compliance with Program Requirements.</u> The Borrower agrees that at all times, and at its sole cost and expense, the Borrower and the Project shall comply with all provisions of the HOME Investment Partnerships Act as set forth in Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, 42 U. S. C. €12701 et seq., as amended from time to time (the **"Act"**); and regulations promulgates at 24 CFR Part 92, et seq. (the **"Regulations"**); all other applicable federal and state statutes, rules, and regulations; such additional regulations, orders, rulings, interpretations, and directives for the HOME Program as may be promulgated by HUD from time to time; such policies and procedures of HUD pertaining to the HOME Program; the applicable provisions of the HOME Program Loan Agreement; and any and all other requirements of the HOME Program (the **"HOME Program Regulations"**). The Borrower acknowledges and agrees that is familiar with all applicable provisions of the HOME Program Regulations and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to fully comply with such provisions. To the extent that there are any conflicts or inconsistencies between the provisions of this Agreement and the HOME Program Regulations, the HOME Program Regulations shall govern.

3. AFFORDABILITY AND LEASE REQUIREMENTS.

3.1 The Borrower agrees that the Project shall contain at all times not less than eleven HOME Assisted Units. The Assisted Units shall bear rents no greater than the HOME Rent Limits set forth in 24 CFR Part 92.252. The Assisted Units' rents shall be reviewed and approved by the City. The Borrower, for and on behalf of itself and its successors and assigns, agrees and shall ensure that all Assisted Units shall be rented and occupied as follows:

(a) Not less than eleven Units in the Project shall be rented to and occupied households whose gross monthly income is at or below 50 percent (**"Very Low Income Households"**) of the area median income for the area in which the Project is located, as determined by HUD from time to time and adjusted for family size (**"Area Median Income"**). For those Assisted Units to be occupied by Very Low Income Households, the rents shall not be greater than 30 percent of the adjusted income of a household whose gross income equals 50 percent of the Area Median Income.

(b) The Assisted Units shall be floating Units as permitted under the HOME Program Regulations. The Units designated as Assisted Units may be changed from time to time, provided that: (1) at all times there shall not less than eleven Units that qualify as Assisted Units in the Project, and (2) each substituted Unit is comparable in terms of size, features, and number of bedrooms to the originally designated Assisted Unit.

3.2 The Borrower shall not raise rents for the Assisted Units, except as follows: One year following the initial occupancy of the Assisted Units, and annually thereafter, the Borrower shall review and recertify the incomes and rents of the Tenants occupying each of the Assisted Units, except that the parties acknowledge that any Assisted Units that have been allocated low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986 shall be subject to the rent restrictions pursuant to Section 42 as set forth in 24 CFR Part 92,252(i)(2). The Borrower may raise the rents of the Assisted Units upon such review and recertification, provided that the new rents do not exceed the maximum HOME rent limits allowed under 24 CFR Part 92.252, as it may be amended from time to time.

3.3 A holder of a Certificate of Family Participation under 24 CFR Part 887 (Rental Certification Program) or a Rental Voucher under 24 CFR Part 982 (Rental Voucher Program), or a hold of a comparable document evidencing participation in a HOME tenant-based assistance program, shall not be refused for leasing because of the status of the prospective Tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document. All of the Assisted Units shall be made available to holders of Certificates of Family Participation or a Rental Voucher.

3.4 The Borrower agrees that the leases between the Borrower and the Tenants of the Assisted Units shall not be less than one year unless by mutual agreement between the Tenant and the Borrower, and shall comply with the provisions of 24 CFR Part 92.253(b) and (c), as it may from time to time be amended.

3.5 The Borrower shall maintain and manage the Project, and each of the Assisted Units to be constructed within the Project, in accordance with written tenant selection policies and criteria that comply with 24 CFR Part 92,253(d), as it may from time to time be amended. Upon execution hereof and annually thereafter, the Borrower shall provide the City copies of such written policies and criteria.

