

**DISPOSITION AND DEVELOPMENT AGREEMENT
(The View Housing Project)**

by and between the

**COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY
a California public body, corporate and politic**

and

**NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA,
a California non-profit public benefit corporation**

[Dated as of November 9, 2010, for reference purposes only]

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND COVENANTS OF COMMISSION AND DEVELOPER SET FORTH IN THIS AGREEMENT, COMMISSION AND DEVELOPER AGREE, AS FOLLOWS:

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 **Definitions.** The following words, terms and phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation:

1.1.1 **Actual Project Costs.** The actual aggregate cost amount in each of the categories of expenses for the Project set forth in the Project Budget and all other costs related to the Project that are incurred by Developer as of the date of issuance of a final Certificate of Occupancy for the entire Project by the City.

1.1.2 **Affiliate.** Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.1.3 **Agreement.** This Disposition and Development Agreement (Verizon Building) by and between Commission and Developer, including all of the exhibits attached to this Agreement.

1.1.4 **AHP Funds.** Defined in Section 9.13.

1.1.5 **Application.** Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for the Project, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument as Developer may reasonably request for the Project; or (b) to enable Developer to seek any Approval or to use and operate the Project in accordance with this Agreement or the Regulatory Agreement.

1.1.6 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Project on the Project Site.

1.1.7 **Automobile Liability Insurance.** Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Developer regarding the Project, with minimum limits for bodily injury and property damage of TWO MILLION DOLLARS (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Commission, which approval shall not be unreasonably withheld.

1.1.8 **Auxiliary Parking Parcel.** That certain condominium air space parcel to be created above the Auxiliary Parking Site for construction of the above-ground parking deck contemplated in Design Option 2 by Developer to be used solely for parking of vehicles for residents, guests or on-site employees of the Project.

1.1.9 **Auxiliary Parking Parcel Deed.** A quitclaim deed conveying Commission's interest in the Auxiliary Parking Parcel from Commission to Developer, substantially in the form of **Exhibit "O"** attached to this Agreement.

1.1.10 **Auxiliary Parking Parcel Map.** A condominium map regarding the Auxiliary Parking Site creating the Auxiliary Parking Parcel as a separate and distinct legal parcel above the surface of the Auxiliary Parking Site, reasonably allowing for use of the surface of the Auxiliary Parking Site for ingress, egress and parking of motor vehicles.

1.1.11 **Auxiliary Parking Site.** That certain real property specifically described in **Exhibit "J"** attached to this Agreement.

1.1.12 **Bankruptcy Law.** Title 11, United States Code, and any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.1.13 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.1.14 **Builder.** Developer or another Person who is a State licensed general contractor experienced in the construction and installation of improvements similar to the Project and which has a net worth of at least the amount of the Total Project Costs.

1.1.15 **Builder's Risk Insurance.** Builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Project Site.

1.1.16 **Building.** The existing building located on the Property on the Effective Date.

1.1.17 **Business Day.** Any weekday on which the City is open to conduct regular municipal functions with City personnel.

1.1.18 **CEQA.** The California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*

1.1.19 **CEQA Documents.** Any exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any

addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, pursuant to CEQA, to issue any discretionary Approval required to approve this Agreement.

1.1.20 **Certificate of Occupancy.** A Certificate of Occupancy as defined in the Uniform Building Code, 2007 Edition, published by the International Conference of Building Officials, as may be amended from time to time, as adopted by the City.

1.1.21 **City.** The City of Downey, California, a California municipal corporation.

1.1.22 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs) and any judgment.

1.1.23 **Close of Escrow.** The first date on which the Escrow Agent has filed all of the documents set forth in Section 6.9.1 with the County for recording in the official records of the County in accordance with Section 6.9.1.

1.1.24 **Commission.** The Community Development Commission of the City of Downey, a California public body corporate and politic, and any assignee of or successor to the rights, powers or responsibilities of the Community Development Commission of the City of Downey.

1.1.25 **Commission Deed of Trust.** A deed of trust in substantially the form of **Exhibit "F"** attached to this Agreement securing Developer's obligation to repay the Commission Loan pursuant to the terms of the Developer Note recorded against the Project Site.

1.1.26 **Commission Loan.** A loan from Commission to Developer in an amount not to exceed **[TO BE DETERMINED BASED ON OPTION ONE OR OPTION TWO]** evidenced by the Developer Note and secured by the Commission Deed of Trust.

1.1.27 **Commission Parties.** Collectively, Commission, its governing body, elected officials, employees, agents and attorneys.

1.1.28 **Commission Party.** Individually, Commission, its governing body, elected officials, employees, agents or attorneys.

1.1.29 **Commission Title Policy.** An ALTA lender's policy of title insurance issued by the Title Company, with coverage in the maximum original principal amount of the Commission Loan showing title to the Project Site vested in Developer and insuring the priority of the Commission Deed of Trust with respect to the Project Site (and, if the Project proceeds pursuant to Design Option 2, then also the Auxiliary Parking Parcel) as only subordinate to a Permitted Security Instrument securing repayment of the Construction Financing and liens imposed by law.

1.1.30 **Completion Certificate.** Commission's written certification acknowledging that the Project is complete in accordance with the terms and conditions of this Agreement, substantially in the form of **Exhibit "C"** attached to this Agreement.

1.1.31 **Completion Guaranty.** A guaranty from the Guarantor substantially in the form of **Exhibit "B"** attached to this Agreement guaranteeing to Commission the completion of construction of the Project in accordance with this Agreement.

1.1.32 **Construction Contract.** A current agreement between Developer and Builder for construction of the entirety of the Project for a fixed or guaranteed maximum price expressly set forth in such contract and in accordance with all of the terms and conditions of this Agreement, conditioned only upon: (a) the Close of Escrow; (b) Developer's receipt of all Approvals; (c) closing of the Construction Financing; and (d) other commercially reasonable conditions.

1.1.33 **Construction Drawings.** The final construction drawings and specifications and finish grading and landscape plans for the Project prepared by or for Developer.

1.1.34 **Construction Financing.** One or more loans that Developer shall obtain from one or more Institutional Lenders, in an amount consistent with the Financing Plan approved by Commission pursuant to Section 6.5.11, the proceeds of which are to be used and applied solely to pay the reasonable costs of obtaining such loan(s) and either: (a) the excess of the Total Project Costs over the sum of the amount of the Commission Loan to be disbursed during Project construction, the amount of the Industry Funds Loan to be disbursed during Project construction (if any), the amount of the IIG Loan to be disbursed during Project construction (if any) and the amount of the Tax Credit Equity to be disbursed during Project construction pursuant to the Financing Plan and the Developer Partnership Agreement; or (b) to refinance only the outstanding amount owed under a prior loan obtained by Developer to finance the amount described in clause "(a)" of this Section 1.1.34 (without any other amounts). Such loan(s) shall provide for normal and customary disbursement controls for the payment of Total Project Costs and normal and customary fees and expenses for loan(s) of similar size and purpose.

1.1.35 **Construction Financing Documents.** The various documents and instruments made by and between Developer and one or more Institutional Lenders that evidence or perfect the Construction Financing or the security for repayment of the Construction Financing, including any associated Security Instrument.

1.1.36 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.1.37 **Cost Reduction.** Defined in Section 9.13.

1.1.38 **CTCAC.** The California Tax Credit Allocation Committee or successor in function.

1.1.39 **CTCAC Regulatory Agreement.** The regulatory agreement required by CTCAC to be recorded against the Project Site to obtain the Tax Credits.

1.1.40 **County.** The County of Los Angeles, California.

1.1.41 **County CDC.** The Community Development Commission of the County of Los Angeles, a public body corporate and politic.

1.1.42 **Default.** The failure of a Party to perform any action or covenant required to be performed by such Party pursuant to this Agreement within the time period provided for such performance in this Agreement.

1.1.43 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the Usury Limit.

1.1.44 **Deferred Developer Fee.** Defined in Section 9.5.

1.1.45 **Design Option 1.** The Project design shown in **Exhibit "K"** attached to this Agreement that provides for all parking for the Project on the Property at approximately the total development cost set forth in the Design Option 1 Budget.

1.1.46 **Design Option 2.** That certain Project design set forth in **Exhibit "L"** attached to this Agreement providing for a portion of the Project parking to be provided on the Auxiliary Parking Parcel at approximately the total development cost set forth in the Design Option 2 Budget.

1.1.47 **Design Option 1 Budget.** That certain budget estimate for the Project developed pursuant to Design Option 1 attached as **Exhibit "M"** attached to this Agreement.

1.1.48 **Design Option 2 Budget.** That certain estimated budget for construction of the Project developed pursuant to Design Option 2 set forth in **Exhibit "N"** attached to this Agreement.

1.1.49 **Developer.** The Original Developer, until the Original Developer Transfers all of its rights and obligations under this Agreement to the Developer Partnership, in accordance with Section 4, then from the date of such Transfer forward, the Developer Partnership and any voluntary successors or assigns to which a Transfer may be made pursuant to the provisions of this Agreement; provided, however, Original Developer shall remain obligated under this Agreement to apply for and obtain the IIG Grant and make the IIG Loan to Developer.

1.1.50 **Developer Entity Documents.** The Developer Partnership Agreement, including all amendments, and all associated agreements (i.e., guaranties, notes, deeds of trust, etc.), all of which Developer shall certify as accurate as of the date of the Close of Escrow, and a Certificate of Good Standing from the Secretary of State of the State certifying that the Developer Partnership is authorized to conduct business in the State.

1.1.51 **Developer Fee.** An aggregate amount not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000), inclusive of the Deferred Developer Fee.

1.1.52 **Developer Note.** A promissory note in substantially the form of **Exhibit "E"** attached to this Agreement evidencing Developer's obligation to repay the Commission Loan pursuant to the terms of such note.

1.1.53 **Developer Official Action.** The official action of the directors, managers, partners or other Persons in Control of Developer in substantially the form attached to this Agreement as **Exhibit "H"** authorizing Developer to enter into and perform this Agreement.

1.1.54 **Developer Parties.** Collectively, Developer and the directors, officers, employees, agents, shareholders, members, managers and partners of Developer.

1.1.55 **Developer Partnership.** A California limited partnership entity comprised of a general partner and the Tax Credit Investor, as the sole limited partner, with the identities and qualifications of all of the general and limited partners being subject to prior written approval of the Commission. The Developer Partnership general partner shall be or include a non-profit, public benefit corporation affordable housing sponsor.

1.1.56 **Developer Partnership Agreement.** The agreement of limited partnership organizing and establishing the Developer Partnership as a legal entity, as approved by the Commission pursuant to Section 4 or Section 6.5.11.

1.1.57 **Developer Party.** Individually, Developer or the directors, officers, employees or agents, shareholders, members, managers or partners of Developer.

1.1.58 **Developer Specific Default.** Any Default that: (a) is not reasonably susceptible of cure by the holder of a Permitted Security Instrument, such as (to the extent, if any, that it actually constitutes a Default under this Agreement) any Default resulting from a Bankruptcy Proceeding affecting Developer; any prohibited change of management of Developer; failure to deliver required financial information within Developer's control; (b) by its nature relates only to, or can reasonably be performed only by, Developer or its Affiliates; or (c) consists of Developer's failure to satisfy or discharge any lien, charge, or encumbrance that satisfies all of the following: (i) attaches to the Project Site; (ii) is junior to the specific Permitted Security Instrument; and (iii) this Agreement prohibits.

1.1.59 **Developer Title Policy.** A standard CLTA owners' policy of title insurance issued by the Title Company, with coverage in the amount of the Purchase Price, showing title to the Project Site vested in Developer.

1.1.60 **Disbursement Agreement.** A disbursement agreement to be entered into by and among the Senior Institutional Lender providing the Construction Financing, Developer and Commission, effective at the Close of Escrow, providing for such Institutional Lender to hold and disburse the proceeds of all sources of financing described in the Financing Plan to be disbursed during Project construction, subject to the terms and conditions of this Agreement, the Regulatory Agreement, the Note and the Commission Deed of Trust.

1.1.61 **Due Diligence Completion Notice.** A written notice from Developer delivered to both Commission and Escrow Agent, prior to the end of the Due Diligence Period, indicating Developer's unconditional acceptance of the condition of the Project Site or indicating Developer's rejection of the condition of the Project Site and refusal to accept a conveyance of title to the Project Site, describing in reasonable detail the actions that Developer reasonably believes are indicated to allow Developer to unconditionally accept the condition of the Project Site.

1.1.62 **Due Diligence Investigations.** Developer's due diligence investigations of the Project Site to determine the suitability of the Project Site for development and operation of the Project, including investigation of the environmental and geotechnical suitability of the Project Site, as deemed appropriate in the reasonable discretion of Developer, all at the sole cost and expense of Developer.

1.1.63 **Due Diligence Period.** The time period of thirty (30) continuous days commencing on the day immediately following the Escrow Opening Date.

