

LOAN AGREEMENT

between

THE COUNTY OF MONTEREY

through its SUCCESSOR HOUSING AGENCY

and

SOUTH COUNTY HOUSING, INC., a California nonprofit public benefit corporation

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SOUTH COUNTY HOUSING INC., a California nonprofit public benefit corporation

THIS LOAN AGREEMENT (“Agreement”), is made and entered into as of _____, 2014, by and among the County of Monterey through its Successor Housing Agency (hereinafter, “County”) and South County Housing, Inc., a California nonprofit public benefit corporation (hereinafter, “Developer”), with reference to the following facts:

A. The County is a public body, corporate and politic, with an interest in assisting with the provision of low and moderate housing opportunities. Pursuant to Health and Safety Code section 34176, the County has elected to retain housing assets and assume the housing functions of the former Redevelopment Agency of the County of Monterey (“Agency”).

B. Developer is a California nonprofit public benefit corporation formed under the Nonprofit Public Benefit Corporation Law (Corporations Code §§ 5110 et seq.) of the State of California.

C. Developer owns property located at 32101 McCoy Road, Soledad, CA 93960, commonly referred to as the Camphora Farm Labor Camp (“Property”) which is currently developed with 43-units of farm worker housing, a manager’s unit and a community center. Developer plans to raze the current improvements and redevelop the Property with a 43 unit multifamily apartment complex, of which 21 units will be restricted by the County to extremely low, very low, and low -income households. The project will be known as Camphora Highlands (“Project”).

D. The Agency previously approved a short term acquisition loan of Three Hundred Thousand (\$300,000) (the “Acquisition Loan”) to Developer to acquire the Property pursuant to

the terms of that certain Acquisition Loan Agreement between Agency and Developer dated as of June 8, 2010.

F. Pursuant to the terms of the Acquisition Loan Agreement, the Acquisition Loan is due and payable in sixty (60) months.

G. On November 8, 2013, Developer repaid \$100,000 of the Acquisition Loan.

H. The parties are entering into this Agreement to provide long term financing for the Project.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1: DEFINITIONS AND EXHIBITS

Section 1.1 Definitions

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

- (a) “Agreement” shall mean this Loan Agreement.
- (b) “Approved Financing” shall mean all of the financing to be acquired by the Developer as set forth in the Development Budget Source and Uses for the purpose of financing the Project, in addition to the County loan.
- (c) “County” shall mean the County of Monterey, a political subdivision of the State of California, and its Successor Housing Agency.
- (d) “Default” shall have the meaning set forth in Section 6.1 below.
- (e) “Developer” shall mean South County Housing, Inc., a California nonprofit public benefit corporation.
- (f) “Effective Date” shall mean the date that this Agreement is executed by the County.

(g) “Improvements” shall mean the 44 units of housing, community center, and related infrastructure to be constructed on the Property pursuant to this Agreement.

(h) “Loan” shall mean the Three Hundred Thousand (\$300,000) loan to be provided by County to Developer for development expenses related to the Property.

(i) “Loan Documents” shall mean the documents evidencing the Loan, and shall include the Promissory Note, the Deed of Trust, the Regulatory Agreement and Declaration of Restrictive Covenants and this Agreement.

(j) “Other Financing” shall mean the award of tax credits, or the receipt or award of financing from other sources, sufficient to eliminate any gaps in the financing of the Project otherwise described herein.

(k) “Property” shall mean the real property consisting of the site as described in the attached Exhibit A.

(l) “Project” shall mean the development of 44 units of housing, community center, landscaping, and related infrastructure to be constructed on the Property pursuant to this Agreement.

(m) “Promissory Note” shall mean the promissory note in the principal amount of Three Hundred Thousand (\$300,000) executed as part of escrow for the construction loan of the Project.

(n) “Residual Receipts” shall mean, with respect to a particular calendar year, the amount by which the Gross Income from the Project exceeds permitted Operating Expenses and Annual Fees.

(o) “Senior Financing” shall mean the loans obtained by Borrower to fund the construction of the Project to be built on the Property during the construction phase and the permanent loans which may replace the construction phase loans after the completion and stabilization of the Project, which are set forth in Exhibit C to the Regulatory Agreement and Declaration of Restrictive Covenants.

(p) “Short Term Loan” means the amount of Two Hundred Thousand Dollars (\$200,000) outstanding on the Acquisition Loan referenced in Recital D.

(q) “Term” shall have the meaning set forth in Section 3.1 below.

Section 1.2 Exhibits

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

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Unit Mix and Restricted Income Levels

EXHIBIT C: Schedule of Performance

EXHIBIT D: Promissory Note for Loan

EXHIBIT E: Deed of Trust

EXHIBIT F: Regulatory Agreement and Declaration of Restrictive Covenants
 (“the Regulatory Agreement”)

ARTICLE 2: OWNERSHIP OF PROPERTY

Section 2.1 Developer’s Ownership

Developer currently owns the Property. The funding of the Loan through this Agreement is designed to assist in the redevelopment of the Property. As set forth below in Section 3.3, as part of the close of escrow for the construction loan of the Property, certain documents affecting the County’s interests will be recorded.

ARTICLE 3: LOAN PROVISIONS

Section 3.1 Loan Amount and Interest

Pursuant to this Agreement, the County shall loan to the Developer a total of Three Hundred Thousand Dollars (\$300,000) contingent upon repayment of the Short Term Loan and concurrent with the close of the construction loan.

The term of the Loan shall be fifty-five (55) years from the close of escrow for the construction loan for the Property but in no event later than December 31, 2071 (the "Term"). The Loan shall bear simple interest at the rate of three percent (3%) per annum, commencing on the date that escrow is closed on the permanent financing for the Project. Payment of principal and any accrued interest on the Loan shall be made on an annual basis from residual receipts beginning on May 10 of the year following the issuance of Certificate of Occupancy for the property. Residual receipts shall mean, with respect to a particular calendar year, the amount by which the Gross Income from the Project exceeds permitted Operating Expenses and Annual Fees. The County's pro rata share of residual receipts shall be determined by its pro rata share of financing when combined with State of California Multi-Family Housing Program and HOME loans.

Section 3.2 Use of Loan Funds

The Loan funds will be used to assist in the payment of development costs associated with the development contemplated by this Agreement.

