

SUBSEQUENT AGREEMENT

between

REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY

and

COMMUNITY HOUSING IMPROVEMENT SYSTEMS & PLANNING ASSOCIATION,  
INC., a California nonprofit public benefit corporation

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REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY

and

COMMUNITY HOUSING IMPROVEMENT SYSTEMS & PLANNING ASSOCIATION,  
INC., a California nonprofit public benefit corporation

THIS SUBSEQUENT AGREEMENT (“Agreement”), is made and entered into as of \_\_\_\_\_, 2011, by and among the Redevelopment Agency of the County of Monterey (hereinafter, “Agency”), and Community Housing Improvement Systems & Planning Association, Inc., a California nonprofit public benefit corporation (hereinafter, “Developer”), with reference to the following facts:

A. The Agency is a public body, corporate and politic, organized and existing pursuant to the Community Redevelopment Law (Health & Safety Code §§ 33000, et seq.). One of the important and fundamental purposes of the Agency is to assist in the provision of low and moderate housing opportunities.

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 is acquiring approximately 3.4 acres of a larger 4.8 acre parcel in the Castroville, located in the Castroville-Pajaro Redevelopment Project Area, located in the County of Monterey, which will be subdivided prior to Developer’s acquisition thereof, and is described in Exhibit A, attached hereto (the “Property”). The description of the Property is subject to minor change, upon recordation of a final map subdividing the larger parcel. Developer will develop the Property as a 59 unit multifamily apartment complex, 28 units of which will be restricted by the Agency to low and very low-income households in accordance with Agency requirements related to the expenditure of Low and Moderate Income Housing Trust Funds. The project will be known as Sea Garden Apartments.

D. Agency previously approved an acquisition loan of \$1,100,000 (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 15, 2010 (the "Original Agreement").

E. Agency also approved a First Amendment to the Original Agreement dated as of March 15, 2011 which increased the Loan Amount to \$1,800,000 ("First Amendment").

F. Pursuant to the terms of the Original Agreement and First Amendment, the Predevelopment Loan is due and payable after 60 months unless a subsequent agreement is executed by the parties which agreement must contain specific terms enumerated in the Original Agreement.

F. The parties are entering into this Agreement to (a) increase the Loan Amount to \$2,300,000 and (b) satisfy the requirements of the Original Agreement and First Amendment for a "subsequent agreement" that provides for a long-term loan and the development of the Property. This Agreement fulfills the obligations of the Original Agreement and the First Amendment.

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) "Agency" shall mean the Redevelopment Agency of the County of Monterey.
- (b) "Agency Loan Documents" shall mean the documents evidencing the Loan, and shall include the Promissory Note, the Deed of Trust, the Declaration of Restrictive Covenants and this Agreement.
- (c) "Agreement" shall mean this Loan Agreement.

(d) "Approved Financing" shall mean all of the financing to be acquired by the Developer as set forth in the Approved Development Budget and consented to by the Agency and any additional financing approved by the Agency in writing for the purpose of financing the Project, in addition to the Agency loans.

(e) "County" shall mean the County of Monterey, a political subdivision of the State of California.

(f) "Default" shall have the meaning set forth in Section 6.1 below.

(g) "Developer" shall mean Community Housing Improvement Systems & Planning Association, Inc., a California nonprofit public benefit corporation.

(h) "Effective Date" shall mean the date that this Agreement is executed by the Agency.

(i) "Improvements" shall mean the 59 units of housing and related infrastructure to be constructed on the Property pursuant to this Agreement.

(j) "Loan" shall mean the \$2,300,000 provided by Agency to Developer for acquisition and predevelopment expenses related to the Property.

(k) "Operating Agreement" shall mean the Sea Garden Apartments Operating Agreement to be entered into between the Agency and Developer concurrently herewith substantially in the form set forth in Exhibit H.

(l) "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.

(m) "Property" shall mean the real property consisting of the site as described in the attached Exhibit A and as shown on Exhibit B.

(n) "Project" shall mean the development of 59 units, together with infrastructure and landscaping as described in the Scope of Development, attached as Exhibit C.

(o) "Promissory Note" shall mean the promissory note in the principal amount of \$2,300,000 executed concurrently herewith.

(p) "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. Residual Receipts shall be further defined in the Sea Garden Apartments Operating Agreement, substantially in the form set forth in Exhibit H.

(q) "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 on Exhibit J, attached hereto.

(r) "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:	Map Showing the Location of the Property
EXHIBIT C:	Scope of Development
EXHIBIT D:	Schedule of Performance
EXHIBIT E:	Estimate of Project Costs and Approved Financing Sources
EXHIBIT F:	Promissory Note for Loan
EXHIBIT G:	Deed of Trust
EXHIBIT H:	Operating Agreement
EXHIBIT I	Declaration of Restrictive Covenants



## ARTICLE 2: OWNERSHIP OF PROPERTY

Section 2.1 Developer's Ownership

Developer is currently in escrow to own the Property, and the funding of the Loan through this Agreement is designed to assist in the close of that escrow. As set forth below in Section 3.3, as part of the close of escrow for the acquisition of the Property, certain documents affecting the Agency's interests will be recorded.

## ARTICLE 3: LOAN PROVISIONS

Section 3.1 Loan Amount and Interest

Pursuant to this Agreement, the Agency shall loan to the Developer a total of Two Million Three Hundred Thousand Dollars (\$2,300,000). Upon the Effective Date of this Agreement by the Developer and the Agency, the existing Amended and Restated Promissory Note shall be replaced by Promissory Note shown as Exhibit F and the terms of the original Loan shall be converted to the following:

The term of the Loan shall be fifty-five (55) years from the date of the issuance of a Certificate of Occupancy for the Property but in no event later than December 31, 2068 (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 permanent financing for the Project. Payment of principal and any accrued interest on the Loan shall be made on an annual basis beginning on May 10 of the year following the issuance of Certificate of Occupancy for the property with residual receipts as set forth in the Operating Agreement. 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. Permitted Operating Expenses and Annual Fees will be further defined in the Sea Garden Apartments Operating Agreement.

Section 3.2 Use of Loan Funds

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

Specifically, Developer shall develop in the aggregate on the Property fifty eight (58) units, twenty eight (28) of which shall be restricted by the Agency and made available to qualified tenants at income levels not greater than sixty percent (60%) of area median income.

Section 3.3 Disbursement of Loan Proceeds

Loan proceeds will be disbursed in two installments. The first installment of One Million Eight Hundred Thousand Dollars (\$1,800,000) will be paid pursuant to the escrow for the acquisition of the Property by Developer but in no case earlier than September 15, 2011. The second installment will be paid when funding commitments, including tax credits, sufficient to fully fund the project, have been awarded and or secured for the Property, but no earlier than January 15, 2012.

Section 3.4 Loan Origination and Monitoring Fees

In consideration of the Loan, Developer shall pay Agency a loan origination fee of 1% of the Loan amount, which shall be paid through the escrow for the acquisition of the Property by Developer. Annually, commencing on June 30, 2012, and thereafter not later than June 30 of each succeeding year, Developer shall pay Agency a loan monitoring fee of \$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 Agency's entry into this Agreement, Developer hereby represents and warrants the following to the Agency, 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 Agency's Loan Documents, and such obligations shall be valid and binding obligations of Developer.

(c) Formation and Organizational Documents: Developer has delivered to the Agency 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 Agency. In the event that formation and/or organizational documents are amended or modified, Developer shall immediately provide the Agency with copies of any amendments or modifications of the formation or organizational documents.

(d) No Violation: Developer's execution, delivery, and performance under the Agency 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 Agency 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 Agency 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 Agency 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

Agency and, except as otherwise disclosed to the Agency 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 Estimate of Project Costs, attached as Exhibit E, 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 Agency concerning the Agency loan or required by the Agency Loan Documents and this Agreement are accurate, correct and sufficiently complete to give the Agency 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 Pledge. Agency, by its execution of this Agreement, pledges Low and Moderate Income Housing Trust Funds in an amount equal to this Loan in accordance with Health and Safety Code, Section 33671.5 to secure to the Borrower the funding of the Loan; such pledge being subordinate to any pledge previously made by Agency to secure repayment of any existing Agency bonds, or the pledge to secure any bond refunding or defeasing repayment of any existing Agency bonds, or the pledge of Low and Moderate Income Housing Trust Funds to satisfy any other prior obligation of the Agency.

Section 3.7 Source of Funds. The Agency 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 3.8 Subordination. The Agency agrees that this Agreement and the other Loan Documents, including the Deed of Trust and Security Agreement and the Declaration of Restrictive Covenants, 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 on Exhibit J, (b) the Construction Loan is from a national or state bank, licensed financial institution, or insurance company. The Executive Director of the Agency 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 Agency.

Section 3.9 Limited Recourse Loan. The Loan is a limited recourse obligation of the Borrower. Agency's recovery against Borrower shall be limited solely to Agency's security in the Property, except that Borrower may be personally liable to the Agency 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 Agency for the payment of the principal 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 which is attached hereto as Exhibit C and incorporated herein by this reference, and the Final Construction Documents approved by the Agency 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 Schematic and Construction Drawings and Related Documents

As and at the times provided therefore in the Schedule of Performance, the Developer shall cause to be prepared, and shall submit to the Agency or Agency's designee construction drawings, in the following stages.

(a) Schematic Design Drawings

The Schematic Design Drawings shall clearly define the site development, floor plans, elevations, landscape features, parking facilities with all spaces indicated, building sections indicating general construction techniques and major building materials under consideration. Key interior, exterior, and structural bay dimensions should be established and a detailed tabulation of floor area by use provided. The Schematic Design Drawings are attached to the Scope of Development (Exhibit C). The Castroville Citizen Advisory Committee has reviewed site and design plans and made recommendations to the Agency or the Agency's designee, as described in Section 4.3. The Agency or its designee will have the final authority for approval of site and design plans.

(b) Construction Drawings

Construction Drawings are to be a continuation of approved Schematic Design Drawings. They provide all the detailed information necessary to obtain permits necessary to install and construct the Improvements, including complete building, site and landscape standards, and specifications.

Section 4.3 Agency 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 Agency if they are a logical evolution of and not in conflict with the Scope of Development and the drawings and plans theretofore approved by the Agency. The primary responsibility for such review shall be vested in the Agency's Chief Administrative Officer or designee, which in this instance shall be the Director of the Redevelopment and Housing Office. The Agency shall approve or disapprove such plans, drawings, and related documents (and any

proposed material changes therein), as well as any change in the general contractor(s), within the times established in the Schedule of Performance. Such approvals shall not unreasonably be 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 Agency, 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 Agency as soon as reasonably practicable after receipt of the notice of disapproval. The Agency shall approve or disapprove such revised portions in the same manner and within the same times as provided in this Section 4.3 for approval or disapproval of plans, drawings, and related documents initially submitted to the Agency.

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

(c) Except as provided in this Agreement, the Agency 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 Agency 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. The Agency shall have the right to reasonably approve all contractors selected by

Developer for the Project to ensure compliance with any applicable grant agreement. The Agency shall not unreasonably withhold, condition or delay its approval of any contractor, and such contractor, shall be deemed approved unless the Agency provides to the Developer its written disapproval within ten (10) business days after receipt of a written request for approval. Any disapproval shall contain the Agency's reasons for disapproval.

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

#### Section 4.4 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 Agency and the Developer have agreed upon a project budget, which is set forth in the Estimate of Project Costs attached hereto as Exhibit E. From time to time, in the event of changes in the estimated development costs, the Developer shall submit to the Agency for its review and approval a modified Estimate of Project Costs. Upon the approval by the Agency or its designee, the modified Estimate of Project Costs shall replace the Estimate of Project Costs attached as Exhibit E.

(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 Agency, in which case such amended estimate shall apply.

#### Section 4.5 Schedule of Performance

(a) The Agency 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 D, 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 Agency or its designee.

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

Section 4.6 Indemnification: Bodily Injury and Property Damage Insurance

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

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

Section 4.7 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 Agency; and

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

(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 Agency 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 Agency 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 Agency and 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 Agency 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 disbursement of any funds pursuant to this Agreement, Developer shall file certificates of insurance with the Agency 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 Agency 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 Agency.

(i) Developer agrees that during the pendency of the Declaration of Restrictive Covenants (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 Agency.

#### Section 4.8 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 Agency, 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 4.9 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 Agency 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 4.10 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 and the Agency acknowledge and agree that it is the policy of the Community Redevelopment Law and the Agency to promote and ensure economic advancement of economically disadvantaged persons through employment and in the award of contracts and subcontracts in or of benefit to redevelopment project areas. 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 redevelopment project areas of the County. This paragraph shall require the reasonable best efforts of the Developer and its contractors but shall not require the hiring of any person unless such person has the experience and ability, and, where necessary, the appropriate trade union affiliation, to qualify such person for the job.

(c) During installation and construction of the Improvements, the Developer shall provide to the Agency such information and documentation available to Developer which the Agency or its designee may reasonably request for purposes of monitoring the Developer's compliance with this Section 4.10, and will confer with appropriate Agency staff on such efforts. From time to time, and upon request of the Agency, 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 4.11 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 4.12 County and Other Governmental Agency 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 agency for such construction, development or work. The Agency 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 Agency shall provide all appropriate assistance to the Developer in securing all necessary permits and certificates.

#### Section 4.13 Records and Audits

(a) Developer shall maintain one or more separate accounts in an Agency-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 Agency hereby approves Rabobank Bank and Wells Fargo Bank as Agency-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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency, or as part of any audit of the Agency, 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 4.14 Rights of Access

Representatives of the Agency 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 Agency shall be those who are so identified by the Agency's Executive Director or designee and such representatives shall report to the on-site construction manager

prior to any such inspections. The Agency 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 4.15 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 4.16 Prohibition Against Transfer

(a) The qualifications and identity of the Developer are of particular concern to the Agency. It is because of those qualifications and that identity that the Agency 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 Agency except for the following which will not require the consent of the Agency:

(1) The transfer of the Property, the Loan and this Agreement to a limited partnership, the managing general partner of which is Community Housing Improvement Systems and Planning, Inc., a California nonprofit public benefit corporation (“Partnership”).

(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 Agency, 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 Agency, 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 E.

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 Agency, 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 Agency for review all instruments and other legal documents proposed to effect any such transfer; and if approved by

the Agency, such approval shall be indicated to the Developer in writing. The Agency shall not unreasonably withhold its consent to any proposed transfer.

(d) In the absence of specific written agreement by the Agency, 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 4.17 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 4.18 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 Agency 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 Agency, which approval the Agency agrees to give if any such conveyance is given to a responsible financial or lending institution, public agency or other acceptable person or entity. Such lender shall be deemed approved unless rejected in writing by the Agency within fifteen (15) business days after receipt of notice thereof by the Agency. Such lender approved by the Agency 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 Agency 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 land development.