1.1.64 **Dwelling Unit.** Any one of the fifty (50) apartment units in the Project.

1.1.65 **Effective Date.** Defined in Section 2.

1.1.66 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.1.67 **Environmental Laws.** All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability of standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Project Site), occupational or environmental conditions on, under, or about the Project Site, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health

& Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other Federal, State, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Project Site, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

1.1.68 **Equity Interest.** All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.1.69 **Escrow.** An escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the sale of the Project Site from Commission to Developer pursuant to this Agreement.

1.1.70 **Escrow Agent.** Fidelity National Title Insurance Company, a California corporation, or such other Person mutually agreed upon in writing by both Commission and Developer.

1.1.71 **Escrow Closing Date.** The earlier of: (a) on or before the fifth (5th) Business Day following the Escrow Agent's receipt of written confirmation from both Commission and Developer of the satisfaction or waiver of all conditions precedent to the Close of Escrow; (b) the date that is one hundred forty-five (145) calendar days following Developer's receipt of written confirmation from CTCAC of the reservation of the Tax Credits for the Project; or (c) another date mutually agreed upon in writing between the Parties for the Close of Escrow.

1.1.72 **Escrow Closing Statement.** A statement prepared by the Escrow Agent indicating among other things, the Escrow Agent's estimate of all funds to be deposited or received by Commission or Developer, respectively and all charges to be paid by Commission or Developer, respectively, through the Escrow.

1.1.73 **Escrow Default.** The unexcused failure to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, pursuant to the terms and conditions of this Agreement, after all other conditions precedent to the Close of Escrow for the benefit of such Party are satisfied or waived by such Party.

1.1.74 **Escrow Opening Date.** The first date on which a fully executed copy of this Agreement is deposited with the Escrow Agent, as provided in Section 6.1.

1.1.75 **Event of Default.** The occurrence of any one or more of the following:

(a) *Monetary Default.* A Monetary Default that continues for fifteen (15) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment;

(b) *Escrow Closing Default.* An Escrow Default that continues for seven (7) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the document or funds not submitted;

(c) *Bankruptcy or Insolvency.* Developer admits in writing that it is unable to pay its debts as they become due or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Agreement or the Project (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);

(d) *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement; or

(e) *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 1.1.75(c) or Section 1.1.75(d) that is not cured within sixty (60) days after Notice to the Party alleged to be in Default describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable diligence be cured within sixty (60) days after the effective date of such Notice, if the Party alleged to be in Default does not do all of the following: (a) within sixty (60) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party alleged to be in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.1.76 **Executive Director.** The Executive Director of Commission or his or her designee or successor in function.

1.1.77 **Federal.** The federal government of the United States of America.

1.1.78 **Financing Plan.** A plan prepared by the Developer setting forth all of the sources of money that the Developer proposes to use to finance all of the Total Project Costs (whether paid, incurred, accrued or anticipated), and including all of the following documents and information: (a) each loan commitment made to the Developer by any Institutional Lender for any portion of the Construction Financing for the Project; (b) any and all loan documents (including Security Instruments) to be made or entered into by or between the Institutional Lender providing the Construction Financing or Developer (including any related Affiliate or Third Person guaranty) regarding the Construction Financing for the Project; (c) the written commitment of the County CDC to provide the Industry Funds Loan to Developer for construction of the Project and all documents to be made or entered into by or between the

County CDC and Developer (including any related Affiliate or Third Person guaranty) regarding such loan; (d) if the Project is proceeding pursuant to Design Option 1, the written commitment of HCD to provide the IIG Grant to the Original Developer for construction of the Project and all documents proposed to be made or entered into by or between Original Developer or HCD (including any related Affiliate or Third Person guaranty) regarding such grant and the associated agreement of the Original Developer to make the IIG Loan to Developer for construction of the Project and all documents proposed to be made or entered into by or between Original Developer and Developer (including any related Affiliate or Third Person guaranty) regarding such loan; (e) a written forward loan commitment from an Institutional Lender to Developer for such Institutional Lender to provide the Permanent Loan to Developer; (f) the amount, source(s) and distribution timing of the Tax Credit Equity and all documents (including Security Instruments) to be made or entered into by or between Developer or the Tax Credit Investor (including any related Affiliate or Third Person guaranty) regarding the Tax Credit Equity, including the Developer Partnership Agreement or any amendments, modifications or restatements of the Developer Partnership Agreement; (g) any agreements requested by any financing source identified in such financing plan to which the Commission is proposed to be a party as a condition precedent to such financing source providing its financing; and (h) the construction budget for the Project that has been approved by both the Senior Institutional Lender providing the Construction Financing and the Tax Credit Investor.

1.1.79 **FIRPTA Certificate.** A certification that Commission is not a “foreign person” within the meaning of such term under Section 1445 of the United States Internal Revenue Code and sufficient to exempt Developer from the obligation to withhold any funds from Commission pursuant to Section 1445 of the United States Internal Revenue Code.

1.1.80 **Form 593.** A California Franchise Tax Board Form 593-C.

1.1.81 **Government.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

1.1.82 **Guarantor.** National Community Renaissance of California, a California non-profit public benefit corporation.

1.1.83 **Hazardous Substance.** Any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (c) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq., or any so-called

“superfund” or “superlien” law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) any substance defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material.

1.1.84 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at on, under, into or from the Project Site, or during transportation of any Hazardous Substance to or from the Project Site, or that arises at any time from the construction, installation, use or operation of the Project or any activities conducted at on, under or from the Project Site, whether or not caused by a Party.

1.1.85 **HCD.** The State Department of Housing and Community Development, a public agency of the State.

1.1.86 **IIG Grant.** A grant to Original Developer from HCD pursuant to HCD’s Infill Infrastructure Grant Program in an amount consistent with the amount of financing from such source set forth in the Financing Plan approved by Commission pursuant to Section 6.5.11 to finance a portion of the Total Project Costs.

1.1.87 **IIG Loan.** A loan of the IIG Grant proceeds by Original Developer to Developer pursuant to a written loan agreement and promissory note, in compliance with all applicable Law and the regulations of HCD, without security in the Project Site or, if security in the Project site for such loan is required by the Tax Credit Investor, then secured by the Project Site in a subordinate lien position to the Permitted Security Instrument securing the Construction Financing, the Commission Deed of Trust and any Permitted Security Instrument securing repayment of the Industry Funds Loan.

1.1.88 **IIG Regulatory Agreement.** The regulatory agreement required by HCD to be recorded against the Project Site to obtain the IIG Grant.

1.1.89 **Indemnify.** Where this Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall

indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

1.1.90 **Indemnitee.** Any Person entitled to be Indemnified under the terms of this Agreement.

1.1.91 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Agreement.

1.1.92 **Industry Funds Loan.** City of Industry Redevelopment Agency or Industry Urban Development Agency Low and Moderate Income Housing Fund money (set aside pursuant to Health and Safety Code Section 33334.2) transferred to the County CDC pursuant to Government Code Section 65584.3, loaned to Developer in an amount consistent with the amount of financing from such source set forth in the Financing Plan approved by Commission pursuant to Section 6.5.11 to finance a portion of the Total Project Costs and to be repaid from “Residual Receipts” (as defined in the Developer Note), with subordination of any associated Permitted Security Instrument to both the Permitted Security Instrument securing repayment of the Construction Financing and the Commission Deed of Trust.

1.1.93 **Institutional Lender.** Any of the following: (a) a bank (State or Federal), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank or a Fortune 500 company; or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in “(a)” of this Section 1.1.93.

1.1.94 **Insurance Documents.** Copies of insurance policies and endorsements evidencing all insurance coverage required to be obtained by Developer pursuant to Section 8.

1.1.95 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule, and regulation of any Government applicable to the Project Site or the Project, in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting the Project Site or the Project, or relating to any taxes, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.1.96 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

1.1.97 **Lender.** The holder of any Security Instrument and its successors and assigns.

1.1.98 **Liability Insurance.** Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in, or about the Project Site, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of [TO BE DETERMINED] for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project Site or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.1.99 **Liquidated Damages Amount.** The amount of One Hundred Thousand Dollars (\$100,000).

1.1.100 **Monetary Default.** Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

1.1.101 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of its obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement by a Party.

1.1.102 **Negotiation Agreement.** Defined in Recital C to this Agreement.

1.1.103 **Normal Business Hours.** Any weekday, Monday through Friday, excluding Federal or State recognized holidays, between the hours of 9:00 a.m. and 5:00 p.m. Pacific Standard Time.

1.1.104 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

1.1.105 **Notice of Affordability Restrictions.** A notice in substantially the form of Exhibit "G" attached to this Agreement to be recorded against the Project Site.

1.1.106 **Notice of Default.** Any Notice claiming or giving Notice of a Default or alleged Default.

1.1.107 **Notify.** To give a Notice.

1.1.108 **Original Developer.** National Community Renaissance of California, a California non-profit public benefit corporation.

1.1.109 **Parking Deck Easement.** An easement to Developer over the surface of the Auxiliary Parking Site for construction, maintenance, repair, operation and restoration by Developer of the above-ground parking deck contemplated in Design Option 2 on the Auxiliary

Parking Site to be used solely for parking of vehicles for residents, guests or on-site employees of the Project, in substantially the form of **Exhibit "P"** attached to this Agreement.

1.1.110 **Parties.** Collectively, Commission and Developer.

1.1.111 **Party.** Individually, either Commission or Developer, as applicable.

1.1.112 **Permanent Loan.** A loan from an Institutional Lender to the Developer that will be used solely in combination with proceeds of the Tax Credit Equity not previously advanced to completely pay-off the Construction Financing, including the reasonable costs of obtaining the loan and any reasonable and customary fees or charges relating to pay-off of the Construction Financing.

1.1.113 **Permitted Encumbrance.** Any Permitted Security Instrument, the CTCAC Regulatory Agreement, the Regulatory Agreement, the Commission Deed of Trust, utility easements directly related to the Project, a Permitted Security Instrument securing repayment of the Permanent Loan and any other document required or expressly allowed to be recorded against the Project Site by the express terms of this Agreement.

1.1.114 **Permitted Exception.** All of the following: (a) all items shown in the applicable Preliminary Report, as exceptions to coverage under the proposed Developer Title Policy, that are approved by Developer pursuant to Section 5.2; (b) any lien for non-delinquent property taxes or assessments; (c) any Laws applicable to the Project Site; (d) the Redevelopment Plan; (e) this Agreement; (f) the Regulatory Agreement; (g) the Commission Deed of Trust; (h) any Permitted Security Instrument; (i) the CTCAC Regulatory Agreement; (j) any existing improvements on the Project Site, if any, following satisfaction of the conditions set forth in Sections 6.4.9 and 6.5.20; (k) any encumbrance recorded against the Project Site with Developer's consent or as a result of the activities of Developer; and (l) any other document or encumbrance expressly required or allowed to be recorded against the Project Site or the Project under the terms of this Agreement.

1.1.115 **Permitted Lender.** The holder of any Permitted Security Instrument.

1.1.116 **Permitted Security Instrument.** Any Security Instrument: (a) that encumbers only the Project Site or any interest in the Project Site; (b) a copy of which (recorded or unrecorded) is promptly after execution delivered to Commission, with a certification by the Lender that the copy is accurate and stating the Lender's name and notice address; (c) that is held by a Lender that is an Institutional Lender, subject to the jurisdiction of the courts of the State, not immune from suit and cannot elect to be immune from suit; and (d) only secures: (i) the repayment of money used to pay or reimburse the Total Project Costs; (ii) a delivery assurance fee regarding a Permanent Loan that is refundable to Developer at the close of the Permanent Loan; or (v) any Refinancing permitted under the terms and conditions of this Agreement.

1.1.117 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.1.118 **Placed In Service Information.** All information required to be provided by Developer to CTCAC pursuant to Title 4 California Code of Regulations Section 10322(i)(2), except such items that are not customarily provided at completion of construction, including the executed CTCAC Regulatory Agreement.

1.1.119 **Pre-Development Loan Note.** That certain promissory note made by Developer to the order of Commission, dated as of January 8, 2010, pursuant to the Negotiation Agreement, and evidencing a loan from the Commission to the Developer for pre-development costs related to the Project in an amount not to exceed Seventy-Five Thousand Dollars (\$75,000).

1.1.120 **Preliminary Report.** A preliminary report issued by the Title Company in contemplation of the issuance of a policy of title insurance, accompanied by the best available copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed policy of title insurance.

1.1.121 **Prevailing Wage Action.** Any of the following: (a) any determination by the State Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code Sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code Section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code Section 1781 or applicable Federal Law.

1.1.122 **Prohibited Encumbrance.** Any Security Instrument, mechanic's lien, easement or other encumbrance recorded or asserted against the Project Site or the Project that is not a Permitted Encumbrance.