Specifically, Developer shall develop in the aggregate on the Property forty four (44) units, twenty one (21) of which shall be restricted by the County and made available to qualified tenants at income levels ranging from thirty to sixty percent (60%) of area median income as delineated in Exhibit B.

Section 3.3 Disbursement of Loan Proceeds

Loan proceeds will be disbursed at construction loan close estimated to take place no later than December 31, 2014, and only after repayment of the Short Term Loan.

Section 3.4 Loan Origination and Monitoring Fees

In consideration of the Loan, Developer shall pay County a loan origination fee of 1% of the Loan amount equal to Three Thousand Dollars (\$3,000), which shall be paid through the escrow for the construction loan close of the Property by Developer. Annually, commencing upon completion of construction, and thereafter not later than June 30 of each succeeding year, Developer shall pay County a loan monitoring fee of Four Thousand Dollars (\$4,000). Such fee shall be separate and in addition to Developer's obligation to repay the Loan in accordance with the terms of this Agreement and the Promissory Note.

Section 3.5 Representations and Warranties of Developer

As a material inducement to the County's entry into this Agreement, Developer hereby represents and warrants the following to the County, as of the date set forth above:

(a) Authority/Enforceability: Developer is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to undertake all actions contemplated by this Agreement.

(b) Binding Obligations: Developer is authorized to execute, deliver and perform its obligations under the County's Loan Documents, and such obligations shall be valid and binding obligations of Developer.

(c) Formation and Organizational Documents: Developer has delivered to the County all formation and organizational documents of Developer and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to the County. In the event that formation and/or organizational documents are amended or modified, Developer shall immediately provide the County with copies of any amendments or modifications of the formation or organizational documents.

(d) No Violation: Developer's execution, delivery, and performance under the County Loan Documents do not (1) require any consent or approval not heretofore obtained under any articles of incorporation, partnership agreement, bylaws, or other document; (2) violate any governmental requirement applicable to the Property or any other statute, law,

regulation or ordinance or any order or ruling of any court or governmental entity; or (3) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which the Developer is bound or regulated.

(e) Compliance with Laws: Developer has and at all times shall maintain compliance with all governmental requirements applicable to the Property and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business.

(f) Litigation: Except as disclosed to the County in writing, there are no claims, actions, suits, or proceedings pending, or to Developer's knowledge, threatened against Developer.

(g) Financial Condition: All financial statements and information heretofore delivered to the County by Developer including, without limitation, information relating to the financial condition of Developer, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied. Developer acknowledges and agrees that the County may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

(h) No Material Adverse Change: There has been no material change in the financial condition of Developer since the dates of the latest financial statements furnished to the County on February 13, 2014 and, except as otherwise disclosed to the County in writing, Developer has not entered into any material transaction which is not disclosed in such financial statements.

(i) Loan Proceeds and Adequacy: The proceeds from the Loan, together with the other funding identified in the Development Budget Sources and Uses, attached as Exhibit C to the Regulatory Agreement, are sufficient to develop the Property in accordance with the intent, terms and conditions of this Agreement.

(j) Accuracy: All reports, documents, instruments, information and forms of evidence delivered to the County concerning the County loan or required by the County Loan Documents and this Agreement are accurate, correct and sufficiently complete to give the

County true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission.

(k) Tax Liability: Developer has filed all required federal, state, county and municipal tax returns and has paid all taxes and assessments owed and payable, and Developer has no knowledge of any basis for any additional payment with respect to any such taxes and assessments.

(l) Compliance: Developer is familiar with all governmental requirements for the development of the Property and will conform to and comply with all governmental requirements and any plans and specifications agreed to in this Agreement.

Section 3.6 Source of FundsThe County represents and warrants to the Developer that the Loan will not be funded or subsidized, in whole or in part, directly or indirectly, by the proceeds of any obligation, the interest on which is exempt from tax under Section 103 of the Internal Revenue Code of 1986, as amended.

Section 3.7 SubordinationThe County agrees that this Agreement and the other Loan Documents, including the Deed of Trust and the Regulatory Agreement, shall be made junior and subordinate to liens given in connection with the Senior Financing of the Property, provided that (a) the Senior Financing does not exceed the amounts, loan term, and interest rate set forth in Exhibit C of the Regulatory Agreement, and (b) the Construction Loan is from a national or state bank, licensed financial institution, or insurance company. The Economic Development Director of the County is hereby authorized and directed to execute such subordination agreements and/or intercreditor agreements or similar agreements as may be requested by the lender of the Senior Financing to evidence subordination to the Senior Financing, without further authorization from the County.

Section 3.8 Limited Recourse LoanThe Loan is a limited recourse obligation of the Borrower. County's recovery against Borrower shall be limited solely to County's security in the Property, except that Borrower may be personally liable to the County for any losses or damages as a result of the following matters (a) fraud or willful misrepresentation or (b) any breach by Borrower of any covenant in the Deed of Trust or this Agreement regarding

Hazardous Materials. The partners, officer, employees, or agents of the Borrower shall not have any direct or indirect personal liability to the County for the payment of the principal of or interest on the loan or the performance of the covenants of the Borrower under this Agreement except for fraud or willful misrepresentation.

ARTICLE 4: DEVELOPMENT AND USE OF THE PROPERTY

Section 4.1 Scope of Development

Subject to each and all of the conditions of this Agreement, the Developer shall construct the Improvements and develop the Project in accordance with the Scope of Development as defined in Section 1.1 and the Final Construction Documents as approved by the County in accordance with this Agreement. For purposes of this Agreement, the terms “construct,” “develop” “construction” or “development” shall mean and refer to the installation and construction of the Improvements as provided in the Final Construction Documents, including all on- and off-site improvements and utilities described therein.

Section 4.2 County Approval of Plans, Drawings and Related Documents; Approval of Contractor(s)

(a) Approval of all plans, drawings and related documents will be promptly granted by the County if they are not in conflict with the Scope of Development and the drawings and plans heretofore approved by the County. The primary responsibility for such review shall be vested in the Director of the Economic Development Department. Such approvals shall not be unreasonably withheld. Any disapproval shall state in writing the reasons for disapproval and the steps which must be taken to achieve such approval. The Developer, upon receipt of a written disapproval by the County, shall revise such portions of the plans, drawings or related documents in a manner that satisfies the reasons for disapproval, consistent with a logical evolution of previously approved drawings and related documents, and shall resubmit such revised portions to the County as soon as reasonably practicable after receipt of the notice of disapproval. The County shall approve or disapprove such revised portions in the same manner and within a reasonable time.