Section 4.19 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the 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 4.20 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Agency 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 Agency 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 Agency 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 4.21 Failure of Holder to Complete Improvements

In any case where, six (6) months after the Agency 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 Agency 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 Agency, 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 Agency.

Section 4.22 Right of Agency 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 Agency, and the holder has not exercised its option to complete the Development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency 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 4.23 Right of the Agency 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 Agency 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 Agency shall notify the Developer if it satisfies any such liens or encumbrances pursuant to this Section.

Section 4.24 Certificate of Completion

(a) Promptly after completion of installation and construction of the Improvements as required by this Agreement and the Construction Drawings, the Agency shall furnish the Developer with a Certificate of Completion. If the conditions relating to the construction of the Improvements have been satisfied, the Agency 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 Agency 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 Agency refuses or fails to furnish a Certificate of Completion after written request from the Developer, the Agency shall, within thirty (30) days after receipt of such written request, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency'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 Agency will issue its Certificate of Completion upon the posting of a bond by the Developer with the Agency in an amount representing the cost of the work not yet completed. If the Agency 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 AGENCY 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 4.25 Prevailing Wages In Construction

. This Agreement has been prepared with the intention that the Agency 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 Agency 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 4.26 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 Agency Executive Director or designee 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 Agency of each inspection report approved by appropriate County staff. In addition to the inspections following Developer's notice, the Agency 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 low- and very-low-income households as described in this Agreement, and in accordance with the Declaration of Restrictive Covenants recorded against the Property (the "Regulatory Agreement").

(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 Agency 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 Agency Loan remains outstanding, the Developer shall defend, indemnify and hold harmless the Agency, 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 Agency loan, but excluding any such claims, costs or liabilities arising solely out of the gross negligence or willful misconduct of the Agency 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 Agency and the Developer shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, 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 Agency 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 Agency loans made pursuant to this Agreement.

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

The Agency 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 Agency 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 Agency 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 Agency Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof by the Developer from the Agency 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 Agency, 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 Agency, without the need for any action by the Agency.

(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 Agency) 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 Agency.

(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 Agency in connection with any of the Agency 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 Operating Agreement, dealing with cure periods.

The Agency 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 Agency.

#### 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 Agency or automatically where so specified, relieve the Agency of any obligation to make or continue disbursements pursuant to any Agency Loan and shall give the Agency 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 Agency shall have the right to cause all indebtedness of the Developer to the Agency 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 Agency may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Agency as a creditor under the law including the Uniform Commercial Code. The Developer shall be liable to pay the Agency on demand all reasonable expenses, costs and fees (including, without

limitation, reasonable attorney's fees and expenses) paid or incurred by the Agency in connection with the collection of the any loan related to this Agreement.

(b) Specific Performance: The Agency 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 Agency Loan Documents, or to enjoin acts on things which may be unlawful or in violation of the provisions of this Agreement or the Agency Loan Documents.

(c) Right to Cure at Developer's Expense: The Agency 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 Agency for any funds advanced by the Agency 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 Agency 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 Agency for any funds advanced by the Agency to cure such default by Developer upon demand therefor.

(d) Replacement of Housing Management: In accordance with Article 11 of the Operating Agreement, the Agency 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 Agency 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 Agency in connection with the condemnation, seizure or appropriation.

(b) The Agency, 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 Agency 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 Agency'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 Agency becomes the owner of the Property by foreclosure or deed in lieu of foreclosure, Developer shall assign to the Agency 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 Agency, 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 Agency 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 Agency 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 Agency, 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 Agency, 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 Agency or County Officials, Employees and Agents

No member, official, employee or agent of the Agency or of the County shall be personally liable to the Developer in the event of any default or breach by the Agency 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 Agency or County, or any immediate family member of such person, or any elected or appointed official of the Agency 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:

**Agency:**           Redevelopment Agency of the County of Monterey  
                          168 W. Alisal Street, Third Floor  
                          Salinas, CA 93901  
                          Attention: Jim Cook, Director, Redevelopment and Housing Office

**Developer:**       Community Housing Improvement System & Planning Association, Inc.  
                          295 Main Street, Suite 100  
                          Salinas, CA 93901  
                          Attention: Executive Director

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

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 Agency be required to agree to cumulative delays in excess of one hundred eighty (180) days.

#### Section 7.13 Agency Approval

Whenever this Agreement calls for Agency approval, consent, or waiver, the written approval, consent, or waiver of the Director of the Redevelopment and Housing Office shall constitute the approval, consent, or waiver of the Agency, without further authorization required from the Agency Board of Directors, 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 Agency, and no material term of this Agreement is altered. The Agency hereby authorizes the Director of the Redevelopment and Housing Office to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Agency 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 Agency 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 Agency 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 Agency Board of Directors is required to amend this Agreement, and this Section 7.13 shall not preclude the Director of the Redevelopment and Housing Office, in his or her sole discretion, from seeking approval from the Agency Board of Directors for any matter under this Agreement.

#### Section 7.14 Waivers

Any waiver by the Agency of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Agency 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 Agency 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 Agency'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.

Section 7.19 Original Agreement and First Amendment

From and after the Effective Date of this Agreement, the terms of the Original Agreement and First Amendment (other than Developer's obligations to indemnify the Agency as set forth in Section 6.4 of the Original Agreement) shall be superseded by this Agreement, the Original Agreement and First Amendment will be of no further force and effect.

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

Agency:

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

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

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

Approved as to form:

Dated: \_\_\_\_\_

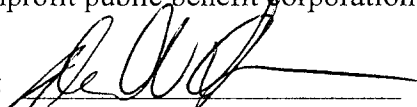
By: \_\_\_\_\_

Deputy County Counsel

Dated: \_\_\_\_\_

Developer:

COMMUNITY HOUSING IMPROVEMENT SYSTEM  
& PLANNING ASSOCIATION, INC., a California  
nonprofit public benefit corporation

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

Its:     CFO

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

Lot 3, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

PARCEL I(A):

The Southeasterly one-half of Speegle Street (now abandoned) lying contiguous to Lot 3, Block XXXII as apportioned to said Lot 3 pursuant to that Order of Abandonment recorded October 24, 1956 in Volume 1745, Page 527, Official Records.

PARCEL II:

That portion of Lot 6, in Block XXXII, as said Lot and Block are shown and designated on that certain Map entitled, "Map of the Town of Castroville", filed September 2, 1887 in Volume 1 of Cities and Towns at Page 55, Records of Monterey County, California, described as follows:

Beginning in the Southeasterly line of said Lot 6 at the most Easterly corner of that certain parcel of land described in the Deed to Luz Arroyo, recorded September 14, 1954 in Volume 1552 of Official Records at Page 126, Records of said County; thence from said point of beginning along said Southeasterly lot line:

- (1) N. 42° 54' E., 50 feet; thence leave said lot line and running
- (2) N. 47° 03-1/2' W., 100 feet, more or less, to a point in the Northwesterly boundary of said Lot 6; thence along las mentioned boundary
- (3) S. 42° 54' W., 50 feet to the most Northerly corner of said parcel of land: thence leave last mentioned boundary and running along the Northeasterly boundary of said parcel of land
- (4) S. 47° 03-1/2' E., 100 feet, more or less, to the point of beginning.

PARCEL III:

Lots 4 and 5, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

Together with that portion of the Southwesterly one-half of Davis Street, title to which would pass by a conveyance describing said lot.

PARCEL III(A):

The Southeasterly one-half of Speegle Street (now abandoned) lying contiguous to Lot 4, Block XXXII as apportioned to said Lot 4 pursuant to that Order of Abandonment recorded October 24, 1956 in Volume 1745, Page 527, Official Records.

PARCEL IV:

That certain 3.024 acre parcel of land shown and so designated of that certain "Record of Survey" map filed for record January 30, 1958 in Volume X-1 of Surveys at page 159, records of Monterey County.



Excepting therefrom all that property described in Grant Deed executed by Frank Aberin, a single man, to Pedro Muna, et ux, recorded January 26, 1970 in Reel 637 of Official Records of Monterey County, California, at page 127.

More particularly described as follows:

Beginning at the northwesterly terminus of Course (1) of "Parcel 1" as said parcel is described and so designated in "Exhibit A" of that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County and running,

- 1) S. 42° 54' 00" W., 25.00 feet; thence running along the northeasterly right-of-way of Davis Street
- 2) N. 47° 03' 30" W., 183.08 feet to the southeasterly corner of Tract No. 1264, Chapin Affordable Housing Project, as said subdivision is shown and recorded in Volume 19 of Cities and Towns at Page 18, records of Monterey County, California thence leaving said northeasterly right-of-way of Davis Street and running along said southeasterly boundary of said subdivision
- 3) N 42° 54' 00" E., 364.27 feet; thence leaving said southeasterly boundary of said subdivision
- 4) S. 47° 03' 30" E., 183.08 feet to the northeasterly boundary of "Parcel 1" as said parcel is described and so designated in "Exhibit A" of that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County; thence running along the common boundary between "Parcel 1" and "Parcel 2" as said parcels are described in the above referenced document.
- 5) S. 42° 54' 00" W., 339.27 feet to the Point of Beginning.

Said property is described as "Parcel 2" in that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County.

#### PARCEL IV(A):

An easement for drainage and the construction and maintenance of slopes, 25 feet in width, lying immediately adjacent to and southeasterly of the following described line:

Beginning at the most southerly corner of that certain 3.024 acre parcel, as said parcel is shown on that certain map entitled, "Record of Survey of a Portion of Block XL, etc.", recorded in Volume X-1 of Surveys at Page 159, records of Monterey County, California, and running thence N 42° 54' E., 25.00 feet to the True point of beginning; thence

- 1) N 42° 54' E., 337.83 feet to a 1-1/2" iron pipe.

#### PARCEL V:

A portion of Lot 6, in Block XXXII, as shown on the map entitled, "Town of Castroville," filed September 2, 1887 in the Office of the County Recorder of the County of Monterey, State of California, in Volume 1 of Maps, Cities and Towns, at Page 55, more particularly described as follows:

BEGINNING at the most Southerly corner of said Lot 6 and running thence along the Southeasterly boundary of said Lot in a Northeasterly direction, a distance of 50 feet; thence leave said Southeasterly boundary in a Northwesterly direction, parallel to the Southwesterly boundary of said Lot, a distance of 100 feet to a point on the Northwesterly boundary of said Lot 6; thence along said Northwesterly boundary in a Southwesterly direction, a distance of 50 feet to the most Westerly corner of said Lot 6; thence along the Southwesterly boundary of said Lot in a Southeasterly direction, a distance of 100 feet to the point of beginning.

#### PARCEL VI:

Lot 1, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

#### PARCEL VII:

A portion of Rancho Bolsa Nueva Y Moro Cojo, being a part of that certain tract of land conveyed to Charles Rizzo, et ux, by Deed dated September 3, 1948, recorded in Book 1087 of Official Records at Page 413, Monterey County Records, said part being more particularly described as follows:

Beginning at the intersection of the center line of Davis Street, 50 feet wide, with the center line of Preston Street, 66 feet wide, as said streets are shown on the Map of the Town of Castroville, filed March 26, 1869 in Map Book One, Cities and Towns, at Page 54 therein, Monterey County Records; thence from said place of beginning along said center line of Preston Street between Block XI and XXXIX, as said Blocks are shown on said filed map

1. N. 42° 27' E., 364.0 feet; thence leaving last mentioned center line
2. N. 47° 28' W., 151.0 feet, at 33.0 feet intersect the Southeasterly boundary of said Block XI, 151.0 feet to a point; thence
3. S. 42° 27' W., 364.0 feet at 161.46 feet a 3/4" diameter iron pipe, at 339.0 feet a 3/4" diameter iron pipe standing in said Southwesterly line of said Block XI, 364.0 feet to a point in said center line of Davis Street, thence along last mentioned center line
4. S. 47° 28' E., 151.0 feet to the place of beginning.

Excepting therefrom that portion of said land lying within Davis Street and Preston Street as the same existed September 3, 1948.

Together with that portion of the Northeastly one-half of Davis Street, title to which would pass by a conveyance describing said property.

PARCEL VII(A):

The westerly half of Preston Street, lying Northerly of Davis Street as disclosed by Resolution No. 85-285, recorded May 28, 1985 in Reel 1842 of Official Records, at Page 708.

PARCEL VIII:

That certain "Remainder Parcel" as shown and so designated on the map entitled "Tract No. 1256 Chapin Affordable Housing Project", recorded March 19, 1996 in Volume 19, "Cities and Towns", Page 18, Official Records, Monterey County.

APN: 030-041-008 (Parcel I, IA), 030-041-003 (Parcel II), 030-041-001 (Parcel III, IIIA), 030-041-004 (Parcel V), 030-041-005 (Parcel VI), 030-011-009 (Parcel IV), 030-011-011 (Parcel VII), 030-054-014 (Parcel VIII)







**EXHIBIT C**  
Sea Garden Apartments  
Castroville, CA

**Scope of Development**

Sea Garden Apartments is new construction of 59 two and three-bedroom apartments. Three bedroom units will be townhomes, with the living-room, kitchen, dining area and bathroom on the first floor and additional bedrooms and a bathroom on the second floor. Two-bedroom units will be on a single level. Three Units will be fully accessible, with roll-in showers, lowered countertops, stove etc.

Seven apartments are "adaptable." They have a bedroom and bath on first floor and are designed to accommodate a wheelchair.

Two-bedroom apartments: 899 square feet /one bath.

The three bedroom apartments are 1,160 square feet /two full baths.

**Construction and Amenities and Related Facilities**

The design of the buildings is appropriate for the City of Castroville and ties into the character of the existing neighborhood by scale, massing, detail, finish materials, and color.

A variety of plants and trees will be provided, with an emphasis on native, drought-tolerant species. A section of the property will be allocated to a community garden to be shared by the tenants.

Construction will be slab-on-grade, wood frames for walls and upper floors. Exterior will be cellulose/cement hardboard siding, vinyl windows, metal-clad exterior doors, and composition asphalt shingles on the roof.

The interior will consist of painted, textured sheetrock wallboard and sheet vinyl floor covering at least 3/32 inch thick for light/ medium traffic areas and at least 1/8 inch thick for heavy traffic areas.

Carpeting on stairs and bedrooms will be HUD/FHA UMD compliant. Interior surfaces will be finished with low VOC paint over textured wallboard. Windows will have vertical blinds.

Appliances and amenities will include Energy Star gas ovens and stoves, frost free refrigerators, garbage disposals, washers and dryers, and fire retardant window blinds.

A residents' center will provide a community meeting room with a kitchen, a computer learning center, and manager's office.