1.1.123 **Project.** The fifty (50) Dwelling Unit affordable residential rental project specifically described in either Design Option 1 or Design Option 2, as applicable pursuant to Section 5.5. The Project shall include all required or associated on-site and off-site improvements, hardscape improvements, parking areas and carports, and landscaping improvements to the Project Site, in accordance with plans and specifications approved by the City, any conditions imposed by the City in issuing development entitlements related to the Project and applicable Law.

1.1.124 **Project Area.** Defined in Recital A to this Agreement.

1.1.125 **Project Budget.** If the Project is proceeding pursuant to Design Option 1, then the Design Option 1 Budget, and if the Project is proceeding pursuant to Design Option 2, then the Design Option 2 Budget.

1.1.126 **Project Commencement Date.** The date that is one hundred eighty (180) days after the date Developer first receives written notice from CTCAC of reservation of the Tax Credits for the Project.

1.1.127 **Project Completion Date.** The date that is Five Hundred Forty (540) calendar days following the date of the Close of Escrow.

1.1.128 **Project Deficit.** Defined in Section 9.13.

1.1.129 **Project Map.** A condominium map for the Project approved by the City consistent with Design Option 1 or Design Option 2, as applicable pursuant to Section 5.5.

1.1.130 **Project Site.** The Property and, if the Project proceeds pursuant to Design Option 2, the Auxiliary Parking Parcel (provided that Commission owns fee title to the Auxiliary Parking Site) and related rights, interests or easements.

1.1.131 **Project Surplus.** Defined in Section 9.13.

1.1.132 **Property.** That certain real property and improvements legally described in **Exhibit "A"** attached to this Agreement.

1.1.133 **Property Deed.** A quitclaim deed conveying the Commission's interest in the Property from Commission to Developer, at the Close of Escrow, substantially in the form of **Exhibit "I"** attached to this Agreement.

1.1.134 **Property Insurance.** Insurance providing coverage for the Project Site and all improvements on or to the Project Site against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Project Site; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

1.1.135 **Punchlist Work.** Construction of an insubstantial nature that, if not completed, will not delay issuance of a final Certificate of Occupancy (or equivalent approval) for the Project by the City or materially interfere with use of the Project.

1.1.136 **Purchase Price.** If the Project proceeds pursuant to Design Option 1, then \$1,644,275 or, alternatively, if the Project proceeds pursuant to Design Option 2, then \$1,481,775.

1.1.137 **Redevelopment Plan.** Defined in Recital A to this Agreement.

1.1.138 **Refinancing.** Any loan secured by a Permitted Security Instrument that Developer obtains from an Institutional Lender subsequent to recordation of a Permitted Security Instrument securing repayment of the Permanent Loan for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer

exceeding the amount of principal and interest under the existing loan being paid plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Developer without paying off any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan.

1.1.139 **Regulatory Agreement.** That certain “Regulatory Agreement and Conditions, Covenants and Restrictions Restricting Use of Property for Affordable Housing (Verizon Building)” to be entered into by and between Commission and Developer at Close of Escrow, substantially in the form of **Exhibit “D”** attached to this Agreement recorded against the Project Site.

1.1.140 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Project Site, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

1.1.141 **Senior.** Referring to multiple Security Instruments, the Security Instrument that is most senior in lien of the same type. Where Senior is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type that is senior in lien to such specified Security Instrument. If only one Security Instrument of a particular type exists, then it shall be deemed the Senior Security Instrument of such type.

1.1.142 **State.** The State of California.

1.1.143 **Tax Credit Equity.** The amount to be paid by the Tax Credit Investor to acquire 99.99% ownership of the Developer Partnership, as the sole limited partner, pursuant to the Developer Partnership Agreement.

1.1.144 **Tax Credit Investor.** The Person that provides the Tax Credit Equity. The Tax Credit Investor shall be subject to the reasonable approval of Commission. In no event may the Tax Credit Investor be an Affiliate of Developer.

1.1.145 **Tax Credits.** An allocation from CTCAC of nine percent (9%) Federal low income housing tax credits in an amount consistent with the Financing Plan approved by

Commission pursuant to Section 6.5.11 to finance a portion of the Total Project Costs, all in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, all associated Internal Revenue Service regulations, State law and all associated CTCAC regulations.

1.1.146 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.147 **Title Company.** Fidelity National Title Insurance Company, a California corporation, or such other Person mutually agreed upon in writing by both Commission and Developer.

1.1.148 **Title Notice.** A written notice from Developer to Commission indicating Developer's acceptance of the state of the title to the Project Site, as described in the Preliminary Report for the Developer Title Policy, or Developer's disapproval of specific matters shown in Schedule B of such Preliminary Report as exceptions to coverage under the proposed Developer Title Policy for the Project Site, describing in suitable detail the actions that Developer reasonably believes are indicated to obtain Developer's approval of the state of the title to the Project Site.

1.1.149 **Title Notice Response.** The written response of Commission to the Title Notice, in which Commission either elects to: (i) cause the removal from the Preliminary Report for the Developer Title Policy of any matters disapproved; (ii) obtain title or other insurance or endorsement in a form reasonably satisfactory to Developer insuring against any matters disapproved in the Title Notice; or (iii) not take either action described in clause "(i)" or "(ii)" of this Section 1.1.149.

1.1.150 **Title Notice Waiver.** A written notice from Developer to Commission waiving Developer's previous disapproval in the Title Notice of specific matters shown in Schedule B of the Preliminary Report for the Developer Title Policy as exceptions to coverage under the proposed Developer Title Policy.

1.1.151 **Total Project Costs.** All of the costs set forth in the Project Budget.

1.1.152 **Transfer.** Regarding any property, right or obligation means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" and "(c)" of this Section 1.1.152, shall be deemed a Transfer by Developer even though Developer is not technically the transferor. A "Transfer" shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Project Site and/or any Equity

Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the entity whose Equity Interest is being transferred; (iv) the original sale of limited partnership Equity Interests in Developer for the purpose of syndicating the Tax Credit Equity; (v) a conveyance to an Affiliate of Developer; (vi) a conveyance to an Affiliate of the Tax Credit Investor pursuant to the rights of the Tax Credit Investor under the Developer Partnership Agreement; (vii) a collateral pledge of the Equity Interests in the Developer Partnership to the Institutional Lender providing the Construction Financing for the Project; or (viii) a collateral pledge by the Tax Credit Investor of its Equity Interests in the Developer Partnership to an Institutional Lender that is making a loan to the Tax Credit Investor to finance the Tax Credit Investor's acquisition of such Equity Interests in the Developer Partnership.

1.1.153 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement, except payment or deposit of money, arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters, or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

1.1.154 **Usury Limit.** The highest rate of interest, if any, that Law allows under the circumstances.

1.1.155 **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Agreement for any loss such policy covers.

1.1.156 **Workers Compensation Insurance.** Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of Developer.

2. **EFFECTIVE DATE.** This Agreement shall not become effective until the date on which all of the following have occurred: ("**Effective Date**"): (a) Commission has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Developer; (b) Commission has received a certified copy of the Developer Official Action executed by the authorized representative(s) of Developer; (c) this Agreement is approved by Commission's governing body; (d) this Agreement is signed by the authorized representative(s) of Commission; and (e) one (1) original of this Agreement signed by the authorized representative(s) of Commission has been delivered by Commission to Developer. The Effective Date of this Agreement is _____, 20__

3. **TERMINATION OF NEGOTIATION AGREEMENT.** Upon the occurrence of the Effective Date, the Parties intend and agree that the Negotiation Agreement, as it relates to the

Property shall expire, terminate and be of no further force or effect regarding the Property, without any effect on the obligations of Developer under the Pre-Development Loan Note. The Negotiating Agreement shall remain in full force and effect related to property that does not include the Property.

4. **TRANSFER TO DEVELOPER PARTNERSHIP.** Within sixty (60) calendar days following the date of issuance by CTCAC of a letter to Original Developer reserving the Tax Credits for the Project, the Original Developer shall Transfer all of its rights and obligations under this Agreement to the Developer Partnership through a written assignment and assumption agreement approved by the Commission prior to the effective date of such Transfer. Notwithstanding any other provision of this Agreement to the contrary, the form and substance of the Developer Partnership Agreement shall have been approved by the Commission prior to the effective date of such Transfer, including the then current identities and qualifications of the general partner and all of the limited partners of the Developer Partnership. Any later change in the identities or qualifications of the general partner or any or all of the limited partners of the Developer Partnership or any amendment, modification or restatement of the Developer Partnership Agreement, shall be subject to the prior written approval of Commission, until issuance of a Completion Certificate for the Project. If the Original Developer fails to timely Transfer all of its rights and obligations under this Agreement to the Developer Partnership in accordance with this Section 4, the Commission shall have the right to terminate this Agreement by Notice to the Original Developer.

5. **PURCHASE AND SALE OF PROJECT SITE**

5.1 Escrow. Commission shall sell the Project Site to Developer and Developer shall purchase the Project Site from Commission, subject to the Permitted Exceptions and the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the Project Site from Commission to Developer and the purchase of the Project Site by Developer from Commission, pursuant to the terms and conditions of this Agreement, Commission and Developer agree to open the Escrow with the Escrow Agent. The provisions of Section 6 of this Agreement are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow.

5.2 Developer's Approval of Title to Project Site.

5.2.1 **Title Notice.** Within fifteen (15) days after the Escrow Opening Date, Commission shall request the Preliminary Report for the Developer Title Policy from the Title Company and that the Title Company deliver a copy of such Preliminary Report to Developer. Within thirty (30) days following Developer's receipt of the Preliminary Report for the Developer Title Policy, Developer shall send the Title Notice to both Commission and Escrow Agent.

5.2.2 **Failure to Deliver Title Notice.** If Developer fails to send the Title Notice to Commission and Escrow Agent within the time period provided in Section 5.2.1, Developer will be deemed to disapprove the status of title to the Project Site and refuse to accept conveyance of the Project Site and both Developer and Commission shall have the right to

cancel the Escrow and terminate this Agreement upon seven (7) days Notice, in their respective sole and absolute discretion.

5.2.3 Title Notice Response. Within fifteen (15) days following Commission's receipt of the Title Notice (if any), Commission shall send the Title Notice Response to both Developer and Escrow Agent. If the Title Notice does not disapprove or conditionally approve any matter in the Preliminary Report for the Developer Title Policy or Developer fails to deliver the Title Notice, Commission shall not be required to send the Title Notice Response. If Commission does not send the Title Notice Response, if necessary, within the time period provided in this Section 5.2.3, Commission shall be deemed to elect not to take any action in reference to the Title Notice. If Commission elects in the Title Notice Response to take any action in reference to the Title Notice, Commission shall complete such action, prior to the Escrow Closing Date or as otherwise specified in the Title Notice Response.

5.2.4 Title Notice Waiver. If Commission elects or is deemed to have elected not to address one or more matters set forth in the Title Notice to Developer's reasonable satisfaction, then within ten (10) days after the earlier of: (i) Developer's receipt of the Commission's Title Notice Response; or (ii) the date for Commission to deliver its Title Notice Response pursuant to Section 5.2.3, Developer shall either: (a) refuse to accept the title to and conveyance of the Project Site, or (b) waive its disapproval or conditional approval of all such matters set forth in the Title Notice by sending the Title Notice Waiver to both Commission and Escrow Agent. Failure by Developer to timely send the Title Notice Waiver, where the Title Notice Response or Commission's failure to deliver the Title Notice Response results in Commission's election not to address one or more matters set forth in the Title Notice to Developer's reasonable satisfaction, will be deemed Developer's continued refusal to accept the title to and conveyance of the Project Site, in which case both Developer and Commission shall have the right to cancel the Escrow and terminate this Agreement upon seven (7) days Notice, in their respective sole and absolute discretion.

5.2.5 Disapproval of Encumbrances Securing Commission Obligations. Notwithstanding any other provision of this Agreement, Developer disapproves any and all encumbrances against the Project Site securing monetary (other than non-delinquent property taxes) or performance obligations of Commission. All such encumbrances shall be removed from the Project Site by Commission prior to the Close of Escrow, at Commission's sole cost and expense.

5.2.6 No Termination Liability. Any termination of this Agreement and cancellation of the Escrow pursuant to this Section 5.2 shall be without liability to the other Party or any other Person. Termination shall be accomplished by delivery of a Notice of termination to both the other Party and the Escrow Agent at least seven (7) days prior to the termination date. Following issuance of a Notice of termination of this Agreement pursuant to a right provided under this Agreement, the Parties and the Escrow Agent shall proceed pursuant to Section 6.13. Once a Notice of termination is given pursuant to this Section 5.2, delivery of a Title Notice or Title Notice Waiver shall have no force or effect and this Agreement shall terminate in accordance with the Notice of termination.

5.3 Due Diligence Investigations.

5.3.1 **Time and Expense.** Developer shall complete all of its Due Diligence Investigations within the Due Diligence Period and shall conduct all of its Due Diligence Investigations at its sole cost and expense.