(b) If the Developer desires to make any material changes in the Final Construction Documents after the review and approval by the County, Developer shall submit such proposed changes to the County for its review and approval to ensure conformance with previous County approvals.

(c) Except as provided in this Agreement, the County does not undertake, assume, or have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the Development, whether with respect to the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Development, any person furnishing the same or otherwise. Developer and all third parties shall rely upon its or their own judgment with respect to such matter, and any review, inspection, supervision, exercise of judgment or information supplied to the Developer or to any third party by the County in connection with such matter is for the public purpose of providing affordable housing for low income families in accordance with this Agreement, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon.

(d) The Developer agrees to comply with all Federal and State procurement requirements in the selection of the contractors for the Project, including eligibility to receive grant funds.

(e) Developer acknowledges that County approval of plans, drawings and related documents does not supplant the obligation of Developer to obtain all needed permits from other regulatory bodies.

Section 4.3 Cost of Construction

(a) Except as provided in this Agreement, the cost of developing the Property shall be the responsibility of the Developer.

(b) Concurrently with the execution of this Agreement, the County and the Developer have agreed upon a project budget, which is set forth in Exhibit C to the Regulatory Agreement. In the event of changes in the estimated development costs, the Developer shall submit to the County for its review and approval a modified Estimate of Project Costs. Upon the

approval by the County or its designee, the modified Estimate of Project Costs shall replace the Estimate of Project Costs attached as Exhibit C to the Regulatory Agreement.

(c) The parties hereby acknowledge and agree that any increase in costs above the amounts set forth in the approved Estimate of Project Costs, or decreases in revenues below the amounts heretofore projected or assumed by the Developer, which occur subsequent to the execution of this Agreement, shall be at the sole financial risk of the Developer, unless an amended Estimate of Project Costs is approved by the County, in which case such amended estimate shall apply.

Section 4.4 Schedule of Performance

(a) The County and Developer shall perform all of their respective obligations hereunder within the times specified in the Schedule of Performance which is attached hereto as Exhibit C, and incorporated herein by this reference. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing by and between the Developer and the County or its designee.

(b) During the period of installation and construction, the Developer shall submit to the County quarterly written progress reports when and as requested by the County. The reports shall be in such form and detail as may reasonably be requested by the County and other financing entities, and shall provide such other information as may be mutually agreed upon.

Section 4.5 Indemnification: Bodily Injury and Property Damage Insurance

(a) Developer agrees to, and shall, defend, indemnify and hold the County and the County harmless as provided in Section 7.4 of this Agreement.

(b) Developer shall furnish or cause to be furnished to the County duplicate originals or appropriate certificates of bodily injury and property damage insurance policies as provided in section 4.7 of this Agreement.

Section 4.6 Insurance Requirements

The Developer shall maintain the following insurance coverage throughout the Term:

(a) To the extent required by law, Workers' Compensation insurance in accordance with California Labor Code Section 3700, with a minimum of \$1,000,000 per occurrence for Employer's Liability, covering all persons employed by the Developer in connection with this Agreement and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against the Developer or the County; and

(b) Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations; and

(c) Automobile Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Developer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Property and Fire Insurance covering the entire Property, in an amount sufficient to replace the Improvements.

(e) All insurance required by this Agreement shall be with a company acceptable to the County and authorized to transact insurance business in the State of California. The required insurance shall be provided under an occurrence form, and shall be maintained continuously so long as any County Note relating to this Agreement is outstanding. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(f) Commercial, General Liability, Property, Fire and Automobile Liability insurance policies shall be endorsed to name as an Additional Insured the County and their respective officers, agents and employees and shall further provide that such insurance is primary

insurance to any insurance or self-insurance maintained by the County or County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Developer's insurance.

(g) Prior to execution of to this Agreement, Developer shall file certificates of insurance with the County showing that Developer has in effect the insurance required by this Agreement. The Developer shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause contained in Section 7.4 of this Agreement, which shall remain in full force and effect.

(h) All policies and bonds shall be endorsed to provide thirty (30) days prior written notice to the County of cancellation, reduction in coverage, or intent not to renew, and such written notice shall be provided to the address established for notices to the County.

(i) Developer agrees that during the pendency of the Regulatory Agreement (as defined herein) recorded against the Property, Developer and any successor shall use any insurance proceeds awarded to repair or replace any damage to the Project, unless otherwise agreed by the County.

Section 4.7 Insurance Requirements During Construction

In addition to the insurance coverage required pursuant to Section 4.7 above, during construction and prior to the issuance of a Certificate of Completion pursuant to Section 4.24 below, the Developer shall maintain coverage of the type now known as builder's completed value risk insurance, as delineated on an All Risk Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (A) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (B) a "Replacement Cost Endorsement" in amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject

to reasonable approval by the County, and (C) an endorsement to include coverage for budgeted soft costs (including construction loan interest, building permit fees, construction inspection fees, builder's risk insurance, and property taxes during construction). The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$50,000 per occurrence

Section 4.8 Nondiscrimination During Construction; Equal Opportunity

The Developer, for itself and its successors and assigns agrees that in the installation and construction of the Improvements on the Property provided for in this Agreement:

(a) The Developer will not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or in retaliation for having filed a discrimination complaint. The Developer will not unlawfully deny family or medical care leave, or pregnancy disability leave. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or in retaliation for having filed a discrimination complaint. Such action shall include, but not be limited to, the following: employment, evaluation, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this nondiscrimination clause.

(b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, national origin,

ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or in retaliation for having filed a discrimination complaint.

(c) The Developer will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

Section 4.9 Affirmative Action in Employment and Contracting Procedures

This Section 4.10 shall apply only to the extent the Developer purchases construction services in connection with the development of the Property (such as the hiring of contractors or subcontractors), and shall not apply to the utilization of volunteered services.