3.6 The Project may receive Project Based Section 8 vouchers or other rental subsidies (the "Rental Subsidies") throughout the term of this Agreement. If, during the term of this Agreement, any change in federal law occurs or any action (or inaction) by

Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidies, such that the rental subsidy projected on the budget for the Project is reduced or no longer available, Borrower may request to increase the rents on one or more of the HOME Assisted Units during the remainder of the Term up to 60% AMI, provided Borrower demonstrates to the satisfaction of the City that such rental increase is necessary to maintain the financial stability of the Project and no alternative rental subsidies are available.

4. MANAGEMENT.

4.1 Borrower's Responsibilities. Subject to the rights set forth in Section 4.3, the Borrower will be specifically and solely responsible for causing all maintenance, repair, and management functions performed in connection with the Project, including the selection of tenants, the recertification of income and household size, evictions, the collection of rents, routine and extraordinary repairs, and the replacement of capital items. The Borrower must maintain or cause to be maintained the Project, including the Units and the common areas, in a safe and sanitary manner in accordance with local health, building, and housing codes; California Health and Safety Code 1792010; the applicable provisions of 24 CFR Part 35; and all applicable federal requirements.

4.2 The Borrower must take prudent measures to ensure the security of the Site. These measures may include erecting a fence; covering and securing all openings in any vacant building; and hiring security guards, as appropriate for the circumstances.

4.3 Contracting with Management Agent.

(a) The Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in Subject 4.1, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between the Borrower and the management agent, *provided, however,* that the arrangement will not relieve the Borrower of responsibility for the performance of those duties. Any management contract must contain a provision allowing the Borrower to terminate the contract without penalty upon no more than 30 days' notice. The City hereby agrees that Eden Housing Management, Inc. is an approved management agent.

(b) The City will provide written notice to the Borrower of any determination that the Management agent performing the functions required in Section 4.1 has failed to operate and manage the Project in accordance with this Agreement. If the management agent has not cured the failure within a reasonable time period, as determined by the City, the Borrower must exercise its right of termination immediately, and make immediate arrangements for continuous and continuing performance of the functions required in Section 4.1 to the City's approval.

4.4 Borrower Management. The Borrower may manage the Project itself only with the City's prior written approval. The City will provide written notice to the Borrower of any determination that the Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case of the Borrower does not cure the deficiencies within a reasonable period of time, the City may require the Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in Section 4.1.

5. MONITORING REQUIREMENTS.

5.1 Each year during the term of this Agreement, the Borrower shall provide to the City, for the City's approval, a written report which contains the following:

(a) The rental rate for each of the Assisted Units.

(b) The income of each household residing in each of the Assisted Units, and the Borrower's recalculation of the maximum monthly rent to be paid by each tenant household.

(c) The family size of each household residing in each of the Assisted Units.

(d) The monthly allowances proposed by the Borrower for utilities and services to be paid by the tenants of each of the Assisted Units.

5.2 Each year, with not less than 48 hours' prior written notice to the Borrower, the City may conduct an on-site monitoring of the Assisted Units to ensure that the Units meet HUD's minimum Housing Quality Standards (HQS), and applicable local codes and zoning ordinances. The Borrower agrees, promptly and diligently, to make required corrections of a result of this monitoring.

6. MAINTENANCE.

The City and the Borrower anticipate that the Project will be subject to certain maintenance reserve requirements established under other affordable housing financing programs applicable to the Project. To the extent any such maintenance reserve requirements are applicable to the Project, and so long as the Borrower fully complies with such maintenance reserve requirements, the Borrower shall be deemed to be in compliance with the requirements of this Section 6.