**EXHIBIT D**  
**Sea Garden Apartments**  
**Schedule of Performance**

<b>Scheduled</b>		<b>Actual</b>
	<b>Site</b>	
Sep-11	Site Acquired	
	<b>Permits and Environmental Approvals</b>	
	Site Plan Review/ tentative Map	Mar-09
	CEQA	Mar-11
	NEPA	May-11
Jul-11	Final Map	
	<b>Acquisition and Construction Financing</b>	
	<b>Commitment dates</b>	
	HOME	Feb-11
28-Jun-11	Monterey County	
	Commercial Lender	Jun-11
	<b>Permanent Financing</b>	
	<b>Commitment dates</b>	
	Bonneville Mortgage	Sep-10
Jun-11	Monterey County	
	Tax Credit Allocation	Sep-11
	<b>Loan Closing and Construction</b>	
	Monterey RDA - 1st Installment	Sep-11
	Monterey RDA - 2nd Installment	Jan-12
	Construction Loan	Mar-12
	HOME	Mar-12
	Equity	Mar-12
	Pull Building Permits	Mar-12
	Construction Complete	May-12
	100% Lease-up	Jul-12

**EXHIBIT E  
PROJECT COST AND APPROVED FINANCING SOURCES**

**Project Name: Sea Garden Apartments**

**Date: June 7, 2011**

**Sources of Funds**

<b>Permanent Sources</b>	<b>Total</b>	<b>Per Unit</b>	<b>Comments</b>
County RDA Loan	\$ 2,300,000	\$ 38,983	\$1,800,000 committed
1st Mortgage	\$ 2,840,322	\$ 48,141	Committed
Tax Credit Investor Proceeds	\$ 7,393,682	\$ 125,317	Assumes \$0.86/\$1
HOME (CHDO allocation)	\$ 2,500,000	\$ 42,373	Committed
Deferred Developer Fee	\$ 450,000	\$ 7,627	Committed
<b>TOTAL</b>	<b>\$ 15,484,004</b>	<b>\$ 262,441</b>	

**Uses of Funds**

<b>Land</b>	<b>Total Cost</b>	<b>Per Unit</b>	<b>Comments</b>
Land Cost	\$ 2,360,000		
Title & Escrow -- Land Closing			
Legal -- Land Closing + Holding Costs			
<b>Subtotal, Land Costs</b>	<b>\$ 2,360,000</b>	<b>\$ 40,000</b>	
<b>Hard Costs</b>	<b>Total Cost</b>	<b>Per Unit</b>	<b>Comments</b>
Demolition			
Off-Sites			
Environmental Remediation			
Site Improvements	\$2,415,586	\$ 40,942	
Structures	\$6,850,339	\$ 116,107	
Commercial Tenant Improvements			
Podium			
Common Furnishings	\$50,000	\$ 847	
Photovoltaic System			
General Requirements			
Contractor Overhead & Profit			
Contractor Bond and Insurance			
Contingency	\$463,296	\$ 7,852	
<b>Subtotal, Hard Costs</b>	<b>\$ 9,779,221</b>	<b>\$ 165,750</b>	
<b>Soft Costs</b>	<b>Total Cost</b>	<b>Per Unit</b>	<b>Comments</b>
Construction Manager	\$ -	\$ -	\$ -
Architectural & Engineering	\$ 280,000	\$ 4,746	
Construction Mngmt/Prev Wage Mntng			
Construction Loan Fees & Expenses	\$ 800,200	\$ 13,563	Includes Interest
Predev Interest			
Construction Period Interest			
Environmental			
Appraisal	\$ 15,000	\$ 254	Includes Market Study
Real Estate Taxes During Const.			
Insurance During Construction	\$ 103,739	\$ 1,758	Includes Utils & Environmental
Permanent Loan fees and expenses	\$ 38,403	\$ 651	
County RDA Loan Origination Fee			
Market Study			
Audit			
Local Permits & Fees	\$ 800,001	\$ 13,559	
Tax Credit Monitoring Fee	\$ 60,579	\$ 1,027	
Legal Fees -- Organization			
Legal Fees -- Const. Loan Closing			
Legal Fees -- Perm Loan Closing			
Legal Fees -- Syndication	\$ 45,000	\$ 763	
Syndication Consultant			
Title & Escrow -- Construction Loan			
Title & Escrow -- Mortgage Loan			
Title & Escrow -- Syndication			
Marketing - Residential	\$ 29,500	\$ 500	
Printing Costs			
Developer Fee	\$ 958,451	\$ 16,245	
Capitalized Replacement Reserve	\$ -		
Capitalized Operating Reserve	\$ 119,900	\$ 2,032	
Soft Cost Contingency	\$ 94,010	\$ 1,593	
<b>Subtotal, Soft Costs</b>	<b>\$ 3,344,783</b>	<b>\$ 56,691</b>	
<b>Total Development Cost</b>	<b>\$ 15,484,004</b>	<b>\$ 262,441</b>	



**EXHIBIT F**  
**PROMISSORY NOTE SECURED BY DEED OF TRUST**

PROMISSORY NOTE SECURED BY DEED OF TRUST  
TO THE REDEVELOPMENT AGENCY OF THE  
COUNTY OF MONTEREY, CALIFORNIA

\$2,300,000

Salinas, California  
\_\_\_\_\_, 2011

FOR VALUE RECEIVED, COMMUNITY HOUSING IMPROVEMENT SYSTEMS & PLANNING ASSOCIATION, INC., a California corporation, ("Borrower"), hereby promises to pay to THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, CALIFORNIA ("Agency"), a public body, corporate and politic, or order, the principal amount of TWO MILLION THREE HUNDRED THOUSAND Dollars (\$2,300,000.00) pursuant to a Subsequent Agreement dated \_\_\_\_\_, 2011 between the Borrower and the Agency (the "Subsequent Agreement"), incorporated herein by this reference. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Subsequent Agreement. The obligation of the Borrower to the Agency hereunder is subject to the terms of the Subsequent Agreement, this Note, and a deed of trust (the "Agency Deed of Trust") of even date herewith given by the Borrower to the Agency for the purpose of securing this Note. Said documents are public records on file in the offices of the Agency, and the provisions of said documents are incorporated herein by this reference.

1. This Note evidences the terms of the obligation of the Borrower to the Agency for the repayment of funds loaned by the Agency ("Agency Loan") to finance the acquisition of land relating to the development of affordable housing on that property (the "Property") as described in the Subsequent Agreement in connection with the development and construction of the Property with 58 units of rental housing, 28 of which (not more than 49%) will be made affordable to low income households, as described in the Subsequent Agreement (hereinafter, the "Project"). Section 3.2 of the Subsequent Agreement, and the attachment to the Subsequent Agreement entitled "Declaration of Restrictive Covenants" (Exhibit I) incorporated herein by this reference, contain requirements which restrict the use of certain units on the Property to rental housing restricted to low and very low income households at a cost that is affordable to such households (the "Low Income Housing Requirements").

2. The outstanding principal balance of the Loan shall bear interest at the rate of three percent (3%) per annum, commencing on the date that escrow is closed on permanent financing for the Project.

3. This Note is payable at the office of the Agency located at 168 W. Alisal Street, Salinas, California 93901 or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

4. The Agency Loan is a limited recourse obligation of the Borrower. Neither Borrower nor any other party shall have any personal liability for repayment of the Agency Loan

except as provided in the Subsequent Agreement. Except as provided therein, the sole recourse of the Agency under the Subsequent Agreement, this Note and the Agency Deed of Trust for repayment of the Agency Loan shall be the exercise of its rights against the related security thereunder.

5. The Loan shall be due and payable in full fifty five (55) years after the issuance of a Certificate of Occupancy for the Project.

6. In addition, the Agency, at its option, may declare the Agency Loan immediately due and payable, in the event that Borrower:

(a) fails to fulfill its obligations to the Agency under the Subsequent Agreement, this Note or the Agency Deed of Trust, or any agreement or instrument executed in connection herewith (including applicable cure periods), or

(b) fails to comply with the Low Income Housing Requirements, provided that Borrower shall have sixty (60) days to cure this failure and provide satisfactory evidence to the Agency of such cure.

7. Except as provided in the Subsequent Agreement, in the event that Borrower sells, transfers, assigns or refinances the Property, the affordable housing units or any portion thereof or interest therein, without the prior written approval of the Agency or designee, the Agency Loan shall immediately be due and payable.

8. The Borrower agrees for itself, its successors and assigns, that the use of the Property shall be for the development of rental housing designed for occupancy by and affordable to low and very low income households and for no other purpose, as set forth in the Subsequent Agreement.

9. The Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. The Borrower hereby agrees to pay all costs and expenses, including reasonable attorneys' fees, which may be incurred by the holder hereof, in the enforcement of this Note, the Agency Deed of Trust or any term or provision of either thereof.

10. Upon the failure of the Borrower to perform or observe any other term or provision of this Note, or upon the occurrence of any event of default under the terms of the Agency Deed of Trust or the Subsequent Agreement (after the expiration of applicable cure periods), the holder may exercise its rights or remedies thereunder.

11. The Borrower shall have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty.

12. No judgment, or execution thereon, entered in any action, legal or equitable on this Note, shall be enforced personally against Borrower or any partner, member, shareholder, director or officer of Borrower, but shall be enforced only against the property described in the Agency Deed of Trust securing the Note.

BORROWER

COMMUNITY HOUSING IMPROVEMENT SYSTEMS &  
PLANNING ASSOCIATION, INC., a California corporation

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

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

**EXHIBIT G**  
**DEED OF TRUST AND SECURITY AGREEMENT**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Redevelopment Agency of the County of Monterey  
Redevelopment and Housing Office  
168 West Alisal Street, 3rd Floor  
Salinas, CA 93901  
Attention: Director

No fee for recording pursuant to  
Government Code Section 27383

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DEED OF TRUST AND SECURITY AGREEMENT

Sea Garden Apartments, Castroville

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made as of \_\_\_\_\_, 2011, by and among Community Housing Improvement Systems & Planning Association, a California corporation, ("Trustor"), First American Title Company, a California corporation ("Trustee"), and the Redevelopment Agency of the County of Monterey, a public body, corporate and politic ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the County of Monterey, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

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

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

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

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

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

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

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

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

FOR THE PURPOSE OF SECURING:

A. Payment of just indebtednesses of Trustor to Beneficiary as set forth in the Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

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

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Section 1.2 below).

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

ARTICLE 1:  
DEFINITIONS

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

Section 1.1 The term "Subsequent Agreement" means that certain Subsequent Agreement between Trustor and Beneficiary, dated as of \_\_\_\_\_, 2011, providing for the Beneficiary to loan to the Trustor Two Million Three Hundred Thousand Dollars (\$2,300,000.00) in the form of a Note, for the acquisition of the Property.

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Promissory Note, the Subsequent Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means that certain promissory note in the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000.00) of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (Copies of the Note are on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Principal" means the amount required to be paid under the Note.

Section 1.5 The term "Interest" means the amount of interest required to be paid under the Note.

ARTICLE 2:  
MAINTENANCE AND MODIFICATION OF  
THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

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

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation



of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

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

#### Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of roads, public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law. As to these exceptions, Beneficiary will grant or approve and/or direct the Trustee to grant or approve such easements.

### ARTICLE 3: TAXES AND INSURANCE; ADVANCES

#### Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, at least ten (10) days prior to the date of delinquency, all taxes, assessments, charges and levies, if any, imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the foreclosure of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve

account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

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

### Section 3.2 Provisions Respecting Insurance.

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

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

### Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

## ARTICLE 4: DAMAGE, DESTRUCTION OR CONDEMNATION

### Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made

payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. Following an Event of Default, the Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. Notwithstanding the provisions of this Section, the Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (when taking into account the Funds) has sufficient funds to rebuild.

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

Section 5.1 Other Agreements Affecting Property.

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

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal and Interest.

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

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

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

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6:  
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations

relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as are used in construction or operation of the improvements to be constructed on the Property or as may be customarily kept and used in and about residential property.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above hereinafter referred to a "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of

any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

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

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under the Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7:  
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute Events of Default: (1) failure to make any payment to be paid by Trustor under the Loan Documents within ten (10) days following written notice such payment is due and has not yet been paid; or (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination, subject to applicable notice and cure periods, if any, included in the Loan Documents.

With respect to any right to cure or cure period provided in this Deed of Trust or the other Loan Documents, performance of a cure by any entity or partner of Trustor shall have the same effect as would like performance by Trustor.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, subject to any applicable notice and cure periods, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

Subject to any applicable notice and cure periods, if an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Monterey County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

#### Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

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

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

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



Section 7.5 Receiver.

Subject to the rights of senior mortgage lenders under approved financing, if an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

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

Section 7.7 No Waiver.

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

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

Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

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

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8:  
MISCELLANEOUS

Section 8.1 Amendments.

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

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and that all obligations under the Loan Documents have been fully performed, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

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

Redevelopment Agency of the County of Monterey County  
Redevelopment and Housing Office  
168 West Alisal Street, 3rd Floor  
Salinas, CA 93901  
Attention: Director

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

Community Housing Improvement Systems & Planning Association  
295 Main Street, Suite 100  
Salinas, CA 93901  
Attention: President/CEO

Copies of notices to Trustor shall also be sent to any limited partner investor of Trustor at an address to be provided hereafter by Trustor.

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

Section 8.4 Successors and Joint Trustors.

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

Section 8.5 Captions.

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

Section 8.6 Invalidity of Certain Provisions.

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

Section 8.7 Governing Law.

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

Section 8.8 Gender and Number.

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

Section 8.9 Deed of Trust, Mortgage.

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

Section 8.10 Actions.

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

Section 8.11 Substitution of Trustee.

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



STATE OF CA )SS  
COUNTY OF Monterey )

On The 15th, before  
me, Marisol G. Morales, Notary Public, personally  
appeared Normand V. Kolpin

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

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

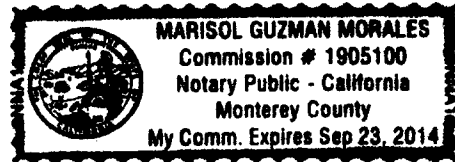
WITNESS my hand and official seal.

Signature

Marisol G. Morales

My Commission Expires: Sep 23, 2014

Notary Name: Marisol G. Morales  
Notary Registration Number: 1905100



*This area for official notarial seal*

Notary Phone: (831) 518-0637  
County of Principal Place of Business: Monterey

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STATE OF \_\_\_\_\_ )SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before  
me, \_\_\_\_\_, Notary Public, personally  
appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature

\_\_\_\_\_

My Commission  
Expires: \_\_\_\_\_

*This area for official notarial seal*

Notary  
Name: \_\_\_\_\_  
Notary Registration  
Number: \_\_\_\_\_

Notary  
Phone: \_\_\_\_\_  
County of Principal Place of  
Business: \_\_\_\_\_

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

Lot 3, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

PARCEL I(A):

The Southeasterly one-half of Speegle Street (now abandoned) lying contiguous to Lot 3, Block XXXII as apportioned to said Lot 3 pursuant to that Order of Abandonment recorded October 24, 1956 in Volume 1745, Page 527, Official Records.