(a) The Developer shall employ or select employees, contractors and subcontractors possessing the necessary skill, expertise, cost level and efficiency for the development of the Property. Within that framework, the Developer shall use its reasonable best efforts to seek out and award contracts and subcontracts for development of the Property to contracting firms which are located in or owned in substantial part by persons residing in the County or which employ low income persons residing within the County.

(b) The Developer shall in all general contracts for the development of the Property (and its contractors shall in all subcontracts thereunder), require that, to the greatest extent reasonably feasible, the labor force in all categories be comprised of residents of the County consistent with County policy.

(c) During installation and construction of the Improvements, the Developer shall provide to the County such information and documentation available to Developer which the County or its designee may reasonably request for purposes of monitoring the Developer's compliance with this Section 4.10, and will confer with appropriate County staff on such efforts. From time to time, and upon request of the County, the Developer shall report in writing on its efforts to comply with Section 4.10. Developer's failure, despite its diligent good faith

reasonable best efforts, to attain the goals set forth in Section 4.10, shall not constitute a default of this Agreement.

Section 4.10 Local, State, and Federal Laws; Environmental Mitigation Measures

The Developer shall carry out the construction of the Project in conformity with all applicable laws, including, among other things, all applicable federal and state labor standards, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and any other provisions required of any other grant or loan agreement with a public entity. The Developer shall be responsible for complying with all applicable County and State building codes, planning and zoning requirements, and shall take all necessary steps so that the development of the Property and the construction, use, operation, and maintenance of the Project thereon in accordance with the provisions of this Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements, pursuant to the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”) shall have been complied with. It shall be the responsibility of the Developer to ensure that any mitigation measures set forth in the Scope of Development are implemented.

Section 4.11 County and Other Governmental County Permits

Before commencement of any work or improvement upon the Property, the Developer shall secure or shall cause to be secured, any permits which may be required by the County or any other governmental County for such construction, development or work. The County shall cooperate with the Developer in securing these permits and certificates. Unless otherwise provided in this Agreement, the Developer shall pay such fees as may be required in connection therewith. The County shall provide all appropriate assistance to the Developer in securing all necessary permits and certificates.

Section 4.12 Records and Audits

(a) Developer shall maintain one or more separate accounts in a County-approved financial institution, for the purpose of receiving and disbursing income related to the development and operation of the Property as described in this Agreement. Such funds shall not

be co-mingled with any other project or operation of Developer. The County hereby approves Union Bank as County-approved financial institutions for purposes of this Agreement.

(b) Developer shall maintain complete, accurate, and current records pertaining to this Agreement for a period of at least five (5) years after the issuance of a Certificate of Completion, and shall permit any duly authorized representative of the County to inspect and copy such records with reasonable notice and during normal business hours. Such records shall include all invoices, receipts, and other documents related to expenditures from the County loan funds. Records must be kept accurate and current. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the record retention time period stated herein, then Developer shall retain such records until such action is finally resolved.

(c) The County shall notify the Developer of any records it deems insufficient. Developer shall have twenty-one (21) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than twenty-one (21) days is reasonably necessary, then Developer shall begin to correct the deficiency within twenty-one (21) days and correct the deficiency as soon as reasonably possible.

(d) The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Developer and its contractors and subcontractors related to performance of Developer's obligations under this Agreement. Pursuant to Government Code section 8546.7, the parties to this Agreement shall be subject, at the request of the County, or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after the termination of this Agreement.

Section 4.13 Rights of Access

Representatives of the County shall have the reasonable right of access to the Property without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being

performed in installing and constructing the Improvements as provided in this Agreement. The representatives of the County shall be those who are so identified by the Economic Development Director or designee and such representatives shall report to the on-site construction manager prior to any such inspections. The County hereby indemnifies and holds the Developer harmless for any injury or damages arising out of any activity of any such representatives performed and conducted on the Property pursuant to this Section 4.14, to the extent such injury or damage is caused by the negligence or misconduct of such representatives.

Section 4.14 Taxes, Assessments, Encumbrances, and Liens

The Developer shall pay when due all real property taxes and assessments, if any, assessed and levied on or against the Property and the Project. Upon failure to so pay, Developer shall remove, or shall have removed, any levy or attachment made on the Property or the Project, or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

Section 4.15 Prohibition Against Transfer

(a) The qualifications and identity of the Developer are of particular concern to the County. It is because of those qualifications and that identity that the County has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

(b) The Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sub-lease, sale, transfer, conveyance or assignment of the whole or any part of the Property or the Improvements thereon, without prior written approval of the County except for the following which will not require the consent of the County:

(1) The transfer of the Property, the Loan and this Agreement to a limited partnership, the managing general partner of which is South County Housing, Inc., a California nonprofit public benefit corporation (“Partnership”) or a related entity.

(2) The admission of an investor limited partner to the Partnership,

(3) A transfer by such investor to an entity in which the investor or an affiliate thereof is the general partner or managing member,

(4) The removal of the general partner by the investor limited partner for a default under the partnership agreement provided the replacement general partner is an affiliate of the investor limited partner; and provided further that any transfers of the general partner interest to a person that is not an affiliate of the limited partner, such unaffiliated proposed general partner shall be subject to the prior approval of the County, not to be unreasonably withheld.

(5) The granting of easements or permits to utilities to facilitate the development of the Property.

(6) The transfer of the limited partner interest to the general partner after the expiration of the Credit Period (as defined in Section 42 of the Internal Revenue Code of 1986, as amended).

(7) The granting of any security interest expressly described in this Agreement for financing the development of the Property,

(8) The leasing of residential units to be constructed on the Property. Without the express written consent of the County, the Developer shall not provide to any lender or other person a security interest in the Property or the Improvements except with respect to the financing described in Exhibit C of the Regulatory Agreement.

The provisions of this Section 4.16 shall not apply to transfers required by law.

(c) Any proposed transferee shall have the development experience, qualifications and financial ability necessary to fulfill the obligations undertaken in this

Agreement by the Developer. Any proposed transferee shall expressly assume all of the obligations of the Developer under this Agreement and shall agree, in a written agreement with the County, to be subject to all of the conditions and restrictions to which the Developer is subject pursuant to this Agreement. Developer shall submit to the County for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the County, such approval shall be indicated to the Developer in writing. The County shall not unreasonably withhold its consent to any proposed transfer.