7. NONDISCRIMINATION.

The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

8. RESTRICTIONS ON SALE, ENCUMBRANCE, AND OTHER ACTS.

8.1 The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance or transfer in any form of all or any part of, or any interest in, the Project or the Property, or remove, replace or transfer the interests of the managing general partner, except with the prior written approval of the City, which shall not be unreasonably withheld. The City hereby approves the following transfers: (i) a transfer to the managing general partner of the Partnership or a replacement of the general partner with the administrative limited partner of the Borrower or an affiliate (as defined in the limited partnership agreement) of **________________**, when such replacement occurs pursuant to the terms of the Borrower's limited partnership agreement (**"Affiliate"**), provided that: (1) no default exists hereunder, (2) the Affiliate agrees in writing to assume all obligations of the Borrower under the Loan Documents, and (3) the Affiliate agrees in writing to seek the City's prior written approval of any and all of its management or ownership agreements, which approval shall not be unreasonably withheld; (ii) the granting of easements or permits to facilitate the development of the Project; (iii) transfers of any limited partner interest of the Borrower; (iv) the leasing of Units after construction of the Project is complete; (v) transfers of the general partnership or manager's interest in the Borrower to a nonprofit public benefit corporation approved in advance by the City; or (vi) the grant or exercise of an option agreement between the Borrower and the Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project. The City's approval of a sale, transfer or conveyance maybe based on conditions imposed by the City, in its reasonable discretion, including without limitation the following:

(a) the Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Agreement;

(b) the successor-in-interest to the Borrower agrees to assume all obligations of the Borrower pursuant to this Agreement and the HOME Program;

(c) the successor-in-interest demonstrates to the City's satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements; and

(d) any terms of the sale, transfer, or conveyance shall not threaten the City's security or the successor's ability to comply with all HOME Program requirements.

8.2 Any such grant of City approval for a sale, transfer or conveyance shall be further subject to terms and conditions as may be necessary to ensure compliance with HOME Program requirements.

9. TERM OF AGREEMENT; COVENANTS RUN WITH PROJECT.

9.1 The covenants, conditions, restrictions, and agreements set forth in this Agreement (collectively, the **"Obligations"**) shall be deemed to run with, bind, and burden the Project, and shall be deemed to bind the Borrower and all of the successors, assigns, and any other future owners of the Project, and the holder of any legal, equitable or beneficial interest therein for the Affordability Period (as hereinafter defined). The **"Affordability Period"** shall mean a period of fifteen years from the date that the Agreement is recorded in the land records of the County of Solano (the **"County"**). In the event of a foreclosure or a deed in lieu of foreclosure relating to any other loan encumbering the Project, the City shall have the right, subject to any Senior loan or foreclosure, but not the obligation, to acquire the Project prior to such foreclosure or deed in lieu of foreclosure to preserve affordability, in accordance with 24 CFR Part 92.252.

9.2 It is hereby expressly acknowledged by the Borrower that the undertakings, covenants, and agreements by the Borrower stated in this Agreement are given to induce the City to make the Loan and that, notwithstanding that the Loan may be repaid prior to the expiration of the Affordability Period, the Borrower's undertaking to perform the Obligations for the period set forth in Paragraph 9.1 above is a condition precedent willingness of the City to make the Loan. This Agreement shall remain in full force and effect, notwithstanding that the Loan may be repaid prior to the expiration of the Affordability Period.

10. AMENDMENT.

This Agreement shall not be altered or amended except in writing, executed by the parties hereto. The parties agree to modify or amend this Agreement if such modification or amendment is determined by the City to be necessary to comply with the HOME Program requirements.

11. PARTIAL INVALIDITY.

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

12. BINDING ON SUCCESSORS.

This Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors-in-interest, and assigns, and notwithstanding the foregoing, the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City.

13. RECORDING AGREEMENT.

This Agreement, and all amendments thereto, shall be executed by each of the parties. This Agreement, and all amendments thereto, shall be recorded against the Property in the Official Records of the County.

14. HOLD HARMLESS.

Absent the gross negligence or willful misconduct of the City, the Borrower, and its successors-in-interest agree to indemnify, defund, and hold harmless the City and its respective agents, employees, and officers from any and all claims, losses, liabilities, or causes of action (including reasonable attorneys; fees) arising from or in connection with the Project.