5.3.2 **Right to Enter.** Commission licenses Developer to enter the Project Site for the sole purpose of conducting the Due Diligence Investigations, subject to all of the terms and conditions of this Agreement. The license given in this Section 5.3 shall terminate with the termination of this Agreement. Any Due Diligence Investigations by Developer shall not unreasonably disrupt any then existing use or occupancy of the Project Site. Developer's exercise of the license provided in this Section 5.3 shall not extend the Due Diligence Period.

5.3.3 **Limitations.** Developer shall not conduct any intrusive or destructive testing of any portion of the Project Site, other than low volume soil samples, without Commission's prior written consent. Developer shall pay all of its vendors, inspectors, surveyors, consultants or agents engaged in any inspection or testing of the Project Site, such that no mechanics liens or similar liens for work performed are imposed upon the Project Site by any such Persons. Following the conduct of any Due Diligence Investigations on the Project Site, Developer shall restore the Project Site to substantially its condition prior to the conduct of such Due Diligence Investigations. Under no circumstances shall Developer be required to remediate or otherwise respond to Hazardous Substances existing on the Project Site prior to Developer's entry onto the Project Site, except to the extent Developer exacerbates an existing condition.

5.3.4 **Indemnification of Commission.** The activities of Developer or its agents directly or indirectly related to the Due Diligence Investigations shall be subject to Developer's indemnity, defense and hold harmless obligations pursuant to Section 12.6. Developer shall provide Commission with evidence of Liability Insurance in compliance with Section 8 prior to the commencement of any Due Diligence Investigations on the Project Site.

5.3.5 **Due Diligence Completion Notice.** Developer shall deliver a Due Diligence Completion Notice to Commission and Escrow Agent prior to the end of the Due Diligence Period. If Developer does not unconditionally accept the condition of the Project Site by delivery of its Due Diligence Completion Notice indicating such acceptance, prior to the end of the Due Diligence Period, Developer shall be deemed to have rejected the condition of the Project Site and refused to accept conveyance of title to the Project Site. If the condition of the Project Site is rejected or deemed rejected by Developer, then both Commission and Developer shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person, by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 6.13.

5.4 **"AS-IS" Acquisition.** Except to the extent of any express representations and warranties of Commission specifically set forth in this Agreement (if any) the Close of Escrow shall evidence Developer's unconditional and irrevocable acceptance of the Project Site in the Project Site's AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, ocean or tidal impacts, shoring or bluff stability or support, subsurface support, zoning, land use restrictions,

the availability or location of utilities or services, the location of any public infrastructure on or off of the Project Site (active, inactive or abandoned), the suitability of the Project Site for the Project or other use or the existence or absence of Hazardous Substances and with full knowledge of the physical condition of the Project Site, the nature of Commission's interest in and use of the Project Site, all laws applicable to the Project Site and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Project Site. The Close of Escrow shall constitute Developer's representation and warranty to Commission that: (a) Developer has had ample opportunity to inspect and evaluate the Project Site and the feasibility of the uses and activities Developer is entitled to conduct on the Project Site in accordance with this Agreement; (b) Developer is experienced in real estate development; (c) Developer is relying entirely on Developer's experience, expertise and its own inspection of the Project Site in its current state in proceeding with acquisition of the Project Site; (d) Developer accepts the Project Site in its present condition; (e) to the extent that Developer's own expertise with respect to any matter regarding the Project Site is insufficient to enable Developer to reach an informed conclusion regarding such matter, Developer has engaged the services of Persons qualified to advise Developer with respect to such matters; (f) Developer has received assurances acceptable to Developer by means independent of Commission or Commission's agents of the truth of all facts material to Developer's acquisition of the Project Site pursuant to this Agreement; and (g) that the Project Site is being acquired by Developer as a result of Developer's own knowledge, inspection and investigation of the Project Site and not as a result of any representation made by Commission or Commission's agents relating to the condition of the Project Site, unless such statement or representation is expressly and specifically set forth in this Agreement. Except to the extent of any express representations and warranties of Commission specifically set forth in this Agreement (if any), Commission hereby expressly and specifically disclaims any express or implied warranties regarding the Project Site.

5.5 Designation of Design Option.

5.5.1 **Design Option 1.** Commission and Developer each acknowledge and agree that the preferred design for the Project is Design Option 1. Commission and Developer each further acknowledge and agree that development of the Project in accordance with Design Option 1 is dependent on Developer receiving both the IIG Loan and the Industry Funds Loan. If HCD has not published a "Notice of Funding Availability" for the IIG Grant on or before June 30, 2011, then the Project shall proceed pursuant to Design Option 2. If HCD has published a Notice of Funding Availability for the IIG Grant on or before June 30, 2011, but Original Developer has not received a written commitment from HCD to provide the IIG Grant to Original Developer on or before September 30, 2011, then Developer shall immediately send Notice to Commission that Original Developer did not receive the IIG Grant AND THE Project shall proceed pursuant to Design Option 2. Further, if Developer does not receive a written commitment from the County CDC on or before April 30, 2012, to provide the Industry Funds Loan to Developer, then Developer shall immediately send Notice to Commission that Developer has not received the Industry Funds Loan and Commission or Developer shall have the right to terminate this Agreement pursuant to Section 5.5.3. Notwithstanding the deadlines for Original Developer or Developer, respectively, to obtain written commitments for the IIG Grant or the Industry Funds Loan, respectively, previously set forth in this Section 5.5.1, if HCD or the County CDC expressly rejects, denies, declines, turns down or takes any action regarding the respective applications of Original Developer or Developer for such funding that reasonably

indicates that Original Developer or Developer, respectively, will not receive such funding as a result of such application, Developer shall immediately send Notice to Commission of such action by HCD or the County CDC and the Parties shall proceed as though such funding was not received by the deadline for receipt of such funding set forth in this Section 5.5.1. If Original Developer does not receive a written commitment from HCD to provide the IIG Grant to Original Developer within the time period required by this Section 5.5.1 to obtain such commitment, but Developer receives a written commitment from the County CDC to provide the Industry Funds Loan to Developer within the time period required by this Section 5.5.1 to obtain such commitment, then the Project shall proceed pursuant to Design Option 2.

5.5.2 Design Option 2. Commission and Developer each acknowledge and agree that development of the Project in accordance with Design Option 2 is dependent upon Commission acquiring fee title to the Auxiliary Parking Site, Developer receiving the Industry Funds Loan and the City approving the Auxiliary Parking Parcel Map. If Commission has not obtained fee title to the Auxiliary Parking Site on or before April 30, 2012, then Commission shall immediately send Notice to Developer that Commission does not own fee title to the Auxiliary Parking Site and Commission or Developer shall have the right to terminate this Agreement pursuant to Section 5.5.3. If Developer does not receive a written commitment from the County CDC to provide the Industry Funds Loan to Developer on or before April 30, 2012, then Developer shall immediately send Notice to Commission that Developer did not receive the Industry Funds Loan and Commission or Developer shall have the right to terminate this Agreement pursuant to Section 5.5.3. Notwithstanding the deadline for Developer to obtain a written commitment from the County CDC to provide the Industry Funds Loan to Developer previously set forth in this Section 5.5.2, if the County CDC expressly rejects, denies, declines, turns down or takes any action reasonably indicating that Developer will not receive the Industry Funds Loan as a result of Developer's then current application for such funding, Developer shall immediately send Notice to Commission of such action by the County CDC and Commission or Developer shall have the right to terminate this Agreement pursuant to Section 5.5.3. If the City has not approved the Auxiliary Parking Parcel Map on or before April 30, 2012, then Commission shall immediately send Notice to Developer that the City has not approved such map and Commission or Developer shall have the right to terminate this Agreement pursuant to Section 5.5.3.

5.5.3 Termination of Agreement. Should any contingency to development of the Project pursuant to Design Option 2 described in Section 5.5.2 fail to occur within the applicable time period set forth in Section 5.5.2, then either Commission or Developer shall have the right to terminate this Agreement on fifteen (15) calendar days advance Notice to the other Party, without liability to the other Party or any other Person.

5.5.4 No Commission Commitment to Acquire Auxiliary Parking Site. Nothing in this Agreement is intended to be a commitment by Commission to acquire fee title to or any other estate or interest in the Auxiliary Parking Site (inclusive of the Auxiliary Parking Parcel). Nothing in this Agreement is intended to be a commitment by Commission to adopt a resolution of necessity to acquire any property pursuant to any power of eminent domain that Commission may have. Developer acknowledges and agrees that Commission retains Commission's sole and absolute discretion regarding whether or not to acquire any property, whether by exercise of any power of eminent domain or otherwise. Further, Commission's

commitment to provide financing for development of the Project pursuant to this Agreement does not include the cost of acquisition of the Auxiliary Parking Site or Auxiliary Parking Parcel and Commission does not intend to be bound to provide any financing for development of the Project in excess of the maximum amount of the Commission Loan.

5.6 Developer to Obtain all Approvals for the Project.

5.6.1 **Permit Ready Project.** At least fifteen (15) calendar days before the Escrow Closing Date, Developer shall obtain final City approval of the Construction Drawings for the Project such that Developer is in a position to obtain City building and grading permits for the Project by paying applicable fees that are conditions precedent to City issuance of such permits.

5.6.2 **Submission of Development Application.** Subject to Section 5.6.1, Developer shall exercise reasonable efforts to prepare and submit all required Applications, documents, fees, charges or other items (including, without limitation, deposits, funds or sureties in the ordinary course) required for the construction of the Project, pursuant to all applicable Laws and Approvals, to each necessary Government for review and approval. Further, Developer shall exercise reasonable efforts to obtain all discretionary Approvals for the construction of the Project on the Project Site from each Government, within ninety (90) days following the Effective Date. Prior to commencement of any part of the construction of the Project, Developer shall obtain all Approvals from each Government required for the construction of the Project. The City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval or elsewhere), shall be applicable to the construction of the Project by Developer.

5.6.3 **Reservations.** The approval of this Agreement by the City or Commission shall not be binding on the City Council, Commission, Design Review Committee, or any other commission, committee, board or body of the City or Commission regarding any Approvals of the Project required by such bodies. No action by the City or Commission with reference to this Agreement or any related documents shall be deemed to constitute issuance or waiver of any required City or Commission Approval regarding the Project Site, the Project or Developer. The Parties acknowledge and agree that this Agreement is not a statutory development agreement pursuant to Government Code Sections 65864, *et seq.*

6. **JOINT ESCROW INSTRUCTIONS**

6.1 Opening of Escrow; Escrow Instructions. The purchase and sale of the Project Site shall take place through the Escrow to be administered by Escrow Agent. Developer shall cause the Escrow to be opened within five (5) days following Developer's receipt of written confirmation from CTCAC of the reservation of the Tax Credits for the Project. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties.

6.2 Escrow Instructions. This Section 6 constitutes the joint escrow instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Project Site, as contemplated by this Agreement. Developer and Commission shall execute such further escrow instructions consistent with the provisions of this Agreement as may be reasonably

requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, the provisions of this Agreement shall control.

6.3 Escrow Agent Authority. Commission and Developer authorize Escrow Agent to:

6.3.1 **Charges.** Pay and charge Commission and Developer for their respective shares of the applicable fees, taxes, charges and costs payable by either Commission or Developer regarding the Escrow;

6.3.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

6.3.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

6.3.4 **Counterpart Documents.** Utilize documents signed by Commission or Developer in counterparts, including attaching separate signature pages to one version of the same document.

6.4 Developer's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Developer, Developer's obligation to purchase the Project Site from Commission on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Developer) of each of the following conditions precedent on or before the Escrow Closing Date:

6.4.1 **Title Policy.** Title Company is committed to issue the Title Policy to Developer upon payment of Title Company's premium for such policy;

6.4.2 **Approvals.** Final issuance of all discretionary Approvals required from any Government for the construction of the Project on the Project Site on terms and conditions reasonably satisfactory to Developer;

6.4.3 **CEQA Documents.** Final adoption, approval or certification of the CEQA Documents by each applicable Government;

6.4.4 **Tax Credits.** Developer has received written notice from CTCAC of the reservation of the Tax Credits for the Project;

6.4.5 **Construction Financing.** Developer has received a written commitment from an Institutional Lender to provide the Construction Financing on terms reasonably acceptable to Developer;

6.4.6 **Permanent Loan.** Developer has received a written forward loan commitment from an Institutional Lender for such Institutional Lender to provide the Permanent Loan on terms and conditions reasonably acceptable to Developer;

6.4.7 **Industry Funds Loan.** Developer has received a written commitment from the County CDC to provide the Industry Funds Loan to Developer for construction of the Project;

6.4.8 **IIG Grant.** If the Project is proceeding pursuant to Design Option 1, then Original Developer has received a written commitment from HCD to provide the IIG Grant to Original Developer for construction of the Project;

6.4.9 **Completion of Demolition.** Commission has completed demolition of the Building, removed all resulting debris and placed the Property in a rough graded condition; provided, however, that failure of Commission to satisfy this condition shall not constitute a Default under this Agreement by Commission;

6.4.10 **Commission Escrow Deposits.** Commission deposits all of the items into Escrow required by Section 6.8;

6.4.11 **Settlement/Closing Statement.** Developer approves the Escrow Closing Statement; and

6.4.12 **Commission Pre-Closing Obligations.** Commission performs all of its material obligations required to be performed by Commission pursuant to this Agreement prior to the Close of Escrow.