(d) In the absence of specific written agreement by the County, no unauthorized sale, sub-lease, transfer, conveyance or assignment of the Property, the Improvements, or any part thereof or interest therein, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Section 4.16 Security Financing; Rights of Holders

The Developer may secure financing for the development of the Property, as contemplated by this Agreement, in accordance with Sections 4.18 through 4.23, inclusive.

Section 4.17 No Encumbrances except Mortgages, Deeds of Trust, Conveyances and Leases-Back or Other Conveyance for Financing for Development

(a) Notwithstanding Section 4.16, mortgages, deeds of trust, conveyances and leases-back, or any other form of conveyance required for any reasonable method of financing, are permitted before the recordation of the Certificate of Completion on the Property, but only for the purpose of securing loans of funds to be used for financing the construction of the Project on the Property and any other expenditures necessary and appropriate to develop the Property under this Agreement. The Developer shall notify the County in advance of any mortgage, deed of trust, conveyance and lease-back, or other form of conveyance for financing if the Developer proposes to enter into the same before the recordation of the Certificate of Completion. The Developer shall not enter into any such conveyance for financing without the prior written approval of the County, which approval the County agrees to give if any such conveyance is given to a responsible financial or lending institution, public County or other acceptable person or entity. Such lender shall be deemed approved unless rejected in writing by the County within

fifteen (15) business days after receipt of notice thereof by the County. Such lender approved by the County pursuant to this Section 4.18 shall not be bound by any amendment, implementation or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

(b) In any event, the Developer shall promptly notify the County of any mortgage, deed of trust, conveyance and lease-back, or other financing, conveyance, encumbrance or lien that has been created or attached to the Property (or any portion thereof) prior to completion of the construction of the Improvements thereon whether by voluntary act of the Developer or otherwise.

(c) The words “mortgage” and “deed of trust” as used herein includes all other appropriate modes of financing real estate acquisition, construction, and development.

Section 4.18 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion or to otherwise perform any other obligation of the Developer under this Agreement. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such holder to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 4.19 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the County shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the County shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement a copy of such notice or demand. Each such

holder shall (insofar as the rights of the County are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession, such holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety- (90) day period, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such holder shall not be required to remedy or cure any non-curable default of the Developer.

Section 4.20 Failure of Holder to Complete Improvements

In any case where, six (6) months after the County has delivered to such holder a notice of default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Property (or portion thereof) has not exercised the option to construct, or if it has exercised the option but has not proceeded diligently with construction (including diligent efforts to obtain possession if necessary), the County may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage, deed of trust or other security interest. If the ownership of the Property (or portion thereof) has vested in the holder, the County, if it so desires, may obtain a conveyance from the holder upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings).
- (b) All expenses with respect to foreclosure.

(c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of the Property (or portion thereof), such as insurance premiums and real estate taxes.

(d) The cost of any improvements made by such holder.

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the County.

Section 4.21 Right of County to Cure Mortgage; Deed of Trust or Other Security Interest Default

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

Section 4.22 Right of the County to Satisfy Other Liens on the Property

Prior to the recordation of the Certificate of Completion, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property, the County shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property to forfeiture or sale. The County shall notify the Developer if it satisfies any such liens or encumbrances pursuant to this Section.

Section 4.23 Certificate of Completion

(a) Promptly after completion of installation and construction of the Improvements as required by this Agreement and the Construction Drawings, the County shall furnish the Developer with a Certificate of Completion. If the conditions relating to the construction of the Improvements have been satisfied, the County may issue the Certificate of Completion whether or not the Developer requests such Certificate, and shall issue a Certificate of Completion within thirty (30) days after receipt of written request therefor by the Developer. The County shall not unreasonably withhold, condition or delay the issuance of any requested Certificate of Completion. The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the installation and construction required by this Agreement.

(b) The Certificate of Completion shall be in such form as to permit it to be recorded in the Recorder's Office of Monterey County.

(c) If the County refuses or fails to furnish a Certificate of Completion after written request from the Developer, the County shall, within thirty (30) days after receipt of such written request, provide the Developer with a written statement of the reasons the County refused or failed to furnish a Certificate of Completion. The statement shall also contain the County's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the completion of offsite improvements or the immediate availability of specific items or materials for landscaping, and/or minor "punch list" items, the County will issue its Certificate of Completion upon the posting of a bond by the Developer with the County in an amount representing the cost of the work not yet completed. If the County fails to provide such written statement of reasons within said 30-day period, the Developer shall be deemed entitled conclusively to the Certificate of Completion, but only if the Developer's written request for the Certificate of Completion contains the following provisions, in bold print: **"PURSUANT TO SECTION 4.24 OF THE LOAN AGREEMENT, THE DEVELOPER WILL BE DEEMED ENTITLED CONCLUSIVELY TO THE CERTIFICATE OF COMPLETION IN THE EVENT THE COUNTY FAILS WITHIN 30 DAYS TO**

PROVIDE A WRITTEN STATEMENT OF REASONS FOR REFUSING TO ISSUE SUCH CERTIFICATE OF COMPLETION.”

(d) The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. The Certificate of Completion is not notice of completion as referred to in Section 3093 of the California Civil Code.

Section 4.24 Prevailing Wages In Construction

This Agreement has been prepared with the intention that the County assistance under this Agreement and the Loan Documents meets the exceptions set forth in Labor Code Sections 1720(c)(6)(E) to the general requirement that state prevailing wages be paid in connection with construction work that is paid for in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by the County or Developer regarding the applicability of the provisions of Labor Code Section 1720 et seq., and Developer shall comply with any applicable laws related to construction wages. Nothing in this Agreement shall constitute an independent obligation of Developer to pay prevailing wages pursuant to Labor Code Section 1720 et seq.

Section 4.25 Inspection of Work

In addition to compliance with normal County procedures concerning the development of property in the County of Monterey, Developer shall provide notice to the County of the readiness for inspection of such portions of the work as may be completed, such as grading, electrical, plumbing and such other items as are subject to inspection pursuant to County codes, and the County shall inspect the progress of the work, to assure that the Development is being constructed in accordance with approved Final Construction Documents. Developer shall provide a copy to the County, if requested, of each inspection report approved by appropriate County staff. In addition to the inspections following Developer's notice, the County or its designees shall have the right to inspect the progress of the work at regular intervals during the course of construction.