15. WAIVER.

No waiver by the City of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

16. CAPTIONS.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

17. GOVERNING LAW.

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

18. NOTICE.

Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the addresses shown below:

Borrower: Vallejo PSH, L.P.
22645 Grand Street
Hayward, CA 94541
Attn: Director of Real Estate Development

City: City of Vallejo
200 Georgia Street
Vallejo, CA 94590
Attn: Housing and Community Development Program Manager

19. ATTORNEYS' FEES.

The prevailing party in any action to enforce this Agreement shall be entitled to reasonable attorneys' fees as determined by the trier of facts in that forum.

[Signature Page Follows]

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement as of the date first set forth above.

THE CITY:

CITY OF VALLEJO

By: ___________________________________
Greg Nyhoff, City Manager

APPROVED AS TO FORM:

By: ____________________________
Veronica Nebb, City Attorney

ATTEST:

By: ____________________________
Dawn G. Abrahamson, City Clerk

(City Seal)

THE BORROWER:

Vallejo PSH, L.P.,
a California limited partnership

By: Vallejo PSH LLC,
a California limited liability company,
its general partner

By: Eden Development, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: __________________________
Name: ________________________
Its: ___________________________

ACKNOWLEDGEMENT

TO BE INSERTED.

ATTACHMENT A
to
RENT LIMITATION AND AFFORDABILITY AGREEMENT

LEGAL DESCRIPTION OF THE SITE

TO BE INSERTED.

EXHIBIT F
Form of Annual Monitoring Report

CITY OF VALLEJO
HOUSING AND COMMUNITY
DEVELOPMENT DIVISION

ANNUAL REPORT
PROJECT SPONSOR'S RATING
(Attach additional pages if necessary)

Project Name: ____________________________________ Contract: ________________

Prepared By: _____________________________________ Date: ___________________

Management Company: ___________________________ Phone Number: ___________

Physical Condition:

1. The Project grounds are in:

excellent condition: ___ average condition: ___ poor condition: ___

2. The building exterior has:

NO deferred maintenance (DM): ___ some DM: ___ significant DM: ___

3. The building systems (heating/cooling/electrical/plumbing systems) have:

NO deferred maintenance (DM): ___ some DM: ___ significant DM: ___

4. The common areas (meeting room/s, laundry room/s, trash collection area/s; group homes and small projects; common kitchen/s, bath/s have:

NO deferred maintenance (DM): ___ some DM: ___ significant DM: ___

5. The units are inspected: Annually: ___ Semiannually: ___ Other: ___

6. Explain any answer indicating poor condition or significant DM:

7. What, if anything, may impact the physical condition of the property in the coming year?

8. Describe any notices or citations for housing code violations.

9. Describe any major repair, replacement, or maintenance work needed.

Financial:

1. Are you aware of any special risks to the short or long term fiscal condition of the Project? If "YES", please explain:

2. Was any loan or loans on the property paid off in the last year? If "YES", please identify loan or loans paid off.

3. Was there any new debt added? If "YES", identify the sources and the amounts, and attach the loan documents.

Management:

1. Indicate the last date of staff training concerning the correct qualification of tenants and the correct setting of rents to ensure rents are compliant with City requirements:

Date: ____________________

Frequency: Month: _____________ Year: __________

2. Indicate the date of the last meeting between property management and the project sponsor:

Date: _______________

Frequency: Month: _____________ Year: ___________

	YES	NO
3. Are Liability and Property Insurances current? Expiration Date/s: __________	____	____
4. Has Management prepared and submitted budgets and reports to the City on time?	____	____
5. Has Management made deposits to Reserve Accounts as required by the City?	____	____
6. Are property taxes paid current?	____	____
7. Management responds to tenant maintenance requests within ______ hours.		
8. Is a waiting list being used?	____	____
If "YES", how many names are on the waiting list? ________		
9. Was City approval obtained prior to making Replacement Reserve Account withdrawals?	_____	_____

10. Explain any "NO" answer.

___

___

___

___

11. The vacancy rate is _____ percent.

12. The collection rate (percentage of actual rent due) is _____ percent.

13. The annual turnover rate is _____ percent.

14. The average vacancy turnover time (move out to move in) is _____ days.

15. How many evictions occurred in the last year? ______ Please identify the reasons for the evictions and the unit numbers.

