

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

COUNTY OF ORANGE
OC COMMUNITY RESOURCES
1300 S. Grand Avenue, Building B (3rd Floor)
Santa Ana, CA 92705
ATTENTION: DIRECTOR

REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS

By and Between

THE ORANGE COUNTY OF ORANGE,

and

[XXXXXX]

**REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS
(XXX Funds)**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement" or "Agreement") is made and entered into as of _____201_, by and between the **COUNTY OF ORANGE**, a political subdivision of the State of California, [ORANGE COUNTY HOUSING AUTHORITY, a public corporation created pursuant to California Health and Safety Code section 34200 et. seq., acting solely as the Housing Successor Agency to the Orange County Development Agency] (the "County") and [XXXXXX] (the "Borrower").

R E C I T A L S

A. Borrower intends to construct a housing project on that certain real property located in [XXX], County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property").

B. The Borrower has submitted to the County an application for funding of a loan for funding of the Project.

C. The Borrower further intends to operate a [XX] (XX) unit low-income residential development which shall be constructed by Borrower on the Property.

D. The Borrower has submitted to County an application for funding of a project, described herein, under its [NOFA/PROGRAM DESCRIPTION]

E. The County desires to provide a permanent loan to Borrower subject to the Borrower’s agreement, amongst other things, to encumber the Property with certain rental restrictions, all as more particularly set forth in this Agreement and the Regulatory Agreement.

F. The Orange County Board of Supervisors [acting as the Board of Commissioners for the Orange County Housing Authority] approved a loan to the Borrower from said funds for permanent financing on [XX].

G. Borrower is financing the acquisition of the Property and the construction of the improvements and related costs and expenses through, among others, the following sources:

[(a) Anticipated tax credit equity from the California Tax Credit Allocation Committee in the approximate amount of \$[XXXXX] (“Tax Credit Equity”).

As is more particularly provided in a separate loan agreement, the County has agreed to loan Borrower the sum of \$[XXX] of HOME funds (“HOME Loan”), for the acquisition of the Property (which will convert to permanent financing after construction completion, and other conditions subsequent set forth in this Loan Agreement), the repayment of which is to be secured by the Project.

(c) As is more particularly provided in this Agreement, the County has agreed to loan Borrower the sum of \$[XXXX] of Housing Successor Agency funds (“HSA Loan”), for the Property, the repayment of which is to be secured by the Project.

(d) A construction loan from [XXXXX] (“Senior Construction/Permanent Loan”) written in the maximum amount of \$[XXXXX], which is evidenced by (i) a promissory note in the face principal amount of \$[XXXXX] (“Senior Construction/Permanent Note”) and (ii) a promissory note in the face principal amount of \$[XXXXX] (“Senior Construction Note”), both secured by a deed of trust (“Senior Construction/Permanent Deed of Trust”).

(e) Borrower has agreed to defer \$[XXXXX] of the developer fee.

H. The County and the Borrower now desire to enter into this Agreement to set forth their agreement regarding the affordable housing restrictions for the Project and to cause said affordable housing restrictions to run with the land.

NOW, THEREFORE, the County and the Borrower hereby agree as follows:

1. **Definitions.** Unless otherwise defined herein or in the Loan Agreement (as such term is defined below), capitalized terms used in this Regulatory Agreement shall have the respective meanings assigned to them in this Section 1:
 - 1.1. "**Act**" means Chapter 8 (commencing with Section 33750) of Part 1 of Division 24 of the Health and Safety Code of the State of California, as amended.
 - 1.2. "**Adjusted Income**" shall mean the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner which complies with determinations of income for low income families under the Department of Housing and Urban Development’s Section 8 Program of the United States Housing Act of 1937, as amended.
 - 1.3. "**Area**" means Orange County.
 - 1.4. "**Borrower**" means [XXXXX]
 - 1.5. "**Code**" means the United States Internal Revenue Code of 1986, as amended hereafter, or any successor statute thereto.
 - 1.6. "**County**" means the [XXXXX].
 - 1.7. "**Director**" means the Director of OC Community Resources or her or his designee.
 - 1.8. "**Housing Act**" means the United States Housing Act of 1937, as amended, or its successor.