ARTICLE 5: USE OF THE PROPERTY

Section 5.1 Use of the Property

(a) The Developer covenants and agrees for itself, its successors and assigns and every successor in interest to the Property or any part thereof, including sub-lessees, that the Developer, such successors and such assigns shall use the Property for the provision of residential uses for extremely low, very low, and low income households as described in this Agreement, and in accordance with the Regulatory Agreement recorded against the Property.

(b) The Developer, for itself and its successors and assigns, hereby covenants and agrees that the Property shall be managed and maintained in accordance with the requirements of the Regulatory Agreement.

Section 5.2 Obligation to Refrain from Discrimination

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

Section 5.3 Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the sale, rental or lease of any housing units on the Property to any person on the basis of race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint. All such deeds (if any), leases or

contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: “The grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint . The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

2. In leases: “The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age,

marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself, or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.”

3. In contracts: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees or vendees of the land.”

Section 5.4 No Intent to Authorize Sale or Conveyance of Property

The provisions in this Agreement concerning non-discrimination, including references to non-discrimination in the “sale” of property or in “deeds,” shall not be interpreted to allow Developer to sell or convey any interest in the Property except with the express written consent of the County and pursuant to Section 4.16 of this Agreement.

Section 5.5 Hazardous Substances

(a) Hazardous Substances, as used in this Agreement, shall include, without limitation, lead paint, any flammable explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials.

(b) Developer agrees that for the Term, Developer shall use the Property in such manner that:

(1) The Property is not in violation of any federal, state or local law, ordinance or regulation relating to environmental conditions on, under or about the Property, including but not limited to soil and groundwater conditions;

(2) Neither the Developer, nor to the best of Developer's knowledge, any third party, uses, generates, manufactures, refines, produces, processes, stores or disposes of, on, under or about the Property, or transports to or from the Property, any Hazardous Substances, except as such may be consistent with the customary construction, use and operation of property similar to the infrastructure and improvements to be developed on the Property pursuant to this Agreement.

(3) During the term of this Agreement, and so long as any County Loan remains outstanding, the Developer shall defend, indemnify and hold harmless the County, the County and their officers, agents, employees, contractors, and consultants from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required clean-up of Hazardous Substances, and the cost of attorneys' fees) which may be sustained as the result of the presence or clean-up of Hazardous Substances on, in or under the Property during the term(s) of the County loan, but excluding any such claims, costs or liabilities arising solely out of the gross negligence or willful misconduct of the County or County.

(4) Developer agrees that the use of lead-based paint shall be prohibited in the installation, construction, remodeling, reconstruction, rehabilitation of the housing units and any improvements located on the Property.

Section 5.6 Effect and Duration of Covenants

The covenants established in this Agreement and the Regulatory Agreement and any amendments thereto approved by the County and the Developer shall, without regard to technical classification and designation, be binding for the benefit and in favor of the County, its successors and assigns. The affordability covenants set forth in Section 5.1 of this Agreement and the Regulatory Agreement shall remain in effect with respect to the housing units for the longest feasible time but not less than fifty-five (55) years from the date the Certificate of

Occupancy is issued for the Property, or until all County loans on the Project have been repaid, whichever is longer. The covenants against discrimination contained in Sections 5.2 and 5.3 of this Agreement shall remain in perpetuity. All other covenants contained in this Agreement shall remain in effect until repayment of the County loans made pursuant to this Agreement.

Section 5.7 Effect of Violation of the Terms and Provisions of This Agreement

The County is deemed a beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the Covenants have been provided. The County shall have the right, if the covenants against discrimination are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants are entitled.

ARTICLE 6: DEFAULT AND TERMINATION

Section 6.1 Events of Default

Each of the following shall constitute a “Default” by Developer under this Agreement:

(a) Failure to Make Payment: Failure to repay the Loan when due and pursuant to the County Loan Documents, provided that, in case of a failure to make payment on the Loan, a default shall not exist if cured within ten (10) calendar days.

(b) Breach of Covenants: Failure by Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the County Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof by the Developer from the County or, if the breach cannot be cured within thirty (30) days, the Developer shall not be in breach so long as Developer is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(c) Default Under Other Agreements: Failure by Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any agreement entered into between Developer and any other party, which agreement provides financing for, or otherwise facilitates, the development of the Property, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof by the Developer from the other party or, if the breach cannot be cured within thirty (30) days, the Developer shall not be in breach so long as Developer is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any such agreement, the specific provisions of that agreement shall control.

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

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

(f) Suspension; Termination: Developer shall have voluntarily suspended its business or, if Developer is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

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

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

(i) Mismanagement of Housing Units: Failure to manage or operate the Property in a prudent or businesslike manner, subject to Article 11 of the Regulatory Agreement, dealing with cure periods.

The County agrees to provide notices of any default to Developer's limited partner when such limited partner is properly identified, and shall accept any cure tendered by such limited partner on the same basis as if such cure were tendered by the Developer; provided, however, that failure to provide notice to Developer's limited partner shall not excuse any defaults of Developer or affect any rights and remedies available to the County.

Section 6.2 Remedies

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

(a) Acceleration of Note: The County shall have the right to cause all indebtedness of the Developer to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor under the law including the Uniform Commercial Code. The Developer shall be liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the County in connection with the collection of the any loan related to this Agreement.

(b) Specific Performance: The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Developer to perform its obligations and covenants under this Agreement, including the various County Loan Documents, or to enjoin acts on things which may be unlawful or in violation of the provisions of this Agreement or the County Loan Documents.

(c) Right to Cure at Developer's Expense: The County shall have the right (but not the obligation) to cure any monetary default by Developer under a loan other than the Loan. The Developer agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Developer upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement. The County shall also have the right (but not the obligation) to cure any default in the performance of Developer's obligation to construct the Project, and Developer agrees to reimburse the County for any funds advanced by the County to cure such default by Developer upon demand therefor.

(d) Replacement of Housing Management: In accordance with Article 11 of the Operating Agreement, the County shall have the right (but not the obligation) to require that the Developer replace the Housing Manager.