6.5 Commission's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Commission, Commission's obligation to sell the Project Site to Developer on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Commission) of each of the following conditions precedent prior to the Escrow Closing Date:

6.5.1 **Completion Guaranty.** Commission has received the original Completion Guaranty signed by the authorized representative(s) of Guarantor;

6.5.2 **Construction Financing.** A Permitted Security Instrument securing repayment of the Construction Financing has been signed by Developer and deposited into the Escrow for recording against the Project Site at the Close of Escrow, all conditions precedent to funding of the Construction Financing (other than progress of construction of the Project) have been satisfied and all subordination or intercreditor agreements required by the Institutional Lender providing the Construction Financing to be entered into by Commission are reasonably acceptable to Commission. Commission shall not be obligated to close the Escrow, either with transfer of title to the Property or the Auxiliary Parking Parcel to Developer or funding of the Commission Loan, unless the Construction Financing closes (with funding consistent with the Financing Plan approved by Commission) concurrent with the Close of Escrow;

6.5.3 **Tax Credit Equity Funding.** All amounts of the Tax Credit Equity to be funded at the Close of Escrow, pursuant to the Financing Plan and Developer Partnership Agreement approved by the Commission pursuant to Section 6.5.11, are deposited into the Escrow by the Tax Credit Investor;

6.5.4 **Permanent Loan.** Developer has received a written forward loan commitment from an Institutional Lender for such Institutional Lender to provide the Permanent Loan on terms and conditions reasonably satisfactory to Commission;

6.5.5 **Industry Funds Loan.** Developer has been awarded the Industry Funds Loan for construction of the Project and the full amount of the Industry Funds Loan to be funded at the Close of Escrow in accordance with the Financing Plan approved by Commission pursuant to Section 6.5.11 and a Permitted Security Instrument securing repayment of the Industry Funds Loan are deposited into the Escrow;

6.5.6 **IIG Grant and IIG Loan.** If the Project is proceeding pursuant to Design Option 1, Original Developer has received a written commitment from HCD to provide the IIG Grant to Original Developer for construction of the Project and the full amount of the IIG Loan to be funded at the Close of Escrow in accordance with the amount of funding from such source set forth in the Financing Plan approved by Commission pursuant to Section 6.5.11 is deposited into the Escrow. Original Developer shall be obligated under this Agreement, notwithstanding any Transfer of any or all of Original Developer's rights or obligations under this Agreement, to apply for the IIG Grant and, if Original Developer receives the IIG Grant, to make the IIG Loan to Developer;

6.5.7 **Project Permit Ready.** Developer has obtained final City approval of the Construction Drawings for the Project such that Developer is in a position to obtain City building and grading permits for the Project by paying applicable fees that are conditions precedent to City issuance of such permits, all in accordance with Section 5.6.1;

6.5.8 **Design Option 2 Conditions.** If the Project is proceeding pursuant to Design Option 2, then each of the following:

(a) *Acquisition of Auxiliary Parking Site.* Commission has acquired fee title to the Auxiliary Parking Site; and

(b) *Auxiliary Parking Parcel Map.* The Auxiliary Parking Parcel Map has been approved by the City and is in a condition to be recorded against the Auxiliary Parking Site at the Close of Escrow;

6.5.9 **Acquisition of Entirety of Property.** Commission has acquired fee title to all of the Property; and

6.5.10 **Project Map Deposit.** Developer has deposited the Project Map into the Escrow for recordation against the Property at the Close of Escrow;

6.5.11 **Document Approval.** Commission has received from Developer and approved all of the following described items in Commission's reasonable discretion, unless another provision of this Agreement provides for approval of such document in Commission's sole and absolute discretion, in which case Commission shall have approved the document in Commission's sole and absolute discretion. Except as otherwise expressly provided in this Agreement, Developer shall deliver to Commission each and every one of the drafts of the documents (or amendments or revisions to such documents) listed in this Section 6.5.11, within

two (2) Business Days following Developer's receipt of each such draft. Developer shall provide substantially final versions of each document listed in this Section 6.5.11 to Commission at least five (5) Business Days before the Close of Escrow. Further, Developer shall have all of the following described documents completed and signed by all of the Persons required to make such documents operative and shall have delivered true, accurate and legible copies or originals of all such documents (as specified in this Agreement) to Commission, at least one (1) Business Day before the Close of Escrow:

- (a) The Developer Entity Documents;
- (b) The Financing Plan;
- (c) A site plan, elevations, color schemes (including material samples) for the Project;
- (d) A copy of the Construction Contract;
- (e) All Insurance Documents;
- (f) A copy of the Construction Financing Documents;
- (g) All documents to be made or entered into by or between the Tax Credit Investor or Developer (including each related Affiliate or Third Person guaranty) regarding the Tax Credit Equity investment (other than the Developer Entity Documents delivered under subsection "(a)" of this Section 6.5.11);
- (h) A written forward loan commitment from an Institutional Lender to Developer for such Institutional Lender to provide the Permanent Loan to Developer;
- (i) All documents to be made or entered into by or between the County CDC or Developer (including each related Affiliate or Third Person guaranty) regarding the Industry Funds Loan from the County CDC to Developer for construction of the Project;
- (j) If the Project is proceeding pursuant to Design Option 1, all documents to be made or entered into by or between HCD or Original Developer (including each related Affiliate or Third Person guaranty) regarding the IIG Grant from HCD to Original Developer for construction of the Project, including the IIG Regulatory Agreement;
- (k) If the Project is proceeding pursuant to Design Option 1, all documents to be made or entered into by or between Original Developer or Developer (including each related Affiliate or Third Person guaranty) regarding the IIG Loan from Original Developer to Developer for construction of the Project;
- (l) The Project Map to be recorded against the Property at the Close of Escrow.

6.5.12 **Title.** Developer accepts the state of the title of the Project Site, in accordance with Section 5.2.

6.5.13 **Due Diligence.** Developer timely delivers its Due Diligence Completion Notice to both Commission and Escrow Agent stating Developer's unconditional acceptance of the condition of the Project Site, in accordance with Section 5.3.

6.5.14 **Title Policy.** Title Company is committed to issue the Commission Title Policy to Commission upon payment of Title Company's premium for such policy.

6.5.15 **Approvals.** Final issuance of all discretionary Approvals required from any Government for the construction of the Project on the Project Site on terms and conditions reasonably satisfactory to Commission.

6.5.16 **Developer Note.** The Developer Note signed by the authorized representative(s) of Developer has been received by Commission;

6.5.17 **CEQA Documents.** Final adoption, approval or certification of the CEQA Documents by each applicable Government;

6.5.18 **Construction Drawings.** City has approved the final Construction Drawings pursuant to Section 5.6.1;

6.5.19 **Lender Agreements.** All subordination, intercreditor, disbursement and other agreements requested by Commission, the Institutional Lender providing the Construction Financing, the County CDC (if any), HCD (if any), CTCAC or otherwise for signature by the authorized representative(s) of Commission shall be reasonably acceptable to Commission, signed by the authorized representatives of Commission and the authorized representatives of the other parties to such agreements, to be delivered and effective only at the Close of Escrow;

6.5.20 **Completion of Demolition.** Commission has completed demolition of the Building, removed all resulting debris and placed the Property in a rough graded condition; provided, however, that failure of Commission to satisfy this condition shall not constitute a Default under this Agreement by Commission;

6.5.21 **Developer Escrow Deposits.** Developer deposits all of the items into Escrow required by Section 6.7;

6.5.22 **Transfer to Partnership.** All of Developer's rights and obligations under this Agreement have been transferred from the Original Developer to the Developer Partnership, in accordance with Section 4;

6.5.23 **Settlement/Closing Statement.** Commission approves the Escrow Closing Statement; and

6.5.24 **Developer Pre-Closing Obligations.** Developer performs all of its material obligations required to be performed by Developer pursuant to this Agreement prior to Close of Escrow.

6.6 Failure of Conditions Not Default. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to satisfy any of the conditions set forth in

Sections 6.4.4, 6.4.5, 6.4.6, 6.4.7 or 6.4.8 (and correspondingly, 6.5.2, 6.5.3, 6.5.4, 6.5.5 or 6.5.6) shall not constitute an Escrow Default (or any other type of Default or Event of Default) by the Developer under this Agreement, unless the Developer fails to exercise Developer Reasonable Efforts to satisfy the conditions. The Commission's failure to satisfy any of the conditions set forth in Sections 6.4.9 (and correspondingly, 6.5.20), 6.5.8, 6.5.9, 6.5.11, 6.5.17 or 6.5.19 shall not constitute an Escrow Default (or any other type of Default or Event of Default) by the Commission under this Agreement.

6.7 Developer's Escrow Deposits. Developer shall deposit the following items into Escrow and, concurrently, provide a copy of each document submitted into Escrow to Commission, at least one (1) business day prior to the Escrow Closing Date:

6.7.1 **Closing Funds.** All amounts required to be deposited into Escrow by Developer under the terms of this Agreement to close the Escrow, including the Purchase Price, all in immediately available funds;

6.7.2 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of Developer in recordable form;

6.7.3 **Commission Deed of Trust.** The Commission Deed of Trust signed by the authorized representative(s) of Developer in recordable form;

6.7.4 **Certificate of Property Deed Acceptance.** The Certificate of Acceptance attached to the Property Deed signed by the authorized representative(s) of Developer in recordable form;

6.7.5 **IIG Regulatory Agreement.** If the Project is proceeding pursuant to Design Option 1, then the IIG Regulatory Agreement signed by the authorized representative(s) of Developer and HCD, in recordable form;

6.7.6 **Design Option 2 Deposits.** If the Project is proceeding pursuant to Design Option 2, then each of the following:

(a) *Certificate of Auxiliary Parking Parcel Deed Acceptance.* The Certificate of Acceptance attached to the Auxiliary Parking Parcel Deed signed by the authorized representative(s) of Developer in recordable form; and

(b) *Parking Deck Easement.* The Parking Deck Easement signed by the authorized representative(s) of Developer in recordable form;

6.7.7 **Project Map.** The Project Map in a condition to be recorded against the Property at the Close of Escrow;

6.7.8 **Escrow Closing Statement.** The Escrow Closing Statement signed by the authorized representative(s) of Developer;

6.7.9 **Tax Credit Equity.** The full amount of the Tax Credit Equity to be funded at the Close of Escrow pursuant to the Financing Plan and the Developer Partnership Agreement, in immediately available funds;

6.7.10 **Construction Financing.** The full amount of the Construction Financing to be funded at the Close of Escrow pursuant to the Financing Plan, in immediately available funds, and a Permitted Security Instrument securing repayment of the Construction Financing, signed by the authorized representative(s) of Developer in recordable form, to be recorded against the Project Site at the Close of Escrow;

6.7.11 **Industry Funds Loan.** The full amount of the Industry Funds Loan to be funded at the Close of Escrow pursuant to the Financing Plan, in immediately available funds, and a Permitted Security Instrument securing repayment of the Industry Funds Loan, signed by the authorized representative(s) of Developer in recordable form, to be recorded against the Project Site at the Close of Escrow;

6.7.12 **IIG Loan.** If the Project is proceeding pursuant to Design Option 1, then the full amount of the IIG Loan to be funded at the Close of Escrow pursuant to the Financing Plan, in immediately available funds;

6.7.13 **Other Reasonable Items.** Any other documents, instruments or funds required to be delivered by Developer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not previously been delivered by Developer.

6.8 Commission's Escrow Deposits. Commission shall deposit the following documents into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Developer, at least one (1) business day prior to the Escrow Closing Date:

6.8.1 **Property Deed.** The Property Deed signed by the authorized representative(s) of Commission in recordable form;

6.8.2 **Commission Loan Proceeds.** The original principal amount of the Commission Loan for delivery to the Institutional Lender providing the Construction Financing for disbursement by such Institutional Lender during the course of construction of the Project in accordance with the Developer Note and a written disbursement agreement between Commission and such Institutional Lender;

6.8.3 **Pre-Development Loan Note.** The Pre-Development Loan Note marked "paid in full;"

6.8.4 **Escrow Closing Statement.** The Escrow Closing Statement signed by the authorized representative(s) of Commission;

6.8.5 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of Commission in recordable form;

6.8.6 **Notice of Affordability Restrictions on Transfer of Property.** The Notice of Affordability Restrictions on Transfer of Property signed by the authorized representative(s) of Commission in recordable form;

6.8.7 **Design Option 2 Deposits.** If the Project is proceeding pursuant to Design Option 2, then each of the following:

(a) *Auxiliary Parking Parcel Deed.* The Auxiliary Parking Parcel Deed signed by the authorized representative(s) of Commission in recordable form;

(b) *Parking Deck Easement.* The Parking Deck Easement signed by the authorized representative(s) of Commission in recordable form; and

(c) *Auxiliary Parking Parcel Map.* The Auxiliary Parking Parcel Map in a condition to be recorded against the Auxiliary Parking Site at the Close of Escrow;

6.8.8 **FIRPTA Affidavit.** A FIRPTA affidavit signed by the authorized representative(s) of Commission, in the customary form provided by the Escrow Agent;

6.8.9 **Form 593.** A Form 593 signed by the authorized representative(s) of Commission; and

6.8.10 **Other Reasonable Items.** Any other documents, instruments, funds and records required to be delivered by Commission under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not been previously delivered by Commission.