- 1.9. **"Loan"** means the loan made by the County to the Borrower pursuant to the Loan Agreement for the purpose of financing the acquisition, construction and development of the Project.
- 1.10. **"Loan Agreement"** means that certain Loan Agreement between the County and the Borrower of even date herewith as it may be amended from time to time, the terms of which are hereby incorporated herein by this reference.
- 1.11. **"Median Income for the Area"** shall mean the median income for the Area as most recently determined by the United States Department of Housing and Urban Development ("HUD") and published by the State of California. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.
- 1.12. **"Parties"** shall mean the County and the Borrower.
- 1.13. **"Project"** means collectively the Property and the structures and related buildings and other improvements located on the Property from time to time together with all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.
- 1.14. **"Property"** means the real property legally described in Exhibit "A", which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.
- 1.15. **"Qualified Project Period"** shall mean the period beginning upon fulfillment of the conditions precedent set forth in Article VI of the Loan Agreement and ending on the date which is fifty-five (55) years after the beginning of the Qualified Project Period.
- 1.16. **"Qualified Tenant" or "Qualified Tenants"** shall collectively mean the individuals occupying the Restricted Units with the Adjusted Incomes more particularly described in Exhibit "B" attached hereto and incorporated herein. The income of individuals shall be determined in a manner consistent with determinations of lower income households under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). In no event, however, will the occupant of a Restricted Unit be considered to be a Qualified Tenant if the occupant is a student, and is not entitled to file a federal income tax return.

- 1.17. **"Regulations"** means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time.
- 1.18. **"Regulatory Agreement" or "Agreement"** means this Regulatory Agreement.
- 1.19. **"Restricted Unit" or "Restricted Units"** means the dwelling units in the Project identified on Exhibit "B" attached hereto and incorporated herein required to be rented to, or held available for occupancy by Qualified Tenants pursuant to the terms, covenants and conditions of this Agreement, including, but not limited to, the rental restrictions and other matters set forth in said Exhibit "B" and the other Loan Documents.
- 1.20. **"Term"** is defined under Section 8 of this Agreement.

2. County Requirements as to Restricted Units. The Borrower hereby represents, warrants and covenants as follows:

(a) Use of Restricted Units. Borrower shall restrict the use, occupancy and rental of the Restricted Units of the Project to Qualified Tenants during the entire Qualified Project Period at the occupancy and rental rates provided for in Exhibit "B" attached hereto and incorporated herein. Borrower shall not rent nor permit the rental of any Restricted Unit in the Project except as provided in said Exhibit "B".

(b) Notifying Qualified Tenants. Borrower shall adopt written tenant selection policies and criteria that meet all of the following requirements:

1. Are consistent with the purpose of providing housing for Qualified Tenants and families.
2. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.
3. Provide for:
 - A. The selection of Qualified Tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - B. The prompt written notification to any rejected applicant of the grounds for any rejection.
4. Carry out the affirmative marketing procedures of the County, to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market Area to the program. Borrower and the County shall

cooperate to effectuate this provision prior to the initial renting, upon occurrence of a vacancy, or upon the re-renting of any Restricted Unit.

5. The Borrower agrees to provide to Qualified Tenants notice of all rent increases pursuant to applicable California law.

(c) Qualified Tenant Protections. The Restricted Units shall be rented to eligible and qualified Qualified Tenants in accordance with the following terms.

1. Lease. The Lease between Borrower and a Qualified Tenant must be for not less than one (1) year, unless otherwise agreed to in writing by both the Qualified Tenant and the Borrower.

2. Prohibited Lease Terms. The Lease between the Borrower and any Qualified Tenant may not contain any of the following provisions:

A. Agreement to be sued. Agreement by the Qualified Tenant to be sued, to admit guilt or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease.

B. Treatment of property. Agreement by the Qualified Tenant that the Borrower may take, hold, or sell personal property of household members without notice to the Qualified Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Qualified Tenant concerning disposition of personal property remaining in the Restricted Unit after the Qualified Tenant has moved out of the Restricted Unit. The Borrower may dispose of this personal property in accordance with applicable state law.

C. Excusing owner from responsibility. Agreement by the Qualified Tenant not to hold the Borrower or its agents legally responsible for any action or failure to act, whether intentional or negligent.

D. Waiver of notice. Agreement of the Qualified Tenant that the Borrower may evict the Qualified Tenant or household members without notice to the Qualified Tenant.