Section 6.3 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other right or remedy for the same default or any other default by the other party.

Section 6.4 Termination of Agreement; Repayment of Loans

Prior to the issuance of a Certificate of Completion, this Agreement may be terminated for the following reasons:

(a) In the event of condemnation, seizure or appropriation of all or the substantial part of the Property, either Developer or the County may at any time thereafter terminate this Agreement (except for Developer's indemnification obligations under Section 7.4), by notice to the other party. Not later than thirty (30) days after the later of (i) such a termination, or (ii) Developer's receipt of any compensation to which it is entitled in connection with condemnation, seizure or appropriation, Developer shall repay the Loan. Developer shall be entitled to credit against the amount of payment otherwise due, the amount of any compensation received by the County in connection with the condemnation, seizure or appropriation.

(b) The County, at its option, may terminate this Agreement in the event of the following:

(1) if the Developer assigns or attempts to assign this Agreement, or any rights therein, or makes any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property or the development, except as permitted by this Agreement;

(2) if the Developer is in default of any provision of this Agreement, and such default is not cured within thirty (30) days after the date of written demand therefor by the County or, if such default cannot reasonably be cured within 30 days, within longer period as necessary to cure such default provided the Developer is diligently pursuing such cure.

Termination under this Section 6.4 shall not affect Developer's or the County's rights or obligations in connection with any default existing under this Agreement at the time of termination.

Section 6.5 Rights to Plans

The Developer hereby agrees that if the County becomes the owner of the Property by foreclosure or deed in lieu of foreclosure, Developer shall assign to the County the rights to all plans and drawings prepared by or on behalf of the Developer with respect to the Improvements; the Architect's contract and all rights to use said plans.

ARTICLE 7: MISCELLANEOUS PROVISIONS

Section 7.1 Relationship of Parties

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County, and the Developer or its agents, employees or contractors, and the Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. The Developer has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. The Developer shall be solely responsible for all matters relating to payment of its respective employees, including but not limited to compliance with Social Security, State Disability Insurance, Payroll Taxes, Workers' Compensation Insurance, Employee Benefits, and any applicable withholding or contribution, and any and all other laws and regulations governing employment matters. Developer shall be solely liable for and obligated to pay directly all applicable taxes, including but not limited to Federal and State Income Taxes and Social Security, and in connection therewith Developer shall indemnify and hold harmless the County from any and all liability which may arise due to Developer's failure to pay such taxes.

Section 7.2 No Claims

Nothing contained in this Agreement shall create or justify any claim against the County by any person that the Developer may have employed or with whom the Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the development or operation of the Project on the Property.

Section 7.3 Amendments

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

Section 7.4 Indemnification

The Developer shall indemnify, defend and hold harmless the County, the County, and their respective officers, agents and employees, from and against: (a) any and all claims, liabilities and losses whatsoever (together with any expenses related thereto, including but not limited to, damages, court costs and attorneys fees) occurring to or resulting from any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and (b) any and all claims, liabilities and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Developer's performance of this Agreement, including but not limited to any such claims, liabilities or losses which occur on or adjacent to the Property and (c) such claims, liabilities, or losses which arise out of the construction and operation of the Project. "Developer's performance" includes Developer's action or inaction and the action or inaction of Developer's officers, employees, agents, contractors, and subcontractors. This indemnification and hold harmless obligation shall not extend to any claim arising solely out of the gross negligence or willful misconduct of the County, the County, their respective agents, and their respective employees. The provisions of this Section 7.4 shall survive the expiration of the Term or other termination of this Agreement.

Section 7.5 Non-Liability of County or County Officials, Employees and Agents

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

Section 7.6 No Third Party Beneficiaries

There shall be no third party beneficiaries to this Agreement.

Section 7.7 Conflict of Interest

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.7(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Developer shall exercise due diligence to ensure that the prohibition in this Section 7.7(a) is followed.

(b) The conflict of interest provisions of Section 7.7(a) above apply to any person who is an employee, agent, consultant, officer of the County or County, or any immediate family member of such person, or any elected or appointed official of the County or of the County, or any person related within the third (3rd) degree of such person.

Section 7.8 Notices, Demands and Communications

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

County: County of the County of Monterey
168 W. Alisal Street, Third Floor
Salinas, CA 93901
Attention: Economic Development Director

Developer: South County Housing, Inc.
7455 Carmel Street
Gilroy, CA 95020
Attention: Executive Director

With a copy to Developer's limited partner, whose address will be provided to the County and be on file with the County.

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 7.8. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.9 Applicable Law

This Agreement shall be governed by California law.

Section 7.10 Parties Bound

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

Section 7.11 Severability

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

Section 7.12 Force Majeure

In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of the Developer or the Developer's inability to finance the Project) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.13 County Approval

Whenever this Agreement calls for County approval, consent, or waiver, the written approval, consent, or waiver of the Economic Development Director shall constitute the approval, consent, or waiver of the County, without further authorization required from the County Board of Supervisors, provided that it is determined that the overall feasibility of the objectives of this Agreement is not in jeopardy, no additional funds are required from the County, and no material term of this Agreement is altered. The County hereby authorizes the Economic Development Director to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the County upon the terms specified above. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The County agrees to give reasonable consideration to requests by Developer for extensions of any time deadlines imposed under this Agreement, provided that it is determined that the overall feasibility of the objectives of this Agreement is not in jeopardy. The County shall not unreasonably delay in reviewing and approving or disapproving any proposal by Developer made in connection with this Agreement. Notwithstanding this delegation, approval of the County Board of Supervisors is required to amend this Agreement, and this Section 7.13 shall not preclude the Economic Development Director, in his or her sole discretion,

from seeking approval from the County Board of Supervisors for any matter under this Agreement.

Section 7.14 Waivers

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

Section 7.15 Title of Parts and Sections

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

Section 7.16 Entire Understanding of the Parties

This Agreement, together with all Exhibits, constitutes the entire understanding and agreement of the parties with respect to the development of the Project and the Loan.

Section 7.17 Multiple Originals; Counterparts

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

Section 7.18 Negotiated Agreement

This Agreement has been arrived at through negotiation and neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code Section 1654.