6.9 **Closing Procedure.** When each of Developer's Escrow deposits, as set forth in Section 6.7, and each of Commission's Escrow deposits, as set forth in Section 6.8, are deposited into Escrow, Escrow Agent shall request confirmation in writing from both Commission and Developer that each of their respective conditions precedent to the Close of Escrow, as set forth in Sections 6.5 and 6.4, respectively, are satisfied or waived. Upon Escrow Agent's receipt of written confirmation from both Commission and Developer that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

6.9.1 **Recordation and Distribution of Documents.** Escrow Agent shall cause the following documents to be filed with the Recorder of the County for recording in the official records of the Recorder of the County regarding the Property in the following order of priority at Close of Escrow: (i) the Project Map; (ii) the Property Deed; (iii) the Regulatory Agreement; (iv) the Notice of Affordability Restrictions; (v) the Permitted Security Instrument securing the Construction Financing; (vi) the Commission Deed of Trust; (vii) the Security Instrument securing the Industry Funds Loan; (viii) if the Project is proceeding pursuant to Design Option 1, the IIG Regulatory Agreement; and (ix) any other documents to be recorded regarding the Property through Escrow upon the joint instructions of the Parties. If the Project is proceeding pursuant to Design Option 2, then Escrow Agent shall also cause the following documents to be filed with the Recorder of the County for recording in the official records of the Recorder of the County regarding the Auxiliary Parking Site in the following order of priority at

Close of Escrow: (a) the Auxiliary Parking Parcel Map; (b) the Auxiliary Parking Parcel Deed; (c) the Regulatory Agreement; (d) the Notice of Affordability Restrictions; (e) the Permitted Security Instrument securing the Construction Financing; (f) the Commission Deed of Trust; (g) the Security Instrument securing the Industry Funds Loan; (h) the Parking Deck Easement; and (j) any other documents to be recorded through Escrow regarding the Auxiliary Parking Site upon the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed for recording in the Official Records of the County through the Escrow to Commission, Developer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each copy of a document filed for recording shall show all recording information. The Parties intend and agree that this Section 6.9.1 shall establish the relative priorities of the documents to be recorded in the Official Records of the County through the Escrow, by providing for recordation of senior interests prior in time to junior interests, in the order provided in this Section 6.9.1;

6.9.2 **Distribution of Other Documents.** Escrow Agent shall deliver copies of all documents to be delivered through the Escrow that are not filed for recording to the Parties and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document.

6.9.3 **Funds.** Distribute all funds held by the Escrow Agent pursuant to the Escrow Closing Statement approved in writing by both Commission and Developer. Proceeds of the Commission Loan that are not disbursed to pay the Purchase Price at the Close of Escrow are anticipated to be distributed to the Institutional Lender providing the Construction Financing for disbursement in accordance with the Disbursement Agreement. Otherwise, such funds will be disbursed by Commission during the course of Project construction pursuant to the terms and conditions of this Agreement, the Regulatory Agreement, the Developer Note and the Commission Deed of Trust.

6.9.4 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service;

6.9.5 **Form 593.** File the Form 593 with the California Franchise Tax Board;
and

6.9.6 **Title Policies.** Obtain and deliver to Developer the Developer Title Policy issued by the Title Company and obtain and deliver to Commission the Commission Title Policy issued by the Title Company.

6.10 **Close of Escrow.** The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The Executive Director is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of Commission up to a maximum time period extension of four (4) months in the aggregate, in the Executive Director's sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without

liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 6.13. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to the first sentence of this Section 6.10, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 6.10 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

6.11 Escrow Costs. Escrow Agent shall notify Developer and Commission of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both Commission and Developer at least four (4) business days prior to the Escrow Closing Date. Commission shall pay the premium charged by the Title Company for the Developer Title Policy, exclusive of any endorsements or other supplements to the coverage of the Developer Title Policy that may be requested by Developer. Developer shall pay the premium charged by the Title Company for the Commission Title Policy, exclusive of any endorsements or other supplements to the coverage of the Commission Title Policy that may be requested by Commission and that are not requested by the Institutional Lender providing the Construction Financing for its lender's policy of title insurance. Developer shall pay all of the fees and other costs as the Escrow Agent may charge for the conduct of the Escrow, all recording fees, documentary transfer taxes and any and all other charges, fees and taxes levied by a Government relative to the conveyance of the Project Site through the Escrow and the cost of any endorsements or supplements to the coverage of the Title Policy requests by Developer.

6.12 Escrow Cancellation Charges. If the Escrow fails to close due to Commission's Default under this Agreement, Commission shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Developer's Default under this Agreement, Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Default of either Developer or Commission, Developer and Commission shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.

6.13 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

6.13.1 **Cancellation Instructions**. The Parties shall, within three (3) Business Days following Escrow Agent's written request, execute any reasonable Escrow cancellation instructions requested by Escrow Agent;

6.13.2 **Return of Funds and Documents**. Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow and title order cancellation

charges from Escrow Agent (if any) or within twenty (20) days following Notice of Termination, whichever is earlier: (i) Developer or Escrow Agent shall return to Commission all documents previously delivered by Commission to Developer or Escrow Agent regarding the Escrow; (ii) Commission or Escrow Agent shall return to Developer all documents previously delivered by Developer to Commission or Escrow Agent regarding the Escrow; (iii) Escrow Agent shall, unless otherwise provided for in this Agreement, return to Developer all funds deposited in Escrow, less Developer's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 6.12; (iv) Escrow Agent shall, unless otherwise provided in this Agreement, return to Commission all funds deposited in Escrow, less Commission's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 6.12.

6.14 Report to IRS. After the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service under applicable Federal law, if such report is required pursuant to Internal Revenue Code Section 6045(e) of the Internal Revenue Code, Escrow Agent shall report the gross proceeds of the purchase and sale of the Project Site to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e). Concurrently with the filing of such reporting form with Internal Revenue Service, Escrow Agent shall deliver a copy of the filed form to both Commission and Developer.

6.15 Condemnation. If any portion of the Project Site or any interest in any portion of the Project Site becomes the subject of any eminent domain proceeding prior to Close of Escrow, other than such a proceeding by the City or Commission, including the filing of any notice of intended condemnation or proceedings in the nature of eminent domain commenced by any Government, Commission shall immediately give Developer Notice of such occurrence and this Agreement shall terminate on the giving of such Notice.

6.16 Maintenance of Property. Except as otherwise required to perform the work described in Sections 6.4.9 and 6.5.20, Commission agrees, prior to the Close of Escrow, to continue to maintain the Property in substantially the same condition as the Commission maintained the Property on the Effective Date. Also, Commission agrees not to enter into any contracts with respect to the Property that will survive the Close of Escrow, without Developer's prior written consent.

7. PROJECT DEVELOPMENT

7.1 Developer's Covenant to Develop the Project. Developer covenants to and for the exclusive benefit of Commission that Developer shall commence, pursue and complete the development of the Project in accordance with the deadlines and other requirements of this Agreement. Developer covenants and agrees for itself, its successors and assigns that the Project Site shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement and all applicable Laws and conditions of each Government. The covenants of this Section 7.1 shall run with the Project Site, until the earlier of: (1) the date of issuance of a Completion Certificate for the Project; or (2) the twentieth (20th) anniversary of the date of the Close of Escrow.

7.2 Changes to Project Plans and Specifications During Course of Construction. Developer shall have the right, during the course of construction of the Project, to make “minor field changes,” without seeking the approval of Commission, if such changes do not affect the type of use to be conducted within all or any portion of a structure. “Minor field changes” shall be defined as those changes from the Approvals for the Project that have no substantial effect on the Project and are made in order to expedite the work of construction in response to field conditions. Nothing contained in this Section 7.2 shall be deemed to constitute a waiver of or change in any Approvals governing any such “minor field changes” or any Approvals by any Government otherwise required for any such “minor field changes.”

7.3 Construction Start and Completion of Project.

7.3.1 **Commencement.** Developer shall commence construction of the Project no later than the Project Commencement Date. Thereafter, Developer shall diligently proceed to pursue and complete the construction of the Project, in a good and workmanlike manner, in accordance with this Agreement, all applicable Laws and all Approvals for the Project issued by each Government.

7.3.2 **Completion.** On or before the Project Completion Date, Developer shall do all of the following:

(a) Record a Notice of Completion, in accordance with California Civil Code Section 3093, for the entirety of the Project;

(b) Request each applicable Government to inspect the Project, as required by the applicable Approvals or Laws;

(c) Correct any defects and deficiencies that may be disclosed by any inspection conducted pursuant to Section 7.3.2(b);

(d) Request each applicable Government to issue all final Certificates of Occupancy or other Approvals necessary for the occupancy and operation of the completed Project and take such other actions reasonably required to obtain all such Certificates of Occupancy or other Approvals; and

(e) Deliver the Placed In Service Information to Commission.

7.3.3 **Time Extensions.** The Executive Director, in his or her sole and absolute discretion, may extend the Project Completion Date for up to an additional ninety (90) days, in the aggregate.

7.4 Compliance with Laws. All work performed in connection with the construction of the Project shall comply with all applicable Laws and Approvals.

7.5 Developer Attendance at Commission Meetings. Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement and the construction of the Project, such that such Person(s) can meaningfully respond to Commission governing body or Commission staff questions regarding the progress of the Project, attend

meetings with Commission staff or meetings of the Commission governing body, when requested to do so by Commission staff, with reasonable advance Notice to Developer, but no more frequently than once a month.

7.6 Commission Right to Inspect Project and Project Site. Developer agrees that the Commission shall have the right of reasonable access to the Project Site, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project. Any and all Commission representatives who enter the Project Site shall at all times be accompanied by a representative of Developer, while on the Project Site. Developer shall make a representative of Developer available for this purpose at all times during normal construction hours, upon reasonable advance Notice from Commission. Commission shall Indemnify Developer regarding Claims arising out of the exercise by Commission of the right of access to the Project Site provided in this Section 7.6, except to the extent that any such Claim arises from the negligence or willful misconduct of Developer or Developer's representatives. If in Commission's reasonable judgment it is necessary, Developer agrees that Commission shall have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Project and verify compliance by Developer with the provisions of this Agreement. Developer acknowledges and agrees that any such Commission inspections are for the sole purpose of protecting Commission's rights under this Agreement, are made solely for Commission's benefit, Commission's inspections may be superficial and general in nature, are for the purposes of informing Commission of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and Developer shall not be entitled to rely on any such inspection(s) as constituting Commission's approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the progress and quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to Developer.

7.7 PREVAILING WAGES.

7.7.1 RESPONSIBILITY. DEVELOPER AGREES WITH COMMISSION THAT DEVELOPER SHALL PAY AND CAUSE ALL CONTRACTORS AND SUBCONTRACTORS OF DEVELOPER TO PAY PREVAILING WAGE RATES TO LABORERS PROVIDING LABOR REGARDING CONSTRUCTION OF THE PROJECT IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. DEVELOPER FURTHER AGREES WITH COMMISSION THAT DEVELOPER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING APPLICABLE STATE OR FEDERAL WAGE LAW.

7.7.2 WAIVERS AND RELEASES. DEVELOPER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES COMMISSION FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO STATE LABOR CODE SECTION 1781 OR APPLICABLE FEDERAL LAW. RELATIVE TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 7.7.2, DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7.7.3 **INITIALS.** BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF SECTION 7.7.2:

Initials of Authorized
Developer Representative

7.7.4 **INDEMNITY.** ADDITIONALLY, DEVELOPER SHALL INDEMNIFY COMMISSION, PURSUANT TO SECTION 12.6, AGAINST ANY CLAIMS PURSUANT TO STATE LABOR CODE SECTION 1781 OR ANY OTHER STATE OR FEDERAL LAW REQUIRING PAYMENT OF MINIMUM OR PREVAILING WAGE AMOUNTS ARISING FROM THIS AGREEMENT OR THE CONSTRUCTION OF ALL OR ANY PORTION OF THE PROJECT.