E. Waiver of legal proceedings. Agreement by the Qualified Tenant that the Borrower may evict the Qualified Tenant or household members without instituting a civil court proceeding in which the Qualified Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

F. Waiver of a jury trial. Agreement by the Qualified Tenant to waive any right to a trial by jury.

G. Waiver of right to appeal court decision. Agreement by the Qualified Tenant to waive the Qualified Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

H. Qualified Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the Qualified Tenant to pay attorney's fees or other legal costs even if the Qualified Tenant wins in a court proceeding by the Borrower against the Qualified Tenant. The Qualified Tenant, however, may be obligated to pay costs if the Qualified Tenant loses.

(d) Termination of Tenancy. Borrower may not terminate the tenancy or refuse to renew the lease of a Qualified Tenant except for serious or repeated violation of the terms and conditions of the Lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period (if the housing is transitional); or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by the Borrower's service upon the Qualified Tenant of a written notice specifying the grounds for the action.

(e) Nondiscrimination Covenant. By acceptance hereof, the Borrower agrees, for itself, its successors and assigns, to refrain from restricting the rental, or lease of the Project on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin or age of any person. All leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, and this lease or sublease is made and accepted upon and subject to the following conditions: That there be no discrimination against or segregation of, any person or group of persons, on account of race, color, creed, religion, handicap, national origin, sex, sexual orientation, marital status, age or ancestry in the leasing, subleasing, transferring, use or enjoyment of the land herein leased or subleased, nor shall the lessee himself or herself, or any persons claiming under or through him or 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, subleases, or subtenants in the land herein leased."

(f) Non-Qualifying Adjusted Income. Subject to the applicable requirements and provisions of, and changes to, Section 42 of the Code, if, upon recertification of the income of a Qualified Tenant of a Restricted Unit, the Borrower determines that a Qualified Tenant has an Adjusted Income exceeding [XXXXX] % of Median Income for the Area, adjusted for household size in accordance with the Act, as defined in Section 1.2 above, such Qualified Tenant may be permitted to continue to occupy the Restricted Unit at the rental rate as provided for in Exhibit B, until the Qualified Tenant chooses to vacate the Restricted Unit. After the Restricted Unit is vacated, the Restricted Unit shall be re-rented to a Qualified Tenant pursuant to the terms, covenants and conditions of this Agreement.

(g) Loss of Project Based Voucher Subsidy.

1. It is anticipated that during the Qualified Project Period the Project will maintain Project Based Voucher (PBV) Restricted Units, supported by Project-Based Section 8 rental subsidy payments (the "Rental Subsidy"). If, during the Qualified Project Period, any change in federal law or regulations occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidy through no fault of Borrower, such that the Rental Subsidy shown on the Financing Plan (as defined in the Loan Agreement) is no longer available (or available in a lesser amount), Borrower may request approval of the County to increase the rent on one or more of the PBV Restricted Units, to an adjusted income that does not exceed sixty percent (60%) of Area Median Income, adjusted for actual household size subject to the following requirements: (a) concurrently therewith, Borrower shall provide the County with evidence of the anticipated reduction, termination, or nonrenewal of the Rental Subsidy, (b) a Management Plan (as defined in Section 1.19 of the Loan Agreement) for the Project for the County's approval pursuant to Sections 4.1 and 7.8 of the Loan Agreement, showing the impact of the loss or reduction of the Rental Subsidy, (c) a proposed operating budget reflecting the rent increases (the "Operating Budget"), and (d) a description of efforts to obtain alternate sources of rent. The number of PBV Restricted Units subject to the rent increase and the amount of the proposed increase may not be greater than the number or amount required to ensure that the Project generates sufficient income to cover its operating costs, required deposits to replacement reserves, and debt service on approved financing as shown on the Operating Budget, and as is necessary to maintain the financial stability of the Project. Any such rent increase must be implemented pursuant to a transition plan approved by the County consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program. In addition, upon a reduction, termination or nonrenewal of the Rental Subsidy as described above, Borrower hereby agrees to the following:

2. Borrower shall use good faith efforts to obtain alternative sources of rental subsidies and shall provide the County with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents to be reduced. Upon receipt of any alternative rental subsidies, Borrower shall reduce the rents back to the original restrictions found in Exhibit B to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs, required replacement reserves and debt service of the Project as shown on the Operating Budget.