___

___

___

16. Describe any problems in filling vacancies and the steps taken to address them.

___

___

___

17. Describe any additional management problems, and the steps taken to solve those problems.

___

___

___

18. Have you had any changes in property management staff responsible for the Project? If "YES", please identify new staff.

___

___

___

Project Sponsor's Signature________________________________ Date: ___________

Title: _______________________

ANNUAL REPORT
RESERVE BALANCES AND SUPPLEMENTAL INFORMATION
(Attach additional pages if necessary)

Project Name: ______________________________ Contract: ______________

Prepared By: ______________________________ Date: ________________

REPORT OF RESERVE AND OTHER ACCOUNT BALANCES
FOR FISCAL YEAR: ________

Please complete the following section with the appropriate amounts ***for each individual account:***

	Operating Reserve Amounts	Replacement Reserve Amounts	Transition Reserve Amounts	Other Reserve Amounts	Tenant Security Deposit Amounts
Account Numbers:	______	______	______	______	______
A. Balance at beginning of FY	______	______	______	______	______
Required Deposits for Year	______	______	______	______	
Other Deposits (Explain below)	______	______	______	______	
Tenant Security Payment Deposits					______
Interest Earned for Year					______

Subtotal, Section A	________	_________	_________	___________	_________________

	Operating Reserve Amounts	Replacement Reserve Amounts	Transition Reserve Amounts	Other Reserve Amounts	Tenant Security Deposit Amounts
B. Withdrawals (Insert Date/s below)					
Security Deposit Amounts Deducted for Tenant Account Receivables					___________
Bank Charges/ Fees Paid for Year	_______	_______	________	_______	____________
Other Debits (Explain below)	_______	_______	________	_______	____________
Interest paid upon move out, if any					____________
Security Deposits Returned to Tenants					___________

Subtotal, Section B	______	______	________	______	___________
C. Balance at end of FY	______	______	________	______	___________

Explanation of Other Deposits:

____

____

____

____

____

Explanation of Other Withdrawals:

____

____

____

____

____

ADDITIONAL REQUESTED INFORMATION FOR FY:

ITEM	YES	NO	DATES PAID AND COMMENTS
1. Operating Reserves: Funded monthly? If not, how often?	___	___	________________________________
2. Replacement Reserves: Funded monthly? If not, how often?	___	___	________________________________
3. Security Deposit Account: Balance equal to or greater than security deposit liability including interest? If "NO", explain:	___	___	________________________________
4. Taxes: Paid current, on time, and no late fees incurred?	___	___	________________________________
5. a. Insurance: Is coverage in place according to the Loan Agreement?	___	___	________________________________
b. Paid current and the renewal policy paid on time?	___	___	________________________________
6. Required Debt Service: Paid current and always paid by the due date?	___	___	________________________________
7. Debt: Has additional indebtedness been incurred? If "YES", explain what, when, and with whom?	___	___	________________________________
8. Other Reserve Accounts: Name other reserve accounts, how funded, who controls them, and their purpose.	___	___	________________________________
9. Account Insurance: Are all accounts insured by the federal government?	___	___	________________________________

EXHIBIT G

Section 3 Requirements and Numerical Goals

The Borrower's use of Funds triggers the following requirements imposed by HUD's Section 3 program.

1. Section 3 Requirements.

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

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

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

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

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment, or suspension from future HUD assisted contracts.