7.8 Project Completion Certificate.

7.8.1 **Issuance.** Following the issuance of a final Certificate of Occupancy for the Project by the City, excluding any Punchlist Work to be completed by Developer, approval of the Placed In Service Information by Commission, completion of Commission's final audit of pre-construction and construction expenditures for the Project and occurrence of the "Occupancy Date" under the Regulatory Agreement, Developer may request that Commission inspect the completed Project and issue a Completion Certificate for the Project. Following Commission's receipt of a written request from Developer for a Completion Certificate, Commission shall promptly inspect the Project to determine whether or not the Project has been completed in compliance with this Agreement. If Commission determines that the Project is complete (excluding any outstanding Punchlist Work) and in compliance with this Agreement, Commission shall issue a Completion Certificate for the Project to Developer. If Commission determines that the Project is not complete or not in compliance with this Agreement, Commission shall send Notice to Developer describing with specificity each non-conformity, within fifteen (15) calendar days following Commission's receipt of Developer's written request for a Completion Certificate or within three (3) calendar days after the next regular meeting of the Commission governing body, whichever date occurs later. The Notice shall also contain Commission's opinion of the action(s) Developer must take to obtain a Completion Certificate from Commission. If the reason for Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Developer or Punchlist Work, Commission may, in its sole and absolute discretion, issue a Completion Certificate upon the delivery by Developer to Commission of a bond or irrevocable standby letter of credit or other security acceptable to Commission, in Commission's sole and absolute discretion, in an amount representing the fair

value of the work on the Project remaining to be completed, as reasonably determined by Commission. If Commission fails to send the Notice required by this Section 7.8.1 within the time period specified in this Section 7.8.1 for sending of such Notice, Developer shall be deemed, conclusively and without further action of Commission, to have satisfied the requirements of this Agreement with respect to the construction of the Project, as if a Completion Certificate had been issued by Commission pursuant to this Agreement, and a Completion Certificate shall irrevocably be deemed to have been issued as of such date for all purposes of this Agreement.

7.8.2 Effect. A Completion Certificate shall only be evidence of Commission's conclusive determination of satisfactory completion of the construction of the Project in accordance with the terms of this Agreement. A Completion Certificate shall not constitute a Notice of Completion under California Civil Code Section 3093, nor shall it act to terminate the continuing reservations, covenants, restrictions or conditions contained in the Property Deed, the Regulatory Agreement or any other instruments recorded against the Project Site or set forth in this Agreement or otherwise. A Completion Certificate is not evidence of the compliance of the Project with any Laws or Approvals. A Completion Certificate shall not evidence the satisfaction of any obligation of Developer to Commission under this Agreement or otherwise, other than Developer's obligation to construct the Project on the Project Site in compliance with the terms and conditions of this Agreement. After the recordation of a Completion Certificate for the Project, any Person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Project Site or the Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding construction of the Project, but such Person shall be bound by any other reservations, covenants, conditions, restrictions and interests affecting the Project Site pursuant to this Agreement or otherwise.

8. INSURANCE

8.1 Developer. Developer shall maintain, to protect the Commission Parties against all insurable Claims resulting from the actions of Developer in connection with this Agreement, the Project Site and the Project, at the sole cost and expense of Developer, until issuance of a Completion Certificate for the Project, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance; (c) Property Insurance; (d) Builder's Risk Insurance; and (e) Workers Compensation Insurance.

8.2 Nature of Insurance. All Liability Insurance, Property Insurance and Automobile Liability Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State. Developer may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Project Site and the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement; and (ii) such policy otherwise complies with this Agreement.

8.3 Policy Requirements and Endorsements. All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:

8.3.1 **Insured.** Liability Insurance and Automobile Liability Insurance policies shall name the Commission Parties as “additional insured.” Property Insurance and Builder’s Risk Insurance policies shall name Commission as a “loss payee.” The coverage afforded to the Commission Parties shall be at least as broad as that afforded to Developer regarding the Project Site and the Project and may not contain any terms, conditions, exclusions, or limitations applicable to the Commission Parties that do not apply to Developer.

8.3.2 **Primary Coverage.** Any insurance or self-insurance maintained by the Commission Parties shall be excess of all insurance required under this Agreement and shall not contribute with any insurance required under this Agreement.

8.3.3 **Contractual Liability.** Liability Insurance policies shall contain contractual liability coverage, for Developer’s indemnity obligations under this Agreement. Developer’s obtaining or failure to obtain such contractual liability coverage shall not relieve Developer from nor satisfy any indemnity obligation of Developer under this Agreement.

8.3.4 **Deliveries to Commission.** Developer shall deliver to Commission evidence of Liability Insurance prior to the commencement of any Due Diligence Investigations. Evidence of Developer’s maintenance of all insurance policies required by this Agreement shall be delivered to Commission prior to the Close of Escrow. Builder’s Risk Insurance shall incept at the time of Builder mobilization for the Project. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Developer shall deliver to Commission evidence of such Party’s maintenance of all insurance this Agreement requires. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days’ advance written notice of such action has been given to Commission by certified mail, return receipt requested; provided; however, that only ten (10) days’ advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as “endeavor to” and “but failure to mail such Notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Commission Parties pursuant to this Agreement.

8.3.5 **Waiver of Certain Claims.** Developer shall cause each insurance carrier providing any Liability Insurance, Builder’s Risk Insurance, Worker’s Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the Commission Parties, if not already in the policy. To the extent that Developer obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this Agreement.

8.3.6 **No Representation.** No Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

8.3.7 **No Claims Made Coverage.** None of the insurance coverage required under this Agreement may be written on a claims-made basis.

8.3.8 **Fully Paid and Non-Assessable.** All insurance obtained and maintained by Developer in satisfaction of the requirements of this Agreement shall be fully paid for and non-assessable. However, Developer's policies may be subject to insurer audits.

8.3.9 **Commission Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Developer to carry any insurance required by this Agreement, Commission may, at its sole option, purchase any such required insurance coverage and Commission shall be entitled to immediate payment from Developer of any premiums and associated reasonable costs paid by Commission for such insurance coverage. Any amount becoming due and payable to Commission under this Section 8.3.9 that is not paid within fifteen (15) calendar days after written demand from Commission for payment of such amount, within an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the Usury Limit, whichever is less. Any election by Commission to purchase or not to purchase insurance otherwise required by the terms of this Agreement to be carried by Developer shall not relieve the Defaulting Party of its obligation to obtain and maintain any insurance coverage required by this Agreement.

8.3.10 **Separation of Insured.** All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Developer and the Commission Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

8.3.11 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions under insurance policies required by this Agreement shall be declared to and approved by Commission. Developer shall pay all such deductibles or self-insured retentions regarding the Commission Parties or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to the Commission Parties.

8.3.12 **No Separate Insurance.** Developer shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Agreement, unless Commission is made an additional insured thereon, as required by this Agreement.

8.3.13 **Insurance Independent of Indemnification.** The insurance requirements of this Agreement are independent of the Parties' indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Parties' indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the

provision of such insurance preclude Commission from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

9. FINANCING OF PROJECT

9.1 Construction Financing. Developer shall obtain the Construction Financing such that when the available proceeds of the Construction Financing are combined with the amount of the Tax Credit Equity to be funded during Project construction (pursuant to the Financing Plan and the Developer Partnership Agreement), the amount of the proceeds of the Industry Funds Loan to be funded during Project construction (if any), the amount of the proceeds of the IIG Loan to be funded during Project construction (if any) and the amount of the proceeds of the Commission Loan to be funded during Project construction, the Developer will have sufficient funds to pay all of the Total Project Costs. The proceeds of the Construction Financing shall be used solely to pay Total Project Costs.

9.2 Tax Credit Equity.

9.2.1 **CTCAC Applications.** Developer shall apply for the Tax Credits in the first round of the 2011 CTCAC application cycle for the Tax Credits. If Developer does not receive a reservation of the Tax Credits for the Project as a result of such initial application, Developer shall re-apply for the second round of the 2011 CTCAC application for the Tax Credits. If Developer does not receive a reservation of the Tax Credits for the Project as a result of such second application, Developer shall again re-apply for the first round of the 2012 CTCAC application cycle for the Tax Credits. If Developer does not receive a reservation of the Tax Credits for the Project as a result of such third application, Developer shall again re-apply for the second round of the 2012 CTCAC application cycle for the Tax Credits. If Developer does not receive a reservation of the Tax Credits for the Project after making these four (4) applications to CTCAC, then either Commission or Developer may terminate this Agreement upon fifteen (15) days Notice to the other Party. If Developer fails to apply for any round of CTCAC application cycles for the Tax Credits in accordance with this Section 9.2, Commission shall have the right to terminate this Agreement upon fifteen (15) days Notice to Developer.

9.2.2 **Tax Credit Equity Funding.** Developer shall obtain bids from at least three (3) investors for becoming the Tax Credit Investor and present all such bids to Commission for review and approval within thirty (30) calendar days following the date of issuance by CTCAC of a letter to Developer reserving the Tax Credits for the Project. Commission and Developer shall negotiate in good-faith for a period of fifteen (15) Business Days to agree on one of the investor bids for the Project. If Commission and Developer agree on one of the investor bids for the Project, Developer shall negotiate in good-faith with the applicable investor regarding entry into the Developer Partnership Agreement to become the Tax Credit Investor. If Commission and Developer do not agree on one of the investor bids for the Project, Developer shall have an additional thirty (30) calendar days to obtain an additional investor bid for the Project that is mutually acceptable to both Commission and Developer. If Developer does not obtain an additional investor bid for the Project that is mutually acceptable to both Commission and Developer within such thirty (30) calendar day period, either Commission or Developer may terminate this Agreement by Notice to the other Party. The Developer Partnership Agreement and all general, limited or other partners under such agreement shall be subject to the review and

approval of Commission prior to the Close of Escrow. Nothing in this Section 9.2.2 shall extend or delay the Escrow Closing Date.

9.3 Industry Funds Loan. Developer shall apply for the Industry Funds Loan on or before November 15, 2010. If Developer does not receive the Industry Funds Loan from such application, then Developer shall make a second application for the Industry Funds Loan on or before December 31, 2011. If Developer does not receive the Industry Funds Loan from such second application, then Developer shall immediately send Notice of such fact to Commission pursuant to Section 5.5.1 and the Parties shall proceed pursuant to Section 5.5.1.

9.4 IIG Grant. If HCD publishes a "Notice of Funding Availability" for the IIG Grant on or before June 30, 2011, Original Developer shall apply for the IIG Grant on or before the last date to apply for such grant stated in such "Notice of Funding Availability." If Original Developer does not receive a written commitment from HCD to provide the IIG Grant to Original Developer as a result of such application, then Developer shall immediately send Notice of such fact to Commission pursuant to Section 5.5.1 and the Parties shall proceed pursuant to Section 5.5.1.

9.5 Developer Fee. The Original Developer shall be entitled to receive the Developer Fee for its services related to development of the Project. The Developer Fee may not be paid to the Original Developer any sooner than provided in the following schedule: (a) ten percent (10%) of the Developer Fee at Close of Escrow; (b) an additional ten percent (10%) of the Developer Fee at completion of twenty-five percent (25%) of the construction of the Project (as determined by the Institutional Lender providing the Construction Financing); (c) an additional thirty percent (30%) of the Developer Fee at completion of fifty percent (50%) of the construction of the Project (as determined by the Institutional Lender providing the Construction Financing); (d) an additional forty percent (40%) of the Developer Fee at issuance of Certificate of Occupancy for all dwelling units in the Project by the City; and (e) the remaining ten percent (10%) of the Developer Fee at filing of Form 8609 for the Project with the Internal Revenue Service. Any portion of the Developer Fee not paid at or before filing of Form 8609 for the Project with the Internal Revenue Service shall be paid from net operating income from the completed Project (except as otherwise specifically provided in Section 9.13) prior to repayment of the Commission Loan ("**Deferred Developer Fee**"). Notwithstanding the preceding provisions of this Section 9.5, to the extent that the Institutional Lender providing the Construction Financing for the Project or the Tax Credit Investor have more restrictive requirements regarding the amount or timing of payment of all or any portion of the Developer Fee than those set forth in the preceding provisions of this Section 9.5, the Executive Director is authorized to agree to any such more restrictive payment provisions, in the Executive Director's sole and absolute discretion. To the extent that the aggregate financing sources available to Developer for development of the Project exceed the aggregate financing sources set forth in the Project Budget, the amount of the Deferred Developer Fee is intended by the Parties to be reduced by the amount of such additional aggregate financing sources. To the extent that the aggregate financing sources available to Developer for development of the Project are less than the aggregate financing sources set forth in the Project Budget, the amount of the Deferred Developer Fee is intended by the Parties to be increased by the amount of such reduction in aggregate financing sources.