3. Borrower shall provide Qualified Tenants in the PBV Restricted Units with notice of any rent increase pursuant to Section 2.(g)(4), below, and shall notify the Qualified Tenant that if they have received a tenant-based voucher from the Orange County Housing Authority (the "Housing Authority") they may use the tenant-based voucher for their Restricted Unit.

4. All rent increases are subject to County approval pursuant to the terms of this Section 2 (g). No later than sixty (60) days prior to the proposed implementation of any rent increase, Borrower shall submit to the County a schedule of any proposed increase in

the rent. The County will disapprove a rent increase if it does not comply with the restrictions set forth in Section 2(g) (1) and (2). Notwithstanding the foregoing, rent increases for the PBV Restricted Units shall be subject to review and approval of the County.

5. Borrower shall give Qualified Tenants of all PBV Restricted Units written notice at least sixty (60) days prior to any rent increase.

3. Qualified Tenants; Records, Reports and Monitoring. During the Qualified Project Period, the Borrower shall submit to the County (i) not later than July 15, of each year, a report showing the necessary information to allow the County to determine the Owner's compliance with this Regulatory Agreement, and (ii) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the County in order to comply with reporting requirements of HUD, or the State of California. Borrower agrees to fully comply with County's requirements for monitoring the affordability of the Project.

4. Management. Borrower shall manage the Restricted Units in accordance with a management plan prepared by Borrower and approved by the Director, describing Borrower's standards for operating, managing and maintaining the Restricted Units, including, but not limited to, the components listed below (the "Management Plan"). The Management Plan shall provide for occupancy standards that are appropriate for the Restricted Units. Borrower shall manage the Restricted Units in accordance with the approved Management Plan, including such amendments as may be approved in writing from time to time by the Director, for the Qualified Project Period. The components of the Management Plan shall include:

(a) **Management Agent.** During the Qualified Project Period, Borrower shall be the management agent or Borrower shall submit the name and qualifications of the proposed management agent. If the management agent is not Borrower, the County shall approve or disapprove the proposed management agent in writing based on the experience and qualifications of the management agent.

(b) **Management Agreement.** At the outset of the Qualified Project Period, Borrower shall submit a copy of the proposed management agreement specifying the amount of the management fee, and the relationship and division of responsibilities between Borrower and management agent.

(c) **Marketing Plan.** The marketing plan will apply to all of the units in the Project, including the Restricted Units, except the Manager's Unit. The Borrower shall submit a marketing plan for review and approval by the Director. The marketing plan must contain procedures that ensure marketing of the Restricted Units to Qualified Tenants throughout Orange County (including both unincorporated areas and other incorporated cities). Such procedures shall be applicable for initial rent-up and ongoing marketing of the units throughout the Qualified Project Period. Borrower shall advertise vacancies of the Restricted Units in general distribution newspapers that circulate

throughout the County. Where the Borrower utilizes other forms of advertising, such advertising shall also be distributed throughout the County

(d) Annual Budget and Projected Cash Flows. Concurrently with the beginning of the Qualified Project Period, and annually thereafter not later than seventy-five (75) days after the close of each calendar year (December 31) thereafter, Borrower shall submit, in a form that is acceptable to the County, a projected operating budget and cash flow for the Project to the County.

(e) County Right to Replace Management Agent. If at any time the County determines that the Project is not being managed or maintained in accordance with the approved Management Plan, Borrower shall change the management agent or the practices complained of, upon receipt of written notice from the County. The County may require Borrower to change management practices or to terminate the management contract and designate and retain a different management agent, to be approved by the County. The management agreement shall provide that it is subject to termination by Borrower without penalty, upon thirty (30) days prior written notice, at the direction of the County. Within ten (10) days following a direction of the County to replace the management agent, Borrower shall select another management agent or make other arrangements satisfactory to the County for continuing management of the Project.