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

County:

THE COUNTY OF MONTEREY, a public body, corporate and politic

By: _____

Its: _____

Approved as to form:

Dated: _____

By: _____

Deputy County Counsel

Dated: _____

Developer:

SOUTH COUNTY HOUSING, INC., a California
nonprofit public benefit corporation

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Monterey, State of California, described as follows:

That portion of Lots C and D of Lot 4 of the Rancho San Vicente, in the County of Monterey, State of California, as shown on Map filed with the Final Decree of Partition in Volume 39, Page 1, Official Records of said County, described as follows:

Beginning at the intersection of the southeasterly boundary of the land described in the deed to A. Caletisen, Et Ux, Recorded in Volume 1593, Page 115, Official Records of said County with the northeasterly line of California State Highway 101, as described in the Deed to the State of California, recorded in Volume 1703, Page 401, Official Records; thence along said Highway line,

(1) South $51^{\circ} 32'$ East, 62.24 Feet (described "64.99 Feet" in last said Deed) to a 6 X 6 concrete monument; thence

(2) Along a curve to the left, having a radius of 4,887 feet, through an angle of $4^{\circ} 04' 30''$, an arc distance of 347.57 feet; thence

(3) North $41^{\circ} 58' 30''$ East, 437.0 feet; thence

(4) North $22^{\circ} 15'$ West, 205.5 Feet; thence

(5) North $77^{\circ} 23' 10''$ West, 249.8 feet to the easterly corner of said land of Caletisen; thence along the southeasterly boundary of said land; thence

(6) South $42^{\circ} 39' 40''$ West, 441.3 feet to the point of beginning.

APN: 257-031-005-000

EXHIBIT B
UNIT MIX AND RESTRICTED INCOME LEVELS

Camphora Apartments

RENTS & UNIT MIX INFORMATIONEnter Tax Credit 50% **Income** Limits for County of :

Monterey

HUD Notice Date:

12/1/2011

Household Size:

Income Limit:

1	2	3	4	5	6	7	8
\$25,000	\$28,550	\$32,100	\$35,650	\$38,550	\$41,400	\$44,250	\$47,100

CTCAC, CDLAC, MHP and CalHFA rent limits are calculated based on the above income limits, and are automatically shown below. If the most restrictive rent limits applicable to some units are required by another program, such as HOME or USDA Rural Development, [click here](#) to enter these limits. (Or scroll to bottom of worksheet)

Show rent limits set by the most restrictive regulatory agency.

Income Limit (% AMI)	Rent Limit Calc. Formula	Unit Size	No. of Units	Maximum Gross Rent	Less Utility Allowance	Maximum Net Rent	Proposed Net Rent	Monthly Income at Proposed Rents	Monthly Income at Maximum Rents
60%	TCAC	Beds	0	\$0	\$0	\$0	\$0		
Rows 19-25 enter <u>Restricted Manager unit(s) only</u> ; unrestricted Manager's unit(s) use rows 119-121. % of Restricted Units in this category 5%		0 Bdrm.	0				\$0		
		1 Bdrm.	0				\$0		
		2 Bdrm.	1	\$963	(\$42)	\$921	\$833	\$833	\$921
		3 Bdrm.	1	\$1,113	(\$46)	\$1,067	\$1,035	\$1,035	\$1,067
		4 Bdrm.	0				\$0		
		5 Bdrm.	0				\$0		
			2	Subtotal				\$1,868	\$1,988
55%	TCAC	Beds	0	\$0	\$0	\$0	\$0		
% of Restricted Units in this category 7%		0 Bdrm.	0				\$0		
		1 Bdrm.	0				\$0		
		2 Bdrm.	3	\$882	(\$42)	\$840	\$833	\$2,499	\$2,520
		3 Bdrm.	0				\$0		
		4 Bdrm.	0				\$0		
		5 Bdrm.	0				\$0		
			3	Subtotal				\$2,499	\$2,520
50%	TCAC	Beds	0	\$0	\$0	\$0	\$0		
% of Restricted Units in this category 23%		0 Bdrm.	0				\$0		
		1 Bdrm.	0				\$0		
		2 Bdrm.	4	\$802	(\$42)	\$760	\$760	\$3,040	\$3,040
		3 Bdrm.	6	\$927	(\$46)	\$881	\$881	\$5,286	\$5,286
		4 Bdrm.	0				\$0		
		5 Bdrm.	0				\$0		
			10	Subtotal				\$8,326	\$8,326
45%	TCAC	Beds	0	\$0	\$0	\$0	\$0		
% of Restricted Units in this category 7%		0 Bdrm.	0				\$0		
		1 Bdrm.	0				\$0		
		2 Bdrm.	2	\$722	(\$42)	\$680	\$680	\$1,360	\$1,360
		3 Bdrm.	1	\$834	(\$46)	\$788	\$788	\$788	\$788
		4 Bdrm.	0				\$0		
		5 Bdrm.	0				\$0		
			3	Subtotal				\$2,148	\$2,148
40%	TCAC	Beds	0	\$0	\$0	\$0	\$0		
% of Restricted Units in this category 16%		0 Bdrm.	0				\$0		
		1 Bdrm.	0				\$0		
		2 Bdrm.	6	\$642	(\$42)	\$600	\$600	\$3,600	\$3,600
		3 Bdrm.	1	\$742	(\$46)	\$696	\$696	\$696	\$696
		4 Bdrm.	0				\$0		
		5 Bdrm.	0				\$0		
			7	Subtotal				\$4,296	\$4,296

EXHIBIT C

SCHEDULE OF PERFORMANCE

1.	Obtain 4% Tax Credit Approvals	May 21, 2014		
2.	Obtain CDLAC Bond Approvals	May 21, 2014		
3.	Close on Construction Financing	August 18, 2014		
4.	Construction Period	August 25, 2014	through	July 24,2015
5.	Certificate of Occupancy	July 24,2015		
6.	Lease Up Period	July 27, 2015	through	September 30, 2015
7.	Perm Loan Closing	March 30, 2016		

EXHIBIT D

PROMISSORY NOTE

EXHIBIT E

DEED OF TRUST

EXHIBIT F
REGULATORY AGREEMENT
and
DECLARATION OF RESTRICTIVE COVENANTS

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