9.6 Commission Loan. Subject to the terms and conditions of this Agreement, Commission shall disburse to or for the benefit of Developer an amount not to exceed the original principal amount of the Commission Loan. All advances of funds made by Commission under the Pre-Development Loan Note shall, at the Close of Escrow, be considered advances under the Commission Loan and shall be repaid by Developer to Commission in accordance with all of the provisions of the Developer Note, including accrual of interest. Inclusion of advances of funds made by Commission under the Pre-Development Loan Note shall not increase the maximum principal amount of the Commission Loan. As an inducement to Commission to make the Commission Loan, Developer has agreed to enter into this Agreement and has agreed to the performance of the terms and conditions set forth in this Agreement. Developer shall use the Commission Loan first to pay the entirety of the Purchase Price for the Project Site and then any remainder of the Commission Loan principal shall be used by Developer solely to pay a portion of the Total Project Costs. Developer shall not be entitled to use any portion of the Commission Loan to reimburse itself for any internal management, administrative or overhead expenses or for any purpose other than paying the Purchase Price and a portion of the Total Project Costs. Further, Developer acknowledges and agrees that one source of funds for the Commission Loan is "Home Investment Partnership Act" funds received by Commission from the Federal government (directly or indirectly) and that these funds will not be used to fund the construction of more than eleven (11) Dwelling Units of the Project, consistent with Section 1.1.55 of the Regulatory Agreement.

9.7 Repayment of Commission Loan. Developer shall repay the Commission Loan pursuant to the terms and conditions of the Developer Note. The Developer Note shall be secured by the Commission Deed of Trust. The Commission Deed of Trust shall only be subordinate in lien priority regarding the Project Site to statutory liens, the Permitted Security Instrument securing the Construction Financing and, upon the complete repayment of the Construction Financing, a Permitted Security Instrument securing the Permanent Loan.

9.8 Disbursement of Commission Loan.

9.8.1 **Pre-Development Cost Disbursements.** Between the Effective Date and the Close of Escrow, if Developer signs and delivers to Commission the Developer Note, Commission will disburse an amount not to exceed Seven Hundred Twenty-Five Thousand Dollars (\$725,000) of the proceeds of the Commission Loan to reimburse Developer for pre-development costs identified in the Project Budget actually paid by Developer prior to the Close of Escrow. Disbursements of the Commission Loan pursuant to this Section 9.8.1 shall be subject to all of the provisions of this Agreement regarding disbursement of the Commission Loan, exclusive of the requirements of Section 9.8.4(a) or (c), the requirement under Section 9.8.4 that such proceeds will only be disbursed for work in place, and the requirements of Section 9.8.7(a), (b), (c), (d), (e), (f) or (k).

9.8.2 **Closing Disbursement.** At the Close of Escrow, an amount of Commission Loan proceeds not to exceed the Purchase Price shall be disbursed and applied to pay the Purchase Price for Developer's acquisition of fee title to the Project Site, subject to the Commission Deed of Trust (Commission will not actually transfer any funds under the Commission Loan to Developer or any other Person on the Close of Escrow pursuant to this

Section 9.8.2, as the Developer's completely offsetting obligation to pay the Purchase Price to Commission results in an accounting transaction only.

9.8.3 Construction Disbursements. The remaining principal balance of the Commission Loan (less the amount of the Commission Loan disbursed to pay pre-development costs pursuant to Section 9.8.1 and less the amount of the Commission Loan applied to pay the Purchase Price at the Close of Escrow pursuant to Section 9.8.2) is anticipated to be deposited in the project account established pursuant to the Disbursement Agreement for disbursement during Project construction to pay a portion of the Total Project Costs, subject to all of the conditions precedent to disbursement under this Agreement and the Disbursement Agreement. Notwithstanding any provision of this Agreement or the Disbursement Agreement to the contrary, Commission shall have no obligation to consent to a requested application, advance or disbursement of Commission Loan proceeds that does not comply with the terms and conditions of this Agreement or the Disbursement Agreement.

9.8.4 Disbursement Requests. The Commission Loan proceeds shall be disbursed from time to time to or for the account of Developer only in accordance with this Agreement, the Disbursement Agreement and the Developer Note. The Commission Loan proceeds shall be disbursed on a line-item by line-item basis in accordance with the Project Budget, subject to Section 9.13. In no event shall Commission have any obligation to consent to any disbursement on account of any line item, if the amount to be disbursed on account of that line item, when taken in the aggregate with all amounts previously disbursed on account of that line item, exceeds the amount allocated to such line item in the Project Budget. Disbursements shall be made only upon Developer's written request in a form provided or approved by Commission showing all costs that Developer intends to fund with such disbursement, itemized in such detail as Commission may reasonably require, accompanied in each case by: (a) written certifications by the Builder and architect that construction to the date of the disbursement request is in accordance with the Construction Drawings for the Project approved by the City; (b) copies of all invoices for all items, equipment or materials purchased and all contracted labor or services provided and lien releases satisfactory to Commission executed by each contractor or subcontractor or material or equipment supplier that has received any payment for work performed or materials provided; (c) CLTA 122 endorsements to the Title Policy in form and substance satisfactory to Commission; (d) a written certification from Developer to Commission that all costs and expenses that are the subject of the disbursement request were incurred in the normal course of construction of the Project and that none of the costs or expenses were the subject of a prior disbursement request; (e) a written certification from Developer to Commission that sufficient funds are projected to be available to complete the Project in accordance with the Financing Plan and that the amount of Tax Credit Equity will not be reduced nor any of the Tax Credits recaptured; and (f) all other documents and information reasonably required by Commission. Disbursement requests shall be submitted to Commission no less than ten (10) Business Days prior to the date of the requested disbursement, and shall not be submitted more often than once monthly. Funds will only be disbursed for work in place. In no event will Commission be required to consent to disbursements for materials not incorporated into the Project; provided, however, that Commission, in Commission's sole and absolute discretion, may consent to disbursements for materials stored securely on-site, if such materials are insured, are available for inspection and will be incorporated into the Project within a reasonable time. Disbursements will be subject to withholding for stop notice claims pursuant to California Civil

Code Section 3162 and mechanic's lien claims. In no event shall any disbursements other than the final disbursement pursuant to Section 9.8.8 be made after the date of issuance of a Certificate of Completion for the Project.

9.8.5 Retainage. As to each "hard cost" item in the Project Budget, disbursements shall be made in the amount of ninety-five percent (95%) of the costs for such item properly incurred and substantiated by Developer during the course of the Project, with a retainage of five percent (5%) of the total cost of work then completed regarding such item. Each disbursement for the Builder's overhead and profit shall be subject to retainage of ten percent (10%) until such time as the construction of the Project is determined, in the reasonable judgment of the Commission, to be fifty-five percent (55%) complete; thereafter, the retainage from the Builder's overhead and profit shall be reduced to five percent (5%) in future disbursements from the Commission Loan. All amounts so retained shall be disbursed upon satisfaction of all conditions to the final disbursement set forth in Section 9.8.8.

9.8.6 Contingency. Commission shall not have any obligation to consent to any disbursement from funds allocated in the Project Budget to the "Contingency" line item, or to consent to any reallocation to any other line item of funds allocated in the Project Budget to the "Contingency" line item; provided, however, Commission shall not unreasonably withhold, condition or delay its consent to any: (1) transfer of funds remaining in a Project Budget line item when the work of that line item is fully completed and provision is made for the retainage required by Section 9.8.5; or (2) reallocation of funds allocated to the "Contingency" line item in the Project Budget so long as, immediately following such reallocation, the undisbursed portion of the funds allocated to the "Contingency" line item is at least five percent (5%) of the "hard costs" of the portion of the Project then remaining to be completed.

9.8.7 Conditions to Disbursement. Except as otherwise expressly provided in Section 9.8.1, the obligation of Commission to consent to any disbursement (excluding the disbursement to be made at the Close of Escrow) is subject to the satisfaction or written waiver by Commission, as the case may be, of all of the following conditions precedent:

- (a) The Close of Escrow has occurred;
- (b) Developer has made payment to the Builder for the amounts covered by all prior disbursement requests;
- (c) All prior disbursements of Commission Loan proceeds have been made in accordance with Sections 9.8.1 through 9.8.6;
- (d) Commission has reasonably determined, based upon inspections or other evidence satisfactory to Commission, that the Project is being constructed in a good and workmanlike manner by appropriate means in accordance with the plans and specifications approved by Commission and that all required inspections and approvals have been obtained as and when necessary;
- (e) The Title Company is prepared to issue a date down endorsement to the Title Policy in the nature of a CLTA 122 endorsement insuring that the lien of the Commission Deed of Trust is unchanged, securing all previous disbursements and the

disbursement then being requested, and that nothing has intervened to affect the validity or priority of the Commission Deed of Trust;

(f) All sources of financing for construction of the Project are “in balance” in accordance with the Financing Plan and the Project Budget and Developer can complete the Project, without obtaining additional funds, all in the judgment of Commission;

(g) Commission has received, in form and substance acceptable to Commission, all required supporting documentation, including work progress certifications from the Builder or architect and invoices and mechanic’s lien claim waivers and releases;

(h) No Default shall remain uncured and no event has occurred or condition exist that, with the giving of Notice or the passage of time or both, would constitute a Default, and Commission has received a certification to that effect from Developer;

(i) No stop notice (whether bonded or not) has been served upon or otherwise delivered to Commission in connection with the Project or otherwise in connection with the Commission Loan, unless Developer has: (a) paid and discharged such stop notice; or (b) effected the release of such stop notice by delivering to Commission a surety bond complying with the requirements of applicable laws for such release;

(j) No claim of lien, notice and claim of mechanic’s lien or other similar document or instrument has been recorded against the Project Site, unless Developer has: (a) paid and discharged the same; (b) effected the release of such claim or lien by delivering to Commission a surety bond complying with the requirements of applicable laws for such release; or (c) provided Commission with other security reasonably acceptable to Commission to protect Commission’s interests regarding the Project Site and the Project against such lien or notice; and

(k) All amounts then due and owing in respect of the Tax Credit Equity have been paid or otherwise provided for to the reasonable satisfaction of Commission in the amounts and at the times set forth in the Developer Partnership Agreement.

9.8.8 Final Disbursement. Commission’s obligation to consent to the final disbursement of that portion of the proceeds of the Commission Loan retained pursuant to Section 9.8.5 is subject to the satisfaction or written waiver by Commission, as applicable, of all of the following additional conditions precedent:

(a) Commission has issued or is deemed to have issued a Completion Certificate for the Project and Developer has completed all of the actions to be performed by Developer pursuant to Section 7.3.2;

(b) Commission has received, in form and substance acceptable to Commission all of the following:

(i) Evidence that Developer has accepted the Project as complete;

(ii) Evidence that all Total Project Costs will, upon making the final disbursement, together with any retainage then held by the Permitted Lender providing the Construction Financing, be paid in full; and

(iii) Evidence that the period for filing mechanic's liens regarding the Project has expired without the filing of any lien or Commission has received executed unconditional lien releases from the Builder and all subcontractors involved in construction of the Project in form and substance reasonably satisfactory to Commission or Commission has received other security reasonably acceptable to Commission to protect Commission's interests regarding the Project Site and the Project against all such liens or similar Claims.

9.9 No Other Commission Financial Assistance. Commission shall be under no obligation to contribute any other financial assistance to the acquisition, construction or operation of the Project other than the Commission Loan, regardless of Actual Project Costs.

9.10 Permanent Loan. Following issuance of a Completion Certificate for the Project, the Permanent Loan shall be obtained by Developer from the Institutional Lender providing the forward loan commitment for the Permanent Loan approved by Commission prior to the Close of Escrow or from another Institutional Lender reasonably acceptable to Commission. The proceeds of the Permanent Loan, together with a portion of the Tax Credit Equity proceeds that have not been previously disbursed to Developer, shall be used to completely and timely pay-off the Construction Financing.

9.11 Limited Recourse of Pre-Development Loan Note. If for any reason other than an Event of Default of Developer, the Close of Escrow does not occur and this Agreement is terminated, all amounts due under the Pre-Development Loan Note and under the Developer Note for Commission Loan proceeds disbursed pursuant to Section 9.8.1 for pre-development costs shall be forgiven and completely discharged following performance of the provisions of Section 9.12 by Developer. Upon the termination of this Agreement following an Event of Default by the Developer, all amounts then outstanding under the Pre-Development Loan Note and under the Developer Note for Commission Loan proceeds disbursed pursuant to Section 9.8.1 for pre-development costs shall be immediately due and payable by Developer to Commission. Any such amount that is not paid to the Commission by Developer within seven (7) calendar days following the date of termination of this Agreement shall accrue Default Interest from the date of such termination, until paid in full.

9.12 Information Deliverables. As a condition precedent to the Section 9.11 forgiveness and discharge of all amounts due under the Pre-Development Loan Note and under the Developer Note for Commission Loan proceeds disbursed pursuant to Section 9.8.1 for pre-development costs, Developer shall deliver to Commission all drawings, specifications, reports, records, surveys, documents, plans, entitlements and other materials prepared by or for Developer the costs of which were paid for, financed or reimbursed in whole or in part from advances under the Pre-Development Loan