5. Maintenance; Compliance with Law. During the Qualified Project Period, Borrower agrees to maintain all interior and exterior improvements, including landscaping, on the Project in good condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with any Management Plan approved by the County under this Agreement (including without limitation any landscaping and signage), as the same may be amended from time to time, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Borrower acknowledges the great emphasis the County places on quality maintenance to protect its investment and to provide quality low income housing for its constituents and to ensure that all County subsidized affordable housing projects within the County are not allowed to deteriorate due to deficient maintenance. In addition, Borrower shall keep the Project free from all graffiti and any accumulation of debris or waste material. Borrower shall promptly make all repairs and replacements necessary to keep the Project in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

In the event that Borrower breaches any of the covenants contained in this Section 5 and such default continues for a period of five (5) days after written notice from the County (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from the County (with respect to landscaping and building improvements), then the County, in addition to whatever other right or remedy it may have under the Loan Agreement, the other Loan Documents, this Regulatory Agreement or at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of

entry, the County shall be permitted (but is not required) to enter upon the Project and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas on the Project. Borrower shall promptly pay to the County, as applicable, the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, including a fifteen percent (15%) administrative charge.

6. Consideration. The County has made the Loan for the purpose, among others, of inducing the Borrower to provide affordable housing in the County of Orange. In consideration of the Loan to the Borrower, the Borrower has entered into this Agreement and has agreed to restrict the Restricted Units of the Project on the terms and conditions set forth herein.

7. Sale or Transfer of the Project. The Borrower hereby covenants and agrees not to voluntarily sell, transfer or otherwise dispose of the Property or the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder), without obtaining the prior written consent of the County. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Property or the Project in violation of this Section 7 shall be null, void and without effect, shall cause a reversion of title to the Borrower and shall be ineffective to relieve the Borrower of its obligations under this Agreement. Any transfer of the Property or the Project to any entity, whether or not affiliated with the Borrower, shall be subject to the provisions of this Section 7.

8. Term. This Agreement and all and each of the provisions hereof shall become effective upon its execution and delivery, shall remain in full force and effect for the period provided herein and in the Loan Agreement, and, shall terminate in its entirety at the expiration of the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the discharge of the Loan and termination of the Loan Agreement. In the event that the Conversion Date, as defined in the Loan Agreement, does not occur and the Qualified Project period does not commence, as set forth in the Loan Agreement, the restrictions of this Agreement shall have no effect and the County shall provide the Borrower with a release of this Agreement.

9. Covenants to Run with the Land.

(a) All conditions, covenants, and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by County, its successors and assigns, against Borrower, its successors and assigns, to or of the Project or any portion thereof or any interest therein, and any party in possession or occupancy of said Project or portion thereof.

(b) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that County shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of County and such covenants shall run in favor of County for the entire period during which such covenants shall be in force and effect, without regard to whether County is or remains an owner of any land or interest therein to which such covenants relate. County shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

(c) The County and its successors and assigns, and Borrower and the permitted successors and assigns of Borrower in and to all or any part of the fee title to the Project, shall jointly have the right upon written agreement signed by both parties to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or restrictions contained in this Agreement without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having any interest less than a fee in the Project. The covenants contained in this Agreement, without regard to technical classification shall not benefit or be enforceable by any owner of any other real property within or outside the Project, or any person or entity having any interest in any other such realty.

(d) No breach of any of the provisions of this Agreement shall impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Property or the Project or any portion thereof.

10. Burden and Benefit. The County and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Property and the Project in that the Borrower's legal interest in the Project is rendered less valuable thereby. The County and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touching and concerning the land is the enhancement and increased enjoyment and use of the Project by Qualified Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by the furthering of public purposes for which the Loan was made.

11. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project.

12. Default. Each of the following shall constitute an "Event of Default" by Borrower under this Agreement:

(a) **Failure to Make Payments.** Borrower fails to make any payment of due the County under this Agreement within ten (10) days after receiving written notice for said payment from the County;

(b) Non-Monetary Failure to Perform. Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement (other than those provisions elsewhere referred to in this Section 12) and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given by the County to Borrower;

(c) Mortgage Loan Document Breach. Any default or breach of Borrower which continues uncured after the expiration of any applicable cure period under the Loan Agreement (including, but not limited to, the obligations of the Borrower under Article VI of the Loan Agreement), any Loan Document or any other loan document including, but not limited to, the Mortgage Loan Documents, as defined and set forth in the Loan Agreement;

(d) Voluntary Suspension. The voluntary suspension of Borrower's business or the dissolution or termination of the partnership (if any) constituting Borrower;

(e) Unauthorized Transfer. Borrower's sale or other transfer of the Project in violation of this Agreement;

(f) Fraud or Material Misstatement or Omissions. Any fraudulent act or omission of Borrower' pertaining to or made in connection with the Loan, Loan Documents or the Project;

(g) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of sixty (60) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 8.1(h) as well; or Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note; or

(h) Project Monies. Borrower's misapplication or embezzlement of Project monies.