2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

(a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)). Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as 30 percent of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of 30 percent of total work hours for the entire project.

(b) Contracts with Section 3 Business Concerns (24 CFR § 135.30). Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(i) At least ten percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing construction and other public construction; and

(ii) At least three percent of the total dollar amount of all other Section 3 covered contracts.

EXHIBIT H
Governmental Regulations

1. Prevailing Wages. If and to the extent applicable, every contract for the construction of housing that includes twelve or more assisted with Funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), as supplemented by Department of Labor regulations (29 CFR part 5) to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332),as supplemented by Department. of Labor regulations (29 CFR part 5). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units.

2. Environmental Review. The Project must meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), related authorities listed at 24 CFR Section 51.100 and parts 50 and 58, and the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the Borrower or the City who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, 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 in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, the Borrower must incorporate, or cause to be incorporated, in all contracts, subcontracts, and Agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. The Borrower will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, the Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) The Borrower represents that it is familiar with the provisions of 24 CFR § 84.42, Governmental Conduct Code, and Sections 1090 through 1097 and 87100 *et seq*. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. The Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify the City immediately if the Borrower at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, the Borrower agrees that the City may refuse to consider any future application for funding from the

Borrower or any entity related to the Borrower until the violation has been corrected to the City's satisfaction, in the City's sole discretion.

4. Disability Access. The Borrower must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). The Borrower is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, the Borrower must provide to the City a written reasonable accommodations policy that indicates how the Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. The Borrower must satisfy the requirements and regulations of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. The Borrower must also comply with the provisions contained in 17 CCR 350000 *et seq.*, 8 CCR 1532.1, and all other applicable Laws governing lead-based hazards.

6. Non-Discrimination in City Contracts.

(a) Borrower May Not Discriminate. In the performance of this Agreement, the Borrower agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with the Borrower, in any of the Borrower's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by the Borrower

7. False Claims. Any borrower, grantee, contractor, subcontractor or consultant who submits a false claim will be liable to the City for three times the amount of damages the City sustains because of the false claim and for the cost, including attorneys' fees and costs, of a civil action brought to recover any of those penalties or damages. In addition, the City may obtain a civil penalty of up to $10,000 for each false claim. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant:

(a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or uses a false record or statement to get a false claim paid or approved by the City;

(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or uses a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is the beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

8. Public Disclosure.

(a) The Borrower understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Borrower hereby authorizes the City to disclose any records, information, and materials submitted to the City in connection with this Agreement as required by Law. Further, the Borrower specifically agrees that any meeting of the governing body of its general partner/manager that addresses any matter relating to the Project or to the Borrower's performance under this Agreement will be conducted as a public meeting.

EXHIBIT I

Insurance Requirements

TO BE PROVIDED BY THE BORROWER ON THE DATE BORROWER ACQUIRES CONTROL OF THE SITE.

The Borrower shall assume all responsibility for damage to property or injuries to persons caused by any equipment furnished by the Borrower under this Agreement or operation thereof.

On the date Borrower acquires Control of the Site, the Borrower shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Borrower, its agents, representatives, employees, or subcontractors. Such insurance shall not be construed to relieve the Borrower, it agents, representatives, employees, or subcontractors of any liability in excess of such coverages.

Minimum Scope of Insurance:

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability form CG 0001 ("occurrence" form).
2. Insurance Services Office form number CA 0001 (Ed. 12/92) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability/Errors and Omissions Liability Insurance appropriate to the Borrower's profession.

Minimum Limits of Insurance:

The Borrower shall maintain insurance limits no less than:

1. General Liability: $5,000,000.00 per occurrence for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the aggregate shall be twice the per occurrence amount.
2. Automobile Liability: $1,000,000.00 per occurrence for bodily injury and property damage.
3. Employer's Liability: $1,000,000.00 per accident for bodily injury or disease.
4. Professional Liability/Errors and Omissions Liability: $1,000,000.00 per claim.