PARCEL II:

That portion of Lot 6, in Block XXXII, as said Lot and Block are shown and designated on that certain Map entitled, "Map of the Town of Castroville", filed September 2, 1887 in Volume 1 of Cities and Towns at Page 55, Records of Monterey County, California, described as follows:

Beginning in the Southeasterly line of said Lot 6 at the most Easterly corner of that certain parcel of land described in the Deed to Luz Arroyo, recorded September 14, 1954 in Volume 1552 of Official Records at Page 126, Records of said County; thence from said point of beginning along said Southeasterly lot line:

- (1) N. 42° 54' E., 50 feet; thence leave said lot line and running
- (2) N. 47° 03-1/2' W., 100 feet, more or less, to a point in the Northwesterly boundary of said Lot 6; thence along las mentioned boundary
- (3) S. 42° 54' W., 50 feet to the most Northerly corner of said parcel of land: thence leave last mentioned boundary and running along the Northeasterly boundary of said parcel of land
- (4) S. 47° 03-1/2' E., 100 feet, more or less, to the point of beginning.

PARCEL III:

Lots 4 and 5, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

Together with that portion of the Southwesterly one-half of Davis Street, title to which would pass by a conveyance describing said lot.

PARCEL III(A):

The Southeasterly one-half of Speegle Street (now abandoned) lying contiguous to Lot 4, Block XXXII as apportioned to said Lot 4 pursuant to that Order of Abandonment recorded October 24, 1956 in Volume 1745, Page 527, Official Records.

PARCEL IV:

That certain 3.024 acre parcel of land shown and so designated of that certain "Record of Survey" map filed for record January 30, 1958 in Volume X-1 of Surveys at page 159, records of Monterey County.



Excepting therefrom all that property described in Grant Deed executed by Frank Aberin, a single man, to Pedro Muna, et ux, recorded January 26, 1970 in Reel 637 of Official Records of Monterey County, California, at page 127.

More particularly described as follows:

Beginning at the northwesterly terminus of Course (1) of "Parcel 1" as said parcel is described and so designated in "Exhibit A" of that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County and running,

- 1) S. 42° 54' 00" W., 25.00 feet; thence running along the northeasterly right-of-way of Davis Street
- 2) N. 47° 03' 30" W., 183.08 feet to the southeasterly corner of Tract No. 1264, Chapin Affordable Housing Project, as said subdivision is shown and recorded in Volume 19 of Cities and Towns at Page 18, records of Monterey County, California thence leaving said northeasterly right-of-way of Davis Street and running along said southeasterly boundary of said subdivision
- 3) N 42° 54' 00" E., 364.27 feet; thence leaving said southeasterly boundary of said subdivision
- 4) S. 47° 03' 30" E., 183.08 feet to the northeasterly boundary of "Parcel 1" as said parcel is described and so designated in "Exhibit A" of that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County; thence running along the common boundary between "Parcel 1" and "Parcel 2" as said parcels are described in the above referenced document.
- 5) S. 42° 54' 00" W., 339.27 feet to the Point of Beginning.

Said property is described as "Parcel 2" in that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County.

#### PARCEL IV(A):

An easement for drainage and the construction and maintenance of slopes, 25 feet in width, lying immediately adjacent to and southeasterly of the following described line:

Beginning at the most southerly corner of that certain 3.024 acre parcel, as said parcel is shown on that certain map entitled, "Record of Survey of a Portion of Block XL, etc.", recorded in Volume X-1 of Surveys at Page 159, records of Monterey County, California, and running thence N 42° 54' E., 25.00 feet to the True point of beginning; thence

- 1) N 42° 54' E., 337.83 feet to a 1-1/2" iron pipe.

#### PARCEL V:

A portion of Lot 6, in Block XXXII, as shown on the map entitled, "Town of Castroville," filed September 2, 1887 in the Office of the County Recorder of the County of Monterey, State of California, in Volume 1 of Maps, Cities and Towns, at Page 55, more particularly described as follows:

BEGINNING at the most Southerly corner of said Lot 6 and running thence along the Southeasterly boundary of said Lot in a Northeasterly direction, a distance of 50 feet; thence leave said Southeasterly boundary in a Northwesterly direction, parallel to the Southwesterly boundary of said Lot, a distance of 100 feet to a point on the Northwesterly boundary of said Lot 6; thence along said Northwesterly boundary in a Southwesterly direction, a distance of 50 feet to the most Westerly corner of said Lot 6; thence along the Southwesterly boundary of said Lot in a Southeasterly direction, a distance of 100 feet to the point of beginning.

#### PARCEL VI:

Lot 1, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

#### PARCEL VII:

A portion of Rancho Bolsa Nueva Y Moro Cojo, being a part of that certain tract of land conveyed to Charles Rizzo, et ux, by Deed dated September 3, 1948, recorded in Book 1087 of Official Records at Page 413, Monterey County Records, said part being more particularly described as follows:

Beginning at the intersection of the center line of Davis Street, 50 feet wide, with the center line of Preston Street, 66 feet wide, as said streets are shown on the Map of the Town of Castroville, filed March 26, 1869 in Map Book One, Cities and Towns, at Page 54 therein, Monterey County Records; thence from said place of beginning along said center line of Preston Street between Block XI and XXXIX, as said Blocks are shown on said filed map

1. N. 42° 27' E., 364.0 feet; thence leaving last mentioned center line
2. N. 47° 28' W., 151.0 feet, at 33.0 feet intersect the Southeasterly boundary of said Block XI, 151.0 feet to a point; thence
3. S. 42° 27' W., 364.0 feet at 161.46 feet a 3/4" diameter iron pipe, at 339.0 feet a 3/4" diameter iron pipe standing in said Southwesterly line of said Block XI, 364.0 feet to a point in said center line of Davis Street, thence along last mentioned center line
4. S. 47° 28' E., 151.0 feet to the place of beginning.

Excepting therefrom that portion of said land lying within Davis Street and Preston Street as the same existed September 3, 1948.

Together with that portion of the Northeastly one-half of Davis Street, title to which would pass by a conveyance describing said property.

PARCEL VII(A):

The westerly half of Preston Street, lying Northerly of Davis Street as disclosed by Resolution No. 85-285, recorded May 28, 1985 in Reel 1842 of Official Records, at Page 708.

PARCEL VIII:

That certain "Remainder Parcel" as shown and so designated on the map entitled "Tract No. 1256 Chapin Affordable Housing Project", recorded March 19, 1996 in Volume 19, "Cities and Towns", Page 18, Official Records, Monterey County.

APN: 030-041-008 (Parcel I, IA), 030-041-003 (Parcel II), 030-041-001 (Parcel III, IIIA), 030-041-004 (Parcel V), 030-041-005 (Parcel VI), 030-011-009 (Parcel IV), 030-011-011 (Parcel VII), 030-054-014 (Parcel VIII)

**EXHIBIT H**  
**OPERATING AGREEMENT**  
**By and Between**  
**REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY (AGENCY)**  
**And**  
**COMMUNITY HOUSING IMPROVEMENT SYSTEMS & PLANNING ASSOCIATION**

OPERATING AGREEMENT

By and Between

REDEVELOPMENT AGENCY OF THE  
COUNTY OF MONTEREY ("Agency"),

And

COMMUNITY HOUSING IMPROVEMENT SYSTEMS & PLANNING ASSOCIATION,  
INC., a California nonprofit public benefit corporation

Relating to the Management and Operation of  
Sea Garden Apartments  
in Monterey County, California

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## OPERATING AGREEMENT

THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, CALIFORNIA ("Agency") and COMMUNITY HOUSING IMPROVEMENT SYSTEMS & PLANNING ASSOCIATION, INC., a California nonprofit public benefit corporation ("Developer") hereby agree as of this \_\_\_\_\_, 2011 as follows:

### Recitals

- A. Developer is or will be the owner of that certain real property located in Castroville, California and commonly known as Sea Garden Apartments, which will be approximately 3.4 acres of a larger 4.8 acre parcel, more particularly described in Exhibit A attached hereto (the "Property") (which description is subject to change upon recordation of a final map subdividing the larger parcel).
- B. Agency and Developer have entered into that certain Subsequent Agreement dated as of the date hereof ("Agreement"), respecting the development, financing, construction, management and operation of the Property as an affordable housing project ("Project"). The Agreement is incorporated herein by this reference.
- C. Pursuant to the Agreement, Developer will undertake and be responsible for the development and operation of the Project pursuant to the terms of the Agreement.
- D. Agency has assisted Developer in the financing of the Project and has assisted with costs associated with acquisition and development costs of the Project, which includes a total of 59 residential rental units, related infrastructure and community facilities.
- E. Developer has agreed to operate, use and maintain the Property and the Project in accordance with this Operating Agreement.

Now, therefore, in consideration of their mutual promises set forth herein, the Agency and Developer hereby agree as follows:

### ARTICLE 1. SUBJECT OF AGREEMENT

#### 1.1 Definitions

All capitalized terms used in this Operating Agreement and not expressly defined herein have the respective meanings set forth in the following list of defined terms:

"Affiliate" means any entity which is under the Control of or who Controls Developer or a wholly owned subsidiary of Developer.

"Agency" means the Redevelopment Agency of the County of Monterey, California, a public body, corporate and politic. Unless specifically provided otherwise in this Agreement, any requirement in this Agreement that a matter is to be approved by the "Agency" shall be satisfied by the written approval by the Executive Director of the Agency.

“Agency Loan” shall mean a maximum of \$2,300,000 in loan amounts disbursed for payment of Project Costs in accordance with the Subsequent Agreement.

“Agency Loan Documents” shall mean the Loan Agreement and Promissory Note between Agency and Developer, and other security instruments or other agreements and documents to be executed by Developer and/or Agency in connection with the Agency Loan.

“Agreement” means that Subsequent Agreement between Agency and Developer dated as of the Effective Date of the Subsequent Agreement.

“Annual Fees” shall mean a partnership management fee of \$12,000, increasing by 3% annually, and an investor asset management fee not to exceed \$5,000 increasing by 3% annually.

“Annual Income” shall mean the total annual income of all persons in a household as calculated in accordance with 24 CFR 92.203.

“Business Day” shall mean a day which is not a Saturday or Sunday or a day on which banking institutions located in New York or California are authorized or required to remain closed.

“Certificate of Occupancy” means the certificate issued by the County of Monterey certifying that the Property may be occupied as intended, pursuant to the Agreement.

“Completion” means the point in time when each of the conditions set forth in Section 4.24 of the Subsequent Agreement shall have occurred, as evidenced by the issuance of the Certificate of Completion in accordance with Section 4.24 of the Agreement.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, joint venture or partnership.

“County” means the County of Monterey, a political subdivision of the State of California.

“Covenants” means the Regulatory Agreement and Declaration of Restrictive Covenants, substantially in the form attached to the Agreement as Exhibit “I.”

“Default” shall have the meaning set forth in Section 11.1 hereof.

“Deferred Development Fee” means the portion of the Development Fee that is not paid from development proceeds, including all partner capital contributions.

“Developer” shall mean Community Housing Improvement Systems & Planning Association, Inc., a California nonprofit public benefit corporation.

“Financing Documents” shall mean those documents necessary to finance the development of the Project pursuant to the Agreement, and identified in Exhibit “E” to the Agreement, describing the approved Estimate of Project Costs and Approved Financing Sources.



“Force Majeure” or “Force Majeure Event” shall mean the following events, provided that they actually delay and interfere with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such interference: War; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers (other than the general contractor); acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the Agency shall not excuse performance by such party); the imposition of any applicable moratorium by a Governmental Authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until the party claiming such delay and interference delivers to the other parties written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within fifteen (15) days after it obtains actual knowledge of the event. No Force Majeure Event excuses or extends timely performance of financial obligations.

“Force Majeure Delay” shall mean any delay in commencing or completing performance of any obligation under this Operating Agreement, proximately caused by the occurrence of any Force Majeure Event; provided that no credit or extension of time shall be granted for the period of delay between the time a party claiming a Force Majeure Delay is required to give notice of a Force Majeure Event and the time the party actually gives such notice.

“Governmental Authority” means the United States, the State of California, the County of Monterey or any other political subdivision in which the Project is located, and any court or political subdivision, agency or instrumentality having jurisdiction over the Project.

“Gross Income” means: (a) all rents and payments received by Developer from tenants and occupants for the use and occupancy of the Project (including revenue from laundry facilities) but shall not include any security deposits (unless and until such deposits have been forfeited by tenants and are payable to Developer) or insurance or condemnation proceeds (except as paid to Developer for loss of rents);

“Housing Manager” shall mean CHISPA Housing Management, Inc. or such other management company, approved by the Agency pursuant to Section 6.4 of this Operating Agreement, under contract with Developer who is responsible for the management and operations of the Project.

“Insurance Policies” shall have the meaning set forth in Section 2.3 of this Operating Agreement.

“Low Income Household” shall mean a household with an Annual Income that does not exceed eighty percent (80%) of Area Median Income, adjusted for Actual Household Size.

“Net Income” means Gross Income minus Operating Expenses, Deferred Development Fees and permitted Annual Fees. In this project, net income is the same as “Residual Receipt” income.

“Operating Expenses” means the following and related expenditures required to be made for the operation or use of the Project or any portion thereof, which are reasonable and normal in business enterprises similar to the Project: Required debt service; trustee’s and issuer’s fees and any other periodic cost; payroll and payroll taxes and expenses; employee benefits; real estate and personal property taxes and assessments, if any; in lieu taxes to the County of Monterey; license and permit fees; charges for public services such as water and sewer and all utility charges for gas and electricity; goods, commodities, materials, equipment, furnishings, fixtures (to the extent that such equipment, furnishings and fixtures are not included in Project Costs or paid for out of the Replacement Reserve); painting, cleaning, maintenance and repair expenses and services; premiums and payments to meet any deductible requirement under any of the Insurance Policies (to the extent that such payments are not paid for out of the Replacement Reserve); pest control; gardening; rubbish removal; security services; insurance premiums; advertising and promotion paid to unrelated third parties; an annual loan monitoring fee of \$4,000 payable to the Agency, leasing commissions paid to unrelated third parties; property management fee (provided any such property management fee shall not include any payment of any item which is deducted separately as Operating Expenses); payments to the Replacement Reserve; repayment of any operating deficit loans to a partner; payment of any tax credit adjusters due to the limited partner; accounting and legal expenses directly attributable to the Project which are customarily incurred in the operation of projects comparable to the Project; and the cost of preparing any audit or report required by the Agreement, or this Operating Agreement. Provided, that Operating Expenses shall not include long term capital improvements, repairs or replacements paid out of insurance proceeds received by Developer or any affiliate connected to Developer and related to the Property, or depreciation of buildings or other similar non-cash items of expense or deduction from income.

“Permitted Developer Transfer” means any disposition of Developer’s interest in this Operating Agreement and/or the Project to (a) another partnership in which an affiliate of Developer is a general partner and directly or indirectly maintains managerial control, or (b) an affiliate of Developer or another nonprofit public benefit corporation under common control with Developer in accordance with this Operating Agreement, and with respect to which the Agency reasonably determines that the resulting entity has the experience and ability to perform Developer’s obligations hereunder.

“Project” shall mean the development and construction of 59 rental units (the “Housing Units”) and related development, including the features and amenities described in the Agreement, constructed pursuant to the Agreement.

“Project Costs” shall have the meaning ascribed to such term in the Agreement.

“Property” means that property in the County of Monterey and described in the “Legal Description” attached to the Agreement as Exhibit “A” and incorporated herein by reference, which description is subject to change upon recordation of a final map subdividing the larger parcel.

“Replacement Reserve” shall mean a reserve for capital improvements, as provided in Section 2.5 of this Operating Agreement.

“Subsequent Work of Improvement” shall mean any alteration of, addition to, demolition or change in the Project which occurs following Completion, but excluding any Punch List items that are completed subsequent to Completion.

“Very Low Income Household” shall mean a household with an Annual Income that does not exceed fifty percent (50%) of Area Median Income, adjusted for Actual Household Size.

“Year” shall mean the first calendar year period after the first disbursement of the Agency Loan, and each subsequent calendar year period thereafter.

## 1.2 Purpose of Operating Agreement

(a) The purpose of this Operating Agreement is to set forth the agreement of the parties concerning the operation, use and maintenance of the Property and the Project during the term hereof.

(b) The Property is located in the County of Monterey, and will be owned by Developer.

(c) In the event that any general provision of this Section 1.2 conflicts with any specific provision of this Operating Agreement, the specific provision shall be deemed to prevail.

## 1.3 Parties to the Agreement

### 1.4 The Agency

(a) The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California (California Health and Safety Code Sections 33000 et seq).

(b) “Agency” as used in this Agreement includes The Redevelopment Agency of the County of Monterey, California and any successor to its rights, powers and responsibilities.

### 1.5 Developer

(a) Developer is Community Housing Improvement Systems & Planning Association, Inc., a California nonprofit public benefit corporation.

(b) “Developer” as used in this Agreement includes Developer, as of the date hereof, and any assignee or successor to its rights, powers and responsibilities as the result of a permitted Developer Transfer or otherwise approved by the Agency pursuant hereto.

1.6 Prohibition Against Change in Ownership, Management and Control of Developer

(a) The qualifications and identity of Developer are of particular concern to Agency. It is because of those qualifications and that identity that Agency has entered into this Operating Agreement with Developer. Except for a Permitted Developer Transfer, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Operating Agreement except as expressly set forth herein.

(b) During the term of this Operating Agreement, except for a Permitted Developer Transfer, or as specifically permitted by this Operating Agreement, Developer shall not assign all or any part of this Operating Agreement or any right herein, nor make any total or partial sublease, sale, transfer, conveyance or assignment of the whole or any part of the Property or the Project thereon, or appoint or hire a Housing Manager or other management agent for the Property, or enter into an agreement to do any of the foregoing, or accomplish any of the foregoing indirectly, without the prior written approval of the Agency, which approval the Agency may withhold or condition in its sole discretion. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate construction of the Project pursuant to Article 3, or to prohibit or restrict the renting for occupancy of residential units pursuant to Section 5.2. The provisions of this Section 1.6 shall not apply to Permitted Developer Transfers.

(c) Any transfer of Developer's interests, change in the identity of Developer, or the management of the Property not approved by Agency in accordance with this Section 1.6 shall be a Default, entitling Agency to exercise any rights set forth in this Operating Agreement. Notwithstanding this Section, the following transfers are hereby approved:

(1) The transfer of the Property, the Loan and this Agreement to a limited partnership, the managing general partner of which is Community Housing Improvement Systems and Planning, Inc., a California nonprofit public benefit corporation ("Partnership").

(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 Agency, not to be unreasonably withheld.

(5) 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).

(d) Any proposed transferee who is approved by the Agency, as required by paragraph (b), shall have the experience, qualifications and financial ability necessary to fulfill

the obligations undertaken in this Operating Agreement by Developer, shall expressly assume all of the obligations of Developer under this Agreement and shall agree, in a written agreement with Agency, to be subject to all of the conditions and restrictions to which Developer is subject pursuant to this Operating Agreement. Developer shall submit to Agency for review all instruments and other legal documents proposed to effect any transfer of Developer's interest, and any other information requested by Agency to assist in its consideration of such transfer.

(e) The written approval by Agency of a transfer shall constitute a release of the party seeking transfer from its obligations arising hereunder after the date of the transfer, but only to the extent expressly assumed in writing by the permitted transferee. In the absence of such written approval by Agency, and the written assumption by the permitted transferee, no unauthorized sale, lease, transfer, conveyance or assignment of the Property, the Project, or any part thereof or interest therein shall be deemed to relieve Developer or any other party from any obligations under this Operating Agreement.

#### 1.7 No Encumbrances Except the Financing Documents

(a) Notwithstanding Section 1.6, the Covenants and the Agency Loan Documents, together with the Financing Documents, are the only liens and encumbrances permitted to be recorded against the Property and the Project. Nothing in this Section 1.7 shall prohibit the recordation of a memorandum of lease or security instruments in connection with laundry leases, subject to the reasonable approval of the Agency.

(b) Developer shall promptly notify the Agency of any known security instrument or security interest relating thereto that may be created or attached to the Property or the Project whether by voluntary act of Developer or otherwise.

#### 1.8 Term of Operating Agreement

(a) The term of this Operating Agreement shall commence upon the issuance of the Certificate of Occupancy for the Property.

(b) This Operating Agreement shall terminate upon the expiration of fifty-five (55) years from the date of the last issuance of a Certificate of Occupancy for the Property, or the repayment of all Agency Loans, whichever occurs last.

### ARTICLE 2. MAINTENANCE OF THE PROPERTY

#### 2.1 Prohibition of Waste and Obligation to Maintain the Property

Throughout the term of this Operating Agreement, Developer shall not commit or suffer to be committed any material waste or impairment of the Property or the Project, or any part thereof, and shall maintain the Project in a first-class manner that is comparable to similar residential developments in the County of Monterey, to the reasonable satisfaction of the Agency.

#### 2.2 Indemnification

(a) Subject to the limitations set forth in Section 11.7, below, as a material part of the consideration to Agency, Developer agrees and shall indemnify, defend and hold harmless the Agency, the County, and their respective officers, agents and employees, from and against any and all claims, liabilities and losses whatsoever (including but not limited to, damages to property, and injuries to or death of persons, court costs and attorneys fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the development of the Project, and from 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 Developer's performance of this Operating Agreement, including but not limited to any such claims, liabilities or losses which arise out of the performance of this Operating Agreement for the operation of the Project. This indemnification and hold harmless obligation shall not extend to any claim arising solely from the gross negligence or willful misconduct of the Agency, the County, their respective agents, and their respective employees. Developer's performance includes Developer's action or inaction and the action or inaction of Developer's partners, employees, agents, contractors and/or subcontractors.

(b) The provisions of this Section 2.2 shall survive the termination of this Operating Agreement.

### 2.3 Obligation to Maintain Insurance

Developer shall, and shall cause any contractor making substantial improvements pursuant to Section 3.1 to, procure or shall have procured and continuously maintain such insurance policies as are required under this Section 2.3 (individually an "Insurance Policy" and collectively the "Insurance Policies").

#### 2.3.1 Insurance Policies

Developer shall procure or cause to be procured and maintain or cause to be maintained in full force and effect the following Insurance Policies:

(a) Commercial General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than \$2,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations; and including supplementary coverage of Blanket Contractual.

(b) Worker's Compensation Insurance. Worker's compensation insurance in accordance with California Labor Code Section 37000, with a minimum of \$1,000,000 per occurrence for Employer's Liability, covering all persons employed by Developer in connection with this Agreement and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Developer or the Agency or County; 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; and

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

(e) Flood Insurance, to the extent all or a portion of the Property is located in a flood zone, in an amount sufficient to replace the affected Housing Units and related infrastructure.

(f) Builder's Risk Insurance. Throughout the course of any Subsequent Work of Improvement that is "substantial" (as defined in Section 3.1 hereof), 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, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (i) an endorsement for earthquake, unless earthquake insurance is not commercially available at reasonable cost (Agency and Developer acknowledge that earthquake is not currently commercially available at reasonable cost), (ii) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (iii) a "Replacement Cost Endorsement" in amount sufficient to prevent Developer from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Agency and (iv) an endorsement to include coverage for budgeted soft costs. 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 \$25,000 per occurrence (except that earthquake coverage shall carry a deductible equal to 5% of the policy amount, or such other deductible amount as the Agency may determine is acceptable, in light of the cost of the premium for such insurance.

### 2.3.2 Requirements Regarding Insurance

Each Insurance Policy required under Section 2.3.1 (or the particular Insurance Policies specified below) shall:

(a) Be in form and substance as is then standard in California for policies of like coverage;

(b) Be issued by insurance carriers acceptable to the Agency and authorized to transact insurance business in the State of California;

(c) Provide coverage on an occurrence basis;

(d) Provide that the Insurance Policy cannot be canceled, suspended, lapsed or modified upon less than 30 days' prior written notice by registered or certified mail to Developer and Agency; provided, however, that if Developer demonstrates to the satisfaction of the Agency that it is not commercially feasible to obtain an insurance policy having such a provision, it shall be sufficient if the Insurance Policy provides that the insurance carrier will use reasonable efforts to provide such notice to the Agency before the Insurance Policy is canceled, suspended, lapsed or modified;

(e) With respect to the Insurance Policies described in Sections 2.3.1(a), (b) and (c), (i) name Agency, and the County of Monterey and their respective board members, commissioners, directors, officers and employees as additional insured as their interests appear, (ii) provide that the coverage thereof is primary and non-contributory coverage with respect to all additional insured, (iii) provide that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by Developer's insurance;

(f) All policies of insurance provided for in this Article shall be maintained continuously so long as any Agency Note 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. Insurance proceeds shall be used to repair such damage or destruction in the manner set forth in this Agreement.

### 2.3.3 Delivery of Insurance Policies

After delivery of each initial Insurance Policy pursuant to Section 3.7 of the Agreement, not less than 30 days prior to the expiration date of each Insurance Policy required under Section 2.3.1, Developer shall deliver to the Agency: (a) a complete certified copy of each such Insurance Policy or renewal or replacement Insurance Policy [provided, however, that if the insurance carrier agrees in writing to provide such certified copy to the Agency upon request, delivery of a certificate of insurance shall be sufficient for purposes of this clause (a)]; (b) satisfactory evidence of payment of the premium therefor; and (c) a certificate of the insurance broker or agent in form reasonably satisfactory to Agency stating the identity of all carriers, identity of named and additional insured, type of coverage, description of all endorsements, policy limits, deductibles, subrogation waiver, other essential policy terms (e.g. full replacement coverage, tail periods, etc.) and a statement of non cancellation consistent with Section 2.3.2(d). If Developer has not provided Agency with the foregoing proof of coverage and payment within ten (10) business days after receipt of written request therefore, the Agency may, in addition to any other available remedy, without obligation and without further inquiry as to whether such insurance is actually in force, obtain such an Insurance Policy and Developer shall reimburse the Agency for the cost thereof upon demand.

### 2.3.4 Co-Insurer Liability

If on account of Developer's failure to comply with the provisions of this Section 2.3 either Agency or the County of Monterey is adjudged to be a co-insurer by an insurance carrier, then any loss or damage it shall sustain by reason thereof shall be borne by Developer which shall immediately pay the same upon receipt of written demand therefor and evidence of such loss or damage.

### 2.3.5 Compliance with Insurer's Requirements

Developer shall observe and comply with the requirements of all Insurance Policies. Developer also shall perform and satisfy the reasonable requirements of insurance companies writing such types of Insurance Policies so that at all times companies of good standing and



meeting the requirements of Section 2.3.2(b) shall be willing to write or to continue such coverage. Developer shall at all times comply with all rules, regulations, orders and requirements of any recognized organization which establishes fire ratings for structures such as the improvements at the Project.

#### 2.3.6 Blanket Insurance

Any insurance coverage required in this Section 2.3 may be effected by a policy or policies of blanket insurance; provided that (a) the Project (or, in the case of errors and omissions coverage, the contract) is specifically identified therein, by endorsement or otherwise, as included in the coverage provided; (b) the amount of the total insurance allocated to the Project (or contract) shall be such as to furnish protection equivalent to that which would be afforded by separate Insurance Policies in the amounts herein required; and (c) in all other respects any such blanket policy or policies shall comply with all other provisions of this Section 2.3. In any such case Developer shall deliver to Agency a certified copy of such policy.

#### 2.3.7 No Limit on Liability

Agency makes no representation that the limits of liability specified for the Insurance Policies to be carried pursuant to this Section 2.3 are adequate to protect Developer against its undertakings under this Operating Agreement, or to protect any general contractor, architects, engineers or other consultants against their respective undertakings. In no event shall the limits of any coverage maintained or caused to be maintained by Developer limit Developer's liability under this Operating Agreement or limit the liability of any general contractor, architect, engineer or other consultants under their respective contracts, warranties, guarantees and indemnities, Agency shall not be limited to the amount of the insurance premium not paid in the proof of any damages any of them may claim against Developer or any other person arising out of or by reason of failure of Developer, any general contractor, architects, engineers or other consultants to provide and keep in force the Insurance Policies required by this Section 2.3; but Agency shall instead be entitled to recover the full amount of damages available.

#### 2.4 Maintenance and Repairs

Developer agrees to operate and maintain the Property and Project during the term hereof without expense to Agency and the County of Monterey, and to perform all repairs and replacements necessary to maintain and preserve the Property and Project in a decent, safe, operable and sanitary condition and in compliance with all Governmental Requirements. Developer agrees to keep the Property and the Project clean and clear of refuse, graffiti and obstructions, and to dispose of all garbage, trash and rubbish in a neat and orderly manner and in compliance with all Governmental Requirements. Developer agrees that Agency and the County shall not be required to perform any maintenance, repairs, or services or to assume any expense in connection with the Property or Project.

#### 2.5 Replacement Reserve

Not later than 24 months after Completion, (as defined in the Agreement), Developer shall establish, fund and thereafter maintain, in a depository approved by the Agency, a reserve

fund (the "Replacement Reserve") to be used exclusively for capital repairs and replacements in accordance with this Section 2.5.

(a) The Replacement Reserve shall remain in the form of cash or shall be invested exclusively in investments that are reasonably approved by Agency. Interest earned on the Replacement Reserve shall be added to the Replacement Reserve.

(b) Developer shall have sole signature authority to expend funds from the Replacement Reserve account; provided, however, that any disbursement shall be for the sole purpose of replacing structural elements or capital equipment of the Project, or for any other Project capital expenditure consistent with maintaining the physical integrity of the Project. For purposes of this Operating Agreement, "capital" expenditures or equipment are those having an expected useful life of five years or more.

(c) Developer shall deposit into the Replacement Reserve an amount equal to \$600 per unit for the first year of operation, and shall make the same level of deposit each year for fifty-five (55) years

(d) Developer shall include in its annual budget report any expenditure from the Replacement Reserve account that has been made since the last report, the current balance in the Replacement Reserve, and the expenditures from the Replacement Reserve anticipated to be made in the next year. In addition, Developer shall prepare and provide to the Agency a written report on any unanticipated expenditure of funds from the Replacement Reserve, as soon as possible but in any case not later than the end of the quarter in which such expenditure is made.

## 2.6 Standard of Maintenance

Any completed work of maintenance or repair shall be at least equal in value, quality and utility to the condition of the improvements before the event giving rise to the work. If maintenance or repairs can be effected more efficiently or at less cost than the work corrected or replaced, but without sacrificing quality or utility, Developer shall not be required to effect work of maintenance or repair of equal value to the improvements corrected or replaced.

## ARTICLE 3. ALTERATION OF PROJECT AND ADDITIONS

### 3.1 Agency Approval Required

Developer shall not make or permit to be made any substantial Subsequent Work of Improvement, without the prior written consent of the Agency. In granting its approval, Agency shall have the right to impose reasonable conditions respecting the proposed work to be performed, comparable to the requirements and conditions set forth in the Agreement respecting the Work of Improvement. In requesting such consent, Developer shall submit to Agency detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. As used herein, "substantial" shall mean at a cost in excess of \$100,000, and shall exclude: (a) installation or replacement of fixtures, furnishings, equipment, and tenant improvements; (b) painting, cleaning and similar work; and (c) work required by law or pursuant to an emergency. Costs shall be aggregated and treated as part of a whole alteration, change or work of improvement for purposes of the preceding sentence if they arise out of, relate to or

address a common event, circumstance or undertaking. In the event of any uncertainty concerning aggregation or concerning an exclusion from the approval requirement, this provision shall be liberally construed in favor of aggregation and the requirement for approval.

### 3.2 Labor Standards

Developer shall comply, and require all contractors and subcontractors employed pursuant to this Article 3 to comply with all applicable labor standards provisions of the California Labor Code and Federal law.

### 3.3 Notice of Nonresponsibility

Within 10 days prior to commencement of any Subsequent Work of Improvement costing in excess of \$25,000, Developer shall give the Agency advance notice in writing of intention to begin said activity in order that non-responsibility notices may be posted and recorded as provided by State and local laws.

### 3.4 Contractor's Bonds

If Developer hires a general contractor that is not an affiliate of Developer, then Developer agrees to procure, or cause the procurement of, contractor's payment and performance bonds covering labor, materials and faithful performance for any Subsequent Work of Improvement exceeding a cost of One Hundred Thousand Dollars (\$100,000). Each such bond shall be in the amount equal to one hundred percent (100%) of the estimated cost of construction as reasonably approved by the Agency. Said bonds and the construction contract must first be approved in writing as to content and form by the Agency. Developer shall, prior to commencement of construction, deliver to the Agency a certificate from a bonding company issuing the aforesaid bonds naming the Agency as an additional insured under said bonds. Developer may substitute one or more letters of credit in form and substance reasonably satisfactory to the Agency in lieu of such contractor's bonds.

### 3.5 No Limitation on Obligation to Maintain

This Article 3 shall not limit or set aside any obligation of Developer under this Operating Agreement to maintain the Property in a decent, safe and sanitary condition, including structural repair and restoration of damaged or worn improvements. The Agency shall not be obligated by this Operating Agreement to make any improvements to the Property or to assume any expense therefor.

## ARTICLE 4. FINANCIAL PROVISIONS

### 4.1 Collection of Gross Income

Developer shall collect and obtain all Gross Income, and shall have the right and obligation to pay all Operating Expenses. Developer shall apply Gross Income first to pay all Operating Expenses. The maximum operating expenses for the first year of operation shall be as shown in the operating budget approved by the State of California Department of Housing and Community Development ("HCD"). Subsequent annual operating budgets will be the HCD

approved budget provided that the annual increase in Operating Expenses does not exceed 3.5%. If the annual increase does exceed 3.5%, Developer shall submit the annual budget to the Agency's Housing and Redevelopment Office for review and approval.

#### 4.2 Priorities in the Use of Gross Income

(a) After paying all Operating Expenses and Annual Fees, the remaining Net Income (Residual Receipts) shall be used to repay any outstanding Agency Loans as well as outstanding Financing Documents, pursuant to the terms thereof. The amount of residual receipt payments shall be calculated so that they are proportional to the Agency's percentage share of total financing in comparison to loans funded with monies, based on final Agency and HCD funding as will be specified in the HCD Regulatory Agreement to be recorded against the Property.

(b) For purposes of calculating the Net Income, Net Income (Residual Receipts) shall mean Gross Income minus the sum of Operating Expenses, Deferred Development Fee and Annual Fees, based on the annual audit in accordance with the approved Operating Budget. Subsequent calculations of residual receipts shall be in conformance with Section 4.1 with regard to increase in Operating Expenses.

### ARTICLE 5. USE OF THE PROPERTY

#### 5.1 Permitted Uses

Developer agrees to use the Property and the Project for the Residential uses specified in this Agreement.

#### 5.2 Residential Uses

5.2.1 Developer shall use the Property for the residential uses described in this Agreement and in the Covenants. The requirements of this Section 5.2 shall continue in effect for fifty-five (55) years from the date of the issuance of a Certificate of Occupancy for the Property. Notwithstanding any provision hereof, in the case of any conflict between the requirements of this Section 5.2, and the requirements of any applicable regulatory agreement, such regulatory agreement shall prevail during the term thereof.

5.2.2 Developer agrees that occupancy of 28 of the dwelling units in the Project shall be restricted to low and very low income households. The primary use of the Project shall be permanent, affordable rental housing.

5.2.3 Household income limits for low and very low income households shall be based on area median incomes published annually by the United States Department of Housing and Urban Development (HUD) for the County of Monterey. Eligibility to occupy a unit in the project shall be based on the income definitions of very low and low income households as described in Section 1.1 of this Agreement.

5.2.4 Developer shall not charge rents for the units in excess of the respective amounts set forth in Section 5.2.5., as such rents may be adjusted from time-to-time on the basis

of the revised schedules of area median incomes published approximately annually by the United States Department of Housing and Urban Development ("HUD"). Agency shall notify Developer in writing of changes, if any, to the applicable maximum incomes and rents prior to the initial rent-up of the units, and subsequently, as such revised schedules are announced by HUD.

5.2.5 The maximum monthly rent, including utility allowance, shall not exceed the following:

Very Low Income Units: One-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for bedroom size

Low Income Units: One-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for bedroom size

The foregoing maximum incomes and rents shall be subject to annual adjustment as provided in Section 5.2.4. During the period that the Project is subject to the tax credit regulatory agreement, the adjustment shall be based on imputed household size of 1.5 persons per bedroom.

5.2.6 Developer shall submit to Agency an annual report (the "Annual Housing Report") required by Health and Safety Code Section 33418. The Annual Housing Report shall include for each unit the rental rate and the income and family size of the occupants. The income information shall be supplied by the tenant in a certified statement on a form provided by Agency. Developer shall submit the Annual Housing Report on or before the end of the first calendar quarter of the year following the year covered by the Annual Housing Report. Developer shall provide for the submission of such information in its leases with tenants of units.

5.2.7 Developer, and any such successors and assigns, shall operate the Residential Units in accordance with the Management Plan described in Section 6.2.

### 5.3 Obligation to Refrain from Discrimination

Developer covenants and agrees for itself, and agrees to cause its successors, assigns and every successor in interest to the Property or any part thereof to covenant and agree, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Developer, 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.

### 5.4 Form of Nondiscrimination and Nonsegregation Clauses

Developer shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry. All such deeds, leases, or

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

(1) In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sublessees, tenants, 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, creed, religion, sex, marital status, national origin or ancestry, in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

#### 5.5 Local, State, and Federal Laws

Developer shall use and operate the Project in compliance with all Governmental Requirements, including but not limited to all applicable County and State health, safety and building codes, planning, general plan and zoning requirements.

#### 5.6 Rights of Access; Inspections and Meetings

Agency and its respective agents and representatives shall have the right, without charges or fees, but not the obligation, to enter the Project at all reasonable times with reasonable notice, including but not limited to normal business hours, for the purpose of inspecting and reinspecting the Project or for the purpose of monitoring compliance with this Agreement or the Security Documents. Developer shall permit entry and full access for such inspections as well as inspections by a Governmental Authority or its agents or representatives. The representatives of the Agency shall be identified in writing by the Agency and such representatives shall report to the management agent prior to any such inspections. Except to the extent of Insurance

maintained or required to be maintained under this Agreement, Agency hereby indemnifies, defends and holds Developer harmless for any injury or damages arising out of any activity of any Agency representative performed and conducted on the Property pursuant to this Section 5.6.

## ARTICLE 6. MANAGEMENT

### 6.1 Obligation to Manage Property

Developer shall manage or cause the Property and the Project to be managed in a prudent and business-like manner, subject to the terms and conditions of this Agreement.

### 6.2 Management Plan

(a) Prior to the Completion, Developer shall prepare and submit to the Agency for approval a Management Plan for the Project. Approval of the Management Plan shall be a condition of Completion.

(b) Developer shall submit the Management Plan and all necessary supporting information in such time to permit the Agency to approve, disapprove or conditionally approve the plan prior to the scheduled Completion Date. At the same time as Developer shall submit the Management Plan, Developer shall submit a schedule of proposed initial rents for all of the dwelling units. After approving the Management Plan, the Agency may not thereafter require changes to the Management Plan, unless the plan as implemented fails to satisfy the requirements of this Article 6. The Management Plan, including such amendments as may be approved by the Agency, shall remain in effect for the term of this Agreement.

(c) The Management Plan shall include, without limitation, the following elements:

(1) Management Agent: Developer shall submit the name and qualifications of any proposed management agent (the "Housing Manager"), who may be an Affiliate of Developer, or a person or management company not otherwise affiliated with Developer. The Agency shall base its respective approval or disapproval of the proposed Housing Manager solely on the experience, qualifications and financial responsibility of the proposed Housing Manager, as provided in Section 6.4.

(2) Management Program: Developer shall describe its proposed management, maintenance, tenant selection, programming and occupancy policies and procedures. Such policies and procedures shall be consistent with this Agreement. The Management Program shall in addition contain an affirmative marketing plan for attracting to the units tenants from those ethnic and racial groups least likely to reside in the Development in the absence of outreach efforts, in compliance with HOME Regulations and requirements. Developer shall be responsible for implementing the approved plan at initial marketing of the units.

(3) Management Agreement: Developer shall submit a copy of the proposed form of management agreement, specifying the relationship and division of responsibilities between Developer and the Housing Manager, including the management fee.

(4) Lease Agreement: Developer shall submit a copy of any proposed form of lease or rental agreement to be used in the Project.

### 6.3 Right of Agency to Require a Change in Property Management

(a) Subject to paragraph (c) of this Section 6.3, Developer shall without delay change the Housing Manager (including, stepping down as Housing Manager if Developer or any Affiliate of Developer is the Housing Manager), in the event that Agency provides written notice to Developer, demanding that the Housing Manager be changed and stating that the Agency has reasonably determined that:

(1) the Project is not being managed or operated in a prudent or businesslike manner, or

(2) the Housing Manager's management practices are otherwise inconsistent with the Management Plan or this Agreement, or

(3) Developer or the Housing Manager has failed to maintain or manage the Project as required by the approved Management Plan or this Agreement.

Any such notice shall specify in reasonable detail the facts on which the Agency has based its determination.

(b) In the event Developer receives a notice pursuant to paragraph (a) of this Section 6.3, Developer shall have 15 days following receipt of such notice to submit to the Agency a written explanation and plan in reasonable detail, to cure or correct the matter complained of (or to reasonably dispute the determination of the Agency). The Agency shall promptly approve, disapprove or conditionally approve such plan, and provide Developer with a second notice in writing, setting forth such approval, disapproval or conditional approval. In the event the Agency disapproves Developer's plan, or Developer disputes the determination of the Agency or the conditions of a conditional approval, Developer and Agency shall meet and confer as soon as possible, but in any event within 15 days after such second notice, to attempt to resolve the matter. In the event that any matter is not resolved to the good-faith satisfaction of the Agency by the end of such 15-day period, or such extension of such 15-day period as the Agency may grant, or in the event a plan to cure is approved but the cure is not fully effected within the period of time provided in the plan (or, if no time is provided, within 60 days), then Developer shall change its Housing Manager or management practices as directed by the Agency.

(c) In the event the Agency is entitled to direct Developer to replace a Housing Manager pursuant to this Section 6.3, the identity and experience of the replacement Housing Manager as well as the terms and conditions of the management agreement with the replacement Housing Manager, shall be subject to the prior written approval of the Agency. Developer shall be solely responsible for finding and recommending a qualified replacement Housing Manager.

(d) Any contract entered into by Developer for the management of the Property and the Project shall contain a provision that such management contract shall be subject



to termination by Developer without penalty upon not more than 30 days prior written notice. Subject to the process described in this Section, Developer shall immediately give notice of termination of the contract with the Housing Manager to be replaced and retain the replacement Housing Manager within thirty (30) days after being directed to do so by the Agency, and shall make arrangements satisfactory to Agency for continuing proper management.

#### 6.4 Management Agent

Developer shall select and hire, or contract with, a management company or individual Housing Manager (or substitute Housing Manager, in accordance with Section 6.3), for the operation of the Project on the Property such that the Project are operated in a prudent and business-like manner, maintained in a decent, safe, and sanitary condition in accordance with the requirements of this Agreement, and the needs of the tenants are met. Any Housing Manager proposed by Developer shall have demonstrated experience and qualifications in housing management and shall have the financial responsibility necessary to fulfill its corporate obligations and liabilities. The selection and hiring of the Housing Manager and all subsequent Housing Managers shall be subject to the reasonable prior written approval of Agency, which shall be obtained prior to the awarding of any contract or entering into of any agreement with a management agent, and Agency may revoke its approval upon determination by such party that the standards set forth herein have not been satisfied. Agency hereby approves CHISPA Housing Management, Inc. as the initial Housing Manager.

#### 6.5 Property Management Fees

Property management fees and benefits payable to any property manager shall not exceed the industry standard competitively charged for comparable buildings and structures in the same general location as the Project. If a property management agreement generally describes the basis for a property management fee rather than stating a specific figure, each setting of the specific property management fee shall be subject to the prior written approval of the Agency, not to be unreasonably withheld. All property management fees payable to Developer or an Affiliate shall be reduced pro tanto by the amount of property management fees or comparable compensation paid to any unaffiliated property manager performing management services. The initial Project budget may provide for property management fees equal to the industry standard not to exceed six (6%) of Gross Income without Agency approval.

### ARTICLE 7. BUDGET PROCESS

#### 7.1 Operating Budgets Required

Developer shall prepare, maintain and operate the Project in accordance with an annual Operating Budget which shall be subject to the approval of the Agency, as provided in this Article 7.

#### 7.2 Preparation and Approval of Operating Budgets

(a) Annually, commencing with the first Year during which the Project will be occupied, Developer shall prepare, and submit to the Agency for approval, an Operating Budget for the Project. The Operating Budget shall show all budgeted Gross Income and

Operating Expenses, itemized in line items by source and type for the Year. In a format substantially similar to the format illustrated in Exhibit B.

(b) An Operating Budget shall be submitted for approval not later than October 31 immediately preceding the Year in question, so that, for example, the Operating Budget for calendar year 2013 shall be submitted for approval not later than October 31, 2012.

(c) Any time during a Year, Developer may submit to the Agency one or more proposed amendments to an approved Operating Budget.

(d) Agency shall promptly review and approve, disapprove or approve with conditions, in writing, any Operating Budget that is submitted by Developer. During its review, the Agency may request such reasonable additional information from Developer as may be required in its analysis of the proposed Operating Budget.

(e) Agency shall not unreasonably withhold or condition its approval of an Operating Budget. Approval or disapproval shall be given within 60 business days after receipt of the proposed Operating Budget and any additional information reasonably requested by the Agency.

(f) Any Operating Budget that is not approved within 60 business days, as provided in paragraph (e), shall be deemed approved, if the request for such approval is in writing, delivered to the party whose approval is requested, and includes the following notice, in bold print and capitalized letters:

**NOTICE: FAILURE TO DISAPPROVE THIS PROPOSED OPERATING BUDGET [AMENDMENT] WITHIN 60 BUSINESS DAYS AFTER RECEIPT SHALL BE DEEMED APPROVAL PURSUANT TO SECTION 7.2 OF THE OPERATING AGREEMENT DATED \_\_\_\_\_, BETWEEN COMMUNITY HOUSING IMPROVEMENT SYSTEMS & PLANNING ASSOCIATION, INC. AND THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY.**

(g) No amendment to any Operating Budget shall be effective unless and until approved by Agency in writing or deemed approved pursuant to subsection (f), above. Approval of an Operating Budget or amendment thereto shall supersede any previously approved Operating Budget. Until a subsequent Operating Budget is approved, the most recently approved Operating Budget shall remain in effect, subject to such amendments as may have been approved.

## ARTICLE 8. REPORTS

### 8.1 Annual Financial Statements

By April 30 of each year,, Developer shall submit to the Agency an annual audited financial statement for the Project for the prior calendar year, prepared by an independent certified accountant selected by Developer, which shall include (i) statements of profit and loss, assets and liabilities of Developer and income and expense and cash flow from operations; (ii) an

annual narrative report of all significant activities and significant advantageous and adverse conditions and events affecting Developer and the Project, prepared by the chief financial officer(s) of Developer, including but not limited to activities, conditions or events concerning or affecting design, permitting, construction, financing, marketing, leasing, insurance, management, operations, damage, destruction, condemnation, revenues or expenditures.

## 8.2 Other Reporting Requirements

Unless Agency otherwise expressly consents in writing:

(a) Reporting. Developer shall maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP or as otherwise disclosed therein;

(b) Tax Returns. Developer shall furnish or cause to be furnished to Agency as soon as available, and in any event not later than at the time of filing with the Internal Revenue Service, the sections of the federal tax returns (and supporting schedules, if any) of Developer applicable to the Project, if any, if requested by Agency;

(c) Certificate of Performance. Concurrently with each of the annual financial statements provided for in Section 8.2, a certificate of an authorized representative of Developer, stating, to the best knowledge of such representative, that Developer has substantially performed and observed each of its covenants contained in this Operating Agreement and that no material default or event which, with the giving of notice or passage of time or both, would become a default has occurred or, if any such event has occurred, specifying its nature;

(d) Statements. Developer shall furnish or cause to be furnished to Agency promptly upon their becoming available, copies of all known press releases and other statements made available generally by Developer to the public concerning activities or developments relating to or affecting the Project; and

(e) Other Information. Developer shall furnish or cause to be furnished to Agency such other documents and information relating to the affairs of Developer and the Project as Agency reasonably may request from time to time.

## ARTICLE 9. EFFECT AND DURATION OF COVENANTS

The covenants set forth in this Operating Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, and shall remain in effect for the term of this Operating Agreement.

## ARTICLE 10. EFFECT OF VIOLATION OF THE TERMS AND PROVISIONS OF THIS OPERATING AGREEMENT

The Agency is deemed a beneficiary of the terms and provisions of this Operating 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 Operating Agreement and the covenants have been provided. The Agency shall have the

right, if the covenants contained in this Operating Agreement 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 Operating Agreement and covenants are entitled.

## ARTICLE 11. DEFAULTS, REMEDIES AND TERMINATION

### 11.1 Defaults - General

Subject to the extensions of time set forth in Section 12.5, failure or delay by Developer to perform any term or provision of this Agreement constitutes a Default under this Agreement.

Subject to Section 11.1.1., below, before Agency shall exercise any right or remedy available under this Agreement, it shall first deliver to Developer a written notice of Default, describing the Default in reasonable detail. Failure or delay in giving such notice or asserting any rights and remedies to any Default shall not constitute a waiver of any Default or of any such rights or remedies, nor shall it change the time of Default. Delays by a party in asserting any of its rights and remedies shall not deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. Unless a different cure period is specified in Section 11.1.1, the Defaulting Party shall have thirty (30) days after the notice of Default is delivered to cure the Default; provided that if the Default is of such a nature that the cure cannot with diligence be completed within thirty (30) days and the Defaulting Party has commenced meaningful steps to cure with such thirty (30) day period, the Defaulting Party shall have such additional period of time, up to a maximum cure period of 90 days, as Agency in its reasonable discretion determines is reasonably necessary to diligently effect a cure.

11.1.1 The following Defaults shall have the following cure periods other than thirty (30) days:

- (a) failure to submit a complete Operating Budget within the time required: 15 Business Days;
- (b) failure to make due and punctual payment of Operating Expenses when and as the same shall become due, including any misapplication of Gross Income: 10 Business Days;
- (c) misapplication of any funds from the Replacement Reserve: 10 Business Days;
- (d) failure to appoint a new Housing Manager acceptable to Agency within the time required, after compliance with the provisions of Section 6.3: 10 Business Days;
- (e) failure to procure and maintain in effect or cause to be procured and maintained in effect any of the Insurance Policies: 10 Business Days; and
- (f) failure to pay or cause to be paid any sum of money owing under this Agreement as and when due: 10 business Days.

The Agency 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 Agency.

#### 11.2 Institution of Legal Actions

In addition to any other rights or remedies, a party may institute legal action to cure, correct, or remedy any default, to obtain specific performance, to enjoin actions, to appoint a receiver of the Project or any portion thereof, to recover damages, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Monterey, State of California, in any other appropriate court in that County, or in the United States District Court for the Northern District of California.

#### 11.3 Applicable Law

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

#### 11.4 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 a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other parties.

#### 11.5 Remedies and Rights of Termination

##### 11.5.1 Termination by Developer

Developer at its option may terminate this Operating Agreement only:

- (a) upon termination of the Agreement prior to Completion as defined in Section 1.1 thereof, and
- (b) by paying to the Agency an amount sufficient to repay all disbursements of Agency Loans.

##### 11.5.2 Termination by Agency

Agency, at its option, may terminate this Agreement as to Developer in the event of the following:

- (a) An Event of Default that is uncured after the respective notice and cure period, if any;

(b) Termination of the Agreement prior to Completion as defined in Section 1.1 thereof.

#### 11.6 Right to Perform Developer's Obligations

(a) If Developer shall at any time fail to pay or perform any of its covenants, agreements and obligations under this Agreement in the manner and within the time specified in this Agreement, then Agency, after ten (10) days' prior written notice to the defaulting party or any shorter period expressly provided elsewhere in this Operating Agreement, and without waiving or releasing the defaulting party, shall have the right, but shall not be obligated, to pay such amount and/or perform such act as may then be required.

(b) If Agency exercises any right to perform any obligations of Developer, in the exercise of such right it may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such obligation, (ii) employ security guards and other safeguards to protect the Project, (iii) spend such sums as are necessary, including any proceeds of Insurance Policies, to employ and pay such architects, engineers, consultants and contractors as may be required for the purpose of completing any alteration or work of improvement, (iv) execute all applications, certificates and other documents in the name of Developer as may be required for completing such work of improvement, (v) make and approve changes, alterations or additions to plans, (vi) modify or terminate any contractual arrangements; (vii) take any and all other actions which it may in its sole discretion consider necessary to complete the construction work, and (vi) prosecute or defend any action or proceeding incident thereto.

(c) Developer shall reimburse Agency, on demand, all sums Agency pays pursuant to this Section 11.6 and all reasonable costs and expenses Agency incurs in connection with the performance of any act authorized by this Section 11.6, together with interest at the rate of ten percent (10%) per annum.

(d) Agency shall not be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto the Project in order to perform Developer's obligations, unless caused solely by the willful misconduct or gross negligence of Agency. If the Agency exercises any right to pay or perform under this Section 11.6, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of construction, unless caused solely by the willful misconduct or gross negligence of the Agency.

#### 11.7 Non-Recourse Liability

(a) Subject to the qualifications below, Developer shall be liable for payment and performance of the debts, obligations, covenants and agreements created or set forth in this Agreement, to the full extent (but only to the extent) of the Housing Units and assets (including infrastructure for the Project) which constitute security for such debts, obligations, covenants and agreements.

#### (b) Exceptions to Non-Recourse Liability



Salinas, California 93901  
FAX: (831) 755-5398

If to Developer: Community Housing Improvement System & Planning  
Association, Inc.  
295 Main Street, Suite 100  
Salinas, CA 93901  
Attention: Executive Director

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

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address in California or an additional and/or different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt, or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

#### 12.2 Conflict of Interests

No member, official or employee of the Agency or County shall have any personal interest, direct or indirect, in this Operating Agreement nor shall any such member, official or employee participate in any decision relating to the Operating Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he, or she is, directly or indirectly, interested.

#### 12.3 Warranty Against Payment of Consideration for Operating Agreement

Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Operating Agreement.

#### 12.4 Nonliability of Officials, Employees and Partners

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

#### 12.5 Enforced Delay [Force Majeure]: Extension of Time of Performance

Notwithstanding specific provisions of this Operating Agreement, performance by any party hereunder (other than performance pursuant to Sections 2.2 and 2.3, and the obligation to



prepare Operating Budgets pursuant to Section 7.1), shall not be deemed to be in default where delays or defaults are due to a Force Majeure Event.

#### 12.6 Books, Records and Audits

(a) Developer shall keep and maintain at its principal offices in Salinas, California, true, accurate and complete records and double-entry books of account relating to the operations of the Project in such manner as to enable a formal audit and preparation of audited financial statements and in accordance with sound accounting practices. Developer shall retain all such books, records and accounts for a period of not less than five (5) years after the end of the year in question. All such books, records and accounts shall be supported by original, authenticated, receipted bills and/or invoices, checks, vouchers, tickets, bank statements, purchase orders, bills of lading, certified payrolls and other documents of entry, shall be maintained separately from books and records concerning any other business or property and shall include a general ledger and journals with chronological entries.

(b) Agency may at any reasonable time during the term of this Operating Agreement, without restriction, upon 24 hours' prior written notice, examine, copy and audit (or cause to be examined, copied and audited by a professional consultant it selects) such records and books of account for the purpose of verifying costs and expenses and any other facts and information pertaining to the Project. In addition, Agency or its representative may from time to time, upon 3 business days' prior written notice, conduct a re-audit and observe the business operations of Developer to confirm the accuracy of books and records. After the Completion Date, Agency's right to examine, copy and audit shall be exercisable not more often than once every six (6) months.

(c) Agency shall notify Developer of any records it deems insufficient and may require implementation of reasonable additions or changes to Developer's accounting procedures if the same are necessary or appropriate to effect more complete or accurate recordkeeping, accounting or disclosure. 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 Agency 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 Agency shall have the right to examine, monitor and audit all records, documents, conditions, and activities of Developer and its contractors and subcontractors related to the performance of obligations under this Operating Agreement. Pursuant to Government Code Section 8546.7, the parties to this Operating Agreement shall be subject, at the request of the Agency, or as part of any audit of the Agency, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Operating Agreement.

#### 12.7 Approvals

(a) Wherever this Operating Agreement provides that a party may approve a matter "in its sole discretion," or similar phrase, approvals required of such party may be given or withheld by such party with or without cause, within any time period. Wherever this

Operating Agreement provides that a party may approve a matter in its "good faith discretion" or similar phrase, approvals required of such party may be given or withheld by such party based solely on its subjective determination of the merits within any time period, exercised in good faith.

(b) Except as provided in paragraph (a), approvals required of the Agency or Developer shall not be unreasonably withheld, conditioned or delayed, and approval or disapproval shall be given within the time provided for herein, or if no time is provided for such matter, within a reasonable time.

(c) For purposes of this Operating Agreement, approval by the Agency shall mean approval by the Executive Director of the Agency, or such other person or official as may be designated in writing from time to time by the Agency Executive Director, unless the Agency provides notice to Developer that it has determined that approval by the Agency Board of Directors is required.

#### 12.8 Construction and Interpretation of Operating Agreement

(a) The language in all parts of this Operating Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Operating Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Operating Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Operating Agreement, this Operating Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(b) If any term or provision of this Operating Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Operating Agreement shall not be affected thereby and each other term and provision of this Operating Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Operating Agreement that is illegal, invalid or unenforceable, there be added as a part of this Operating Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this "Operating Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly

incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to and include the covenants, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

(e) As used in this Operating Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

#### ARTICLE 13. DISCLAIMER OF RESPONSIBILITY

Except as provided in this Operating Agreement, the Agency neither undertakes nor assumes nor will 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 operation, management or maintenance of the Project. 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 Developer or to any third party by the Agency in connection with such matter is for the public purpose of protecting the security of the Agency in accordance with this Operating Agreement, and neither Developer (except for the purposes set forth in this Operating Agreement) nor any third party is entitled to rely thereon.

#### ARTICLE 14. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Operating Agreement shall be executed in duplicate originals each of which is deemed to be an original.

This Operating Agreement, together with the adopted Agreement, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to such terms and conditions. All waivers of the provisions of this Operating Agreement must be in writing and signed by the appropriate authorities of the Agency and Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and Developer.



EXHIBIT A.  
LEGAL DESCRIPTION

**EXHIBIT B  
OPERATING BUDGET**

**Project Name: Sea Garden Apts  
CASH FLOW PROJECTION**

**Date: 6/7/11**

	Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Calendar	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
	Inflation/ Vac Factors															
Rental Income	2.5%	526,805	539,975	553,475	567,311	581,494	596,032	610,932	626,206	641,861	657,907	674,355	691,214	708,494	726,207	744,362
Other Income	2.5%	5,144	5,273	5,404	5,540	5,678	5,820	5,965	6,115	6,267	6,424	6,585	6,749	6,918	7,091	7,268
Commercial Income	1.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Scheduled Gross Income</b>		531,949	545,248	558,879	572,851	587,172	601,851	616,898	632,320	648,128	664,331	680,940	697,963	715,412	733,298	751,630
Residential Vacancy	5.0%	26,597	27,262	27,944	28,643	29,359	30,093	30,845	31,616	32,406	33,217	34,047	34,898	35,771	36,665	37,582
Commercial Vacancy	50.0%	505,352	517,985	530,935	544,208	557,814	571,759	586,053	600,704	615,722	631,115	646,893	663,065	679,642	696,633	714,049
<b>Effective Gross Income</b>		(267,522)	(276,885)	(286,576)	(296,606)	(306,988)	(317,732)	(328,853)	(340,363)	(352,275)	(364,605)	(377,366)	(390,574)	(404,244)	(418,393)	(433,036)
Total Operating Expenses	3.5%	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)	(35,400)
Services Fee	3.5%	202,430	205,700	208,959	212,202	215,428	218,627	221,800	224,941	228,046	231,110	234,127	237,091	239,998	242,840	245,612
<b>Net Operating Income</b>		175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794	175,794
Debt Service		26,636	29,906	33,165	36,408	39,632	42,833	46,006	49,147	52,252	55,316	58,333	61,297	64,204	67,046	69,818
<b>Net Available Cash</b>		1.15	1.17	1.19	1.21	1.23	1.24	1.26	1.28	1.30	1.31	1.33	1.35	1.37	1.38	1.40
<i>Debt Coverage Ratio</i>																
Asset Management Fee		26636	29906	33165	36408	39632	42833	46006	49147	52252	55316	58699	0	0	0	0
Deferred Developer Fee		0	0	0	0	0	0	0	0	0	0	19,634	61,297	64,204	67,046	69,818
Partnership Management Fee		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Available Cash Flow		423,364	393,458	360,294	323,886	284,254	241,421	195,415	146,268	94,015	38,699	0	0	0	0	0
Deferred Developer Fee Balance		450,000	423,364	393,458	360,294	323,886	284,254	241,421	195,415	146,268	94,015	38,699	0	0	0	0



**EXHIBIT I**  
**DECLARATION OF RESTRICTIVE COVENANTS**



**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO**

Redevelopment Agency of the  
County of Monterey  
Redevelopment and Housing Office  
168 West Alisal Street, 3rd Floor  
Salinas, CA 93901  
Attn: Director

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**DECLARATION OF RESTRICTIVE COVENANTS**

**Sea Garden Apartments**

**THIS DECLARATION OF RESTRICTIVE COVENANTS** (“Declaration of Restrictive Covenants”) is entered into as of \_\_\_\_\_, 2011 by Community Housing Improvement Systems & Planning Association, a California corporation (the “Owner”) in favor of the Redevelopment Agency of the County of Monterey, California (“Agency”).

WHEREAS, on the date that this Declaration of Restrictive Covenants is recorded, Owner will be the owner of fee title to that certain real property (the “Site”) located in the County of Monterey more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the Agency has provided funding for the acquisition of the Site, in order to promote an affordable rental housing development on the Site (the “Project”); and

WHEREAS, as a condition to the approval of funding by the Agency, the Agency required the recordation of a restriction against the Site to ensure that the Site be used to provide affordable rental housing for “lower-income households,” as defined in California Health and Safety Code Section 50079.5, for the longest feasible time; and

WHEREAS, the Owner agrees that the Site should be developed for rental housing which is affordable to low and very-low income households, and is entering into this Declaration of Restrictive Covenants to satisfy the Agency’s requirement.

NOW, THEREFORE, OWNER COVENANTS AND AGREES AS FOLLOWS:


1. The Owner covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof) that the Owner, such successors and such assigns shall devote the Site (or any part thereof) to the provision of at least 28 rental units affordable for low and very low income households for the longest feasible time. For purposes of this Declaration of Restrictive Covenants “lower-income households,” shall have the

definition set forth in California Health and Safety Code Section 50079.5.” Of these 28 units, at least six shall be affordable to very low income households, as defined in California Health and Safety Code Section 50105. Further, for purposes of this Declaration of Restrictive Covenants, “longest feasible time” shall mean fifty-five (55) years from the date that a Certificate of Occupancy is issued for any housing which is developed on the Site after the date of this Declaration of Covenants.

2. The Owner further covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Site (or any part thereof) that no commercial, retail, or other development shall proceed upon the Site unless it contains at least 28 rental units affordable for lower income households as described above.

IN WITNESS WHEREOF, the Owner has executed this Declaration of Restrictive Covenants as of the date first set forth above.

COMMUNITY HOUSING IMPROVEMENT SYSTEMS &  
PLANNING ASSOCIATION, a California corporation

Its:  CFU  
(Name and Title)

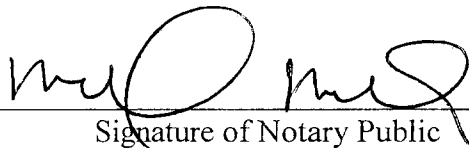
Dated: 6-15-11

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

On June 15<sup>th</sup>, 2011 before me, Marisol G Morales (here insert name of the officer), Notary Public, personally appeared Normond V. Kolpin, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary Public

[Seal]

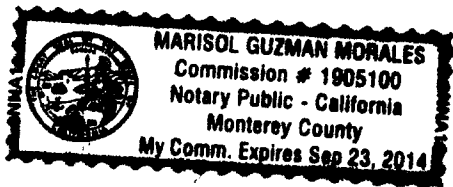


EXHIBIT A

Legal Description

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

Lot 3, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

PARCEL I(A):

The Southeasterly one-half of Speegle Street (now abandoned) lying contiguous to Lot 3, Block XXXII as apportioned to said Lot 3 pursuant to that Order of Abandonment recorded October 24, 1956 in Volume 1745, Page 527, Official Records.

PARCEL II:

That portion of Lot 6, in Block XXXII, as said Lot and Block are shown and designated on that certain Map entitled, "Map of the Town of Castroville", filed September 2, 1887 in Volume 1 of Cities and Towns at Page 55, Records of Monterey County, California, described as follows:

Beginning in the Southeasterly line of said Lot 6 at the most Easterly corner of that certain parcel of land described in the Deed to Luz Arroyo, recorded September 14, 1954 in Volume 1552 of Official Records at Page 126, Records of said County; thence from said point of beginning along said Southeasterly lot line:

- (1) N. 42° 54' E., 50 feet; thence leave said lot line and running
- (2) N. 47° 03-1/2' W., 100 feet, more or less, to a point in the Northwesterly boundary of said Lot 6; thence along las mentioned boundary
- (3) S. 42° 54' W., 50 feet to the most Northerly corner of said parcel of land: thence leave last mentioned boundary and running along the Northeasterly boundary of said parcel of land
- (4) S. 47° 03-1/2' E., 100 feet, more or less, to the point of beginning.

PARCEL III:

Lots 4 and 5, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

Together with that portion of the Southwesterly one-half of Davis Street, title to which would pass by a conveyance describing said lot.

PARCEL III(A):

The Southeasterly one-half of Speegle Street (now abandoned) lying contiguous to Lot 4, Block XXXII as apportioned to said Lot 4 pursuant to that Order of Abandonment recorded October 24, 1956 in Volume 1745, Page 527, Official Records.

PARCEL IV:

That certain 3.024 acre parcel of land shown and so designated of that certain "Record of Survey" map filed for record January 30, 1958 in Volume X-1 of Surveys at page 159, records of Monterey County.

Excepting therefrom all that property described in Grant Deed executed by Frank Aberin, a single man, to Pedro Muna, et ux, recorded January 26, 1970 in Reel 637 of Official Records of Monterey County, California, at page 127.

More particularly described as follows:

Beginning at the northwesterly terminus of Course (1) of "Parcel 1" as said parcel is described and so designated in "Exhibit A" of that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County and running,

- 1) S. 42° 54' 00" W., 25.00 feet; thence running along the northeasterly right-of-way of Davis Street
- 2) N. 47° 03' 30" W., 183.08 feet to the southeasterly corner of Tract No. 1264, Chapin Affordable Housing Project, as said subdivision is shown and recorded in Volume 19 of Cities and Towns at Page 18, records of Monterey County, California thence leaving said northeasterly right-of-way of Davis Street and running along said southeasterly boundary of said subdivision
- 3) N 42° 54' 00" E., 364.27 feet; thence leaving said southeasterly boundary of said subdivision
- 4) S. 47° 03' 30" E., 183.08 feet to the northeasterly boundary of "Parcel 1" as said parcel is described and so designated in "Exhibit A" of that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County; thence running along the common boundary between "Parcel 1" and "Parcel 2" as said parcels are described in the above referenced document.
- 5) S. 42° 54' 00" W., 339.27 feet to the Point of Beginning.

Said property is described as "Parcel 2" in that certain "Restatement of Legal Description" recorded November 24, 2009, Instrument No. 2009075662, Official Records, Monterey County.

PARCEL IV(A):

An easement for drainage and the construction and maintenance of slopes, 25 feet in width, lying immediately adjacent to and southeasterly of the following described line:

Beginning at the most southerly corner of that certain 3.024 acre parcel, as said parcel is shown on that certain map entitled, "Record of Survey of a Portion of Block XL, etc.", recorded in Volume X-1 of Surveys at Page 159, records of Monterey County, California, and running thence N 42° 54' E., 25.00 feet to the True point of beginning; thence

- 1) N 42° 54' E., 337.83 feet to a 1-1/2" iron pipe.

PARCEL V:

A portion of Lot 6, in Block XXXII, as shown on the map entitled, "Town of Castroville," filed September 2, 1887 in the Office of the County Recorder of the County of Monterey, State of California, in Volume 1 of Maps, Cities and Towns, at Page 55, more particularly described as follows:

BEGINNING at the most Southerly corner of said Lot 6 and running thence along the Southeasterly boundary of said Lot in a Northeasterly direction, a distance of 50 feet; thence leave said Southeasterly boundary in a Northwesterly direction, parallel to the Southwesterly boundary of said Lot, a distance of 100 feet to a point on the Northwesterly boundary of said Lot 6; thence along said Northwesterly boundary in a Southwesterly direction, a distance of 50 feet to the most Westerly corner of said Lot 6; thence along the Southwesterly boundary of said Lot in a Southeasterly direction, a distance of 100 feet to the point of beginning.

PARCEL VI:

Lot 1, in Block XXXII, as shown on the map entitled, "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et al, June 1887", etc. filed September 2, 1887 in Volume 1, "Cities and Towns", at Page 55, Monterey County Records.

PARCEL VII:

A portion of Rancho Bolsa Nueva Y Moro Cojo, being a part of that certain tract of land conveyed to Charles Rizzo, et ux, by Deed dated September 3, 1948, recorded in Book 1087 of Official Records at Page 413, Monterey County Records, said part being more particularly described as follows:

Beginning at the intersection of the center line of Davis Street, 50 feet wide, with the center line of Preston Street, 66 feet wide, as said streets are shown on the Map of the Town of Castroville, filed March 26, 1869 in Map Book One, Cities and Towns, at Page 54 therein, Monterey County Records; thence from said place of beginning along said center line of Preston Street between Block XI and XXXIX, as said Blocks are shown on said filed map

1. N. 42° 27' E., 364.0 feet; thence leaving last mentioned center line
2. N. 47° 28' W., 151.0 feet, at 33.0 feet intersect the Southeasterly boundary of said Block XI, 151.0 feet to a point; thence
3. S. 42° 27' W., 364.0 feet at 161.46 feet a 3/4" diameter iron pipe, at 339.0 feet a 3/4" diameter iron pipe standing in said Southwesterly line of said Block XI, 364.0 feet to a point in said center line of Davis Street, thence along last mentioned center line
4. S. 47° 28' E., 151.0 feet to the place of beginning.

Excepting therefrom that portion of said land lying within Davis Street and Preston Street as the same existed September 3, 1948.

Together with that portion of the Northeastly one-half of Davis Street, title to which would pass by a conveyance describing said property.

PARCEL VII(A):

The westerly half of Preston Street, lying Northerly of Davis Street as disclosed by Resolution No. 85-285, recorded May 28, 1985 in Reel 1842 of Official Records, at Page 708.

PARCEL VIII:

That certain "Remainder Parcel" as shown and so designated on the map entitled "Tract No. 1256 Chapin Affordable Housing Project", recorded March 19, 1996 in Volume 19, "Cities and Towns", Page 18, Official Records, Monterey County.

APN: 030-041-008 (Parcel I, IA), 030-041-003 (Parcel II), 030-041-001 (Parcel III, IIIA), 030-041-004 (Parcel V), 030-041-005 (Parcel VI), 030-011-009 (Parcel IV), 030-011-011 (Parcel VII), 030-054-014 (Parcel VIII)

**EXHIBIT J**  
**SENIOR FINANCING**

**Sea Garden Apartments**

**Private Construction loan**

Amount	up to	\$	10,000,000
Rate	up to	8%	
Term:	up to	30 months	
Repayment Terms	Interest only; due in full at perm loan close		

**Private Permanent Loan:**

Amount:	up to:	\$	3,200,000
Rate:	up to:	8%	
Term	30 to 40 years		
Repayment Terms	Amortized		

**HOME**

Amount:	up to	\$2,500,000
Rate:	up to:	3.50%
Term	55 years	
Repayment Terms	Residual receipts on a pro rata basis with RDA loan	