13. Remedies. The occurrence of any Event of Default shall, either at the option of the County or automatically where so specified, relieve the County of any obligation to make

or continue the Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the County's rights and remedies shall be cumulative), including but not limited to the following:

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

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

(c) Right to Cure at Borrower's Expense. The County shall have the right to cure any monetary default by Borrower under this Agreement. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum or the maximum rate permitted by law, whichever rate is lesser, from the date of expenditure until the date of reimbursement.

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

(e) Waiver of Terms and Conditions. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent

breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the Loan Documents, unless in the exercise of any such right, power, or remedy all obligations of Borrower to County are paid and discharged in full.

14. Recording and Filing. The Borrower shall cause this Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County of Orange and in such other places as the County may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

15. Governing Law. This Agreement shall be governed by the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394

16. Amendments. This Agreement shall be amended only by a written instrument executed by the parties hereto, or their successors in title and duly recorded in the real property records of the County of Orange.

17. Notices.

(a) Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Borrower: Savi Ranch II Housing Partners, L.P.
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: [CONTACT NAME]

County: County of Orange
OC Community Resources
1300 S. Grand Avenue, Building B (3rd Floor)

Santa Ana, CA 92705
Attn: Director

(b) County shall endeavor to provide a courtesy copy of any notice sent to Borrower to the following addressee, however, failure to do so shall not affect the validity of any otherwise proper, timely delivered notice to Borrower:

[does anybody else need a courtesy notice?]

Notice shall be deemed given three business days after the date of mailing.

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

19. Additional Terms.

(a) **Indemnity.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the County and its elected officials, officers, governing members, employees, attorneys and agents (collectively, the "Indemnified Parties"), from and against any and all losses, damages, claims, actions, liabilities, costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject to under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

1. this Agreement or the execution or amendment thereof in connection with the transactions contemplated thereby;
2. Borrower's ownership or operation of the Property and the Project or any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Property and the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation of, the Project or any part thereof;
3. any lien or charge upon payments by the Borrower to the County, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the County in respect of any portion of the Project;
4. any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Property or the Project or any part thereof;

5. any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any Loan Document or any of the documents or instruments relating to said Loan Documents that the County relied upon in making the Loan;

except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

(b) Time. Time is of the essence in this Agreement.

(c) Construction. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

(d) Waiver of Jury Trial. Unless prohibited by Federal, State or local laws, each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any Loan Document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any Loan Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

(e) Nonliability. By accepting or approving anything required to be performed or given to County under this Agreement, County shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by County to anyone.

(f) Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of County to Borrower, or any claim by Borrower against County, in connection with this Agreement or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under this Agreement or (b) to claim that the existence of

any such obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

BORROWER:

[PLEASE PROVIDE SIGNATURE BLOCK]

By:

COUNTY OF ORANGE

By _____
Dylan Wright, Director,
OC Community Resources
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By _____
Deputy

Dated _____

EXHIBIT A

LEGAL DESCRIPTION

[PLEASE PROVIDE LEGAL DESCRIPTION]

EXHIBIT B
[PLEASE PROVIDE]

LOW AND VERY LOW QUALIFIED TENANT/UNIT MIX
[LOCATION], California

HOME RENT & AFFORDABILITY SCHEDULE

Number of Restricted Units	Number of Bedrooms	* Gross Restricted Rental Rate	**Utility Allowance	Net Restricted Rental Rate	Income Limit based on Area Median Income (AMI)	Age Restriction (if any)	Project Based Section 8 Units	Number of Years Restricted
Total							Total 0	

- * Restricted Rental Rate is based on the current Area Median Income (AMI) published by HUD annually and does not include the utility allowance deduction.
- ** Utility allowance is based on the current utility schedule published by the Orange County Housing Authority annually.

Rent increases shall be limited to (i) the Department of Housing and Urban Development’s (HUD) annually published Rent Adjustment factor for the Section 8 program, or (ii) no more than the lower of rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth above, which is adjusted annually by HUD and published by the State of California, or as required by California Health & Safety Code section 50053, as referenced in the Loan Agreement Section 3.1 (d).