Deductibles and Self-Insurance Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. If the deductible or self-insured retention is unacceptable to the City, at the City's Risk Manager's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Borrower shall procure a bond guaranteeing of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The General Liability and Automobile Liability policies must contain, or be endorsed to contain, the following provisions:

1. The Borrower, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to the liability, including defense costs, arising out of (a) work or operations by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations, (b) premises owned, occupied or used by the Borrower, and (c) automobiles owned, leased, hired or borrowed by or on behalf of the Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
2. For any claims related to this Project, the Borrower's insurance coverage/s shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the City, its officers, officials, employees, and volunteers shall be excess of the Borrower's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the Borrower's policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, and volunteers.
4. The Borrower's insurance coverage/s shall apply separately to each insured against whom a claim is made or suit brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this Exhibit shall be endorsed to state that coverage shall not be cancelled by either party, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City; or ten days' prior written notice by certified mail, return receipt requested for the non-payment of premium.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A. M. Best rating of no less than A:VII, unless otherwise accepted by the City.

Verification of Coverage:

The Borrower shall furnish the City with an original Certificate of Insurance and amendatory Endorsements effecting coverage required by this clause. The Endorsements should be on forms provided by the City or on other than the City's forms, provided those Endorsements or policies conform to the requirements stated in this Exhibit. The Certificate of Insurance and all Endorsements must be signed by a person authorized by the insurer to bind coverage on its behalf. All Certificates and Endorsements are required to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including Endorsements effecting coverage required by these Exhibits at any time. All insurance documents are to be sent to:

City of Vallejo
Attention: Risk Manager
555 Santa Clara Street
Vallejo, CA 94590

Contractors and Subcontractors:

The Borrower shall include all contractors and subcontractors as insureds under its insurance policies, or shall furnish separate Certificates and Endorsements for each contractor and subcontractors. All insurance coverages for contractors and subcontractors shall be subject to all the requirements stated in this Exhibit.

EXHIBIT J
Lobbying/Debarment Certification Form

ACCEPTABLE ALTERNATIVE WORKSHEET FOR CONTRACTOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIBILITY, AND VOLUNTARY EXCLUSION (LOWER-TIER PARTICIPANT) FOR HUD PROGRAMS COVERED BY 24 CODE F FEDERAL REGULATIONS, PART 24.510(b) AND HUD HANDBOOK 1300.13, REV-1, (EXCLUDING PUBLIC AND INDIAN HOUSING PROGRAMS)

1. By signing and submitting this Certification, the prospective lower-tier participant certifies that neither its, or its principals or affiliates, is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Loan Agreement by any federal department or agency. Further, the participant provides the Certification set out below:
2. The Certification in this Exhibit is a material representation of fact upon which reliance was placed when this Loan Agreement was entered into. If it is later determined that an erroneous Certification was rendered, in addition to other remedies available to the federal government, the City may pursue available remedies.
3. Further, the participant shall provide immediate written notice to the person to which this Loan Agreement s submitted if at any time the participant learns that this Certification was erroneous when submitted, or has become erroneous by reason or changed circumstances.
4. By submitting this Certification, it is agreed that should the proposed covered transaction be entered into, the participant will not knowingly enter into a lower-tiered covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the City.
5. It is further agreed that by submitting this proposal, the participant will include this Certification, without modifications, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

Contractor Name ____ Date __________________
Title ____________________________________ Address _____________________________
City ________________________ State _____________________ Zip ____________________
Contractor Signature ____

NON-CERTIFICATION: As the prospective lower-tier participant, I am unable to certify to (the) statements in this Certification as explained in the attachment to this Exhibit.

Contractor Name ____ Date __________________
Title _______________________________________ Address ___________________________
City _________________________ State _____________________ Zip ___________________
Contractor Signature ____

The penalty for making false statements in this document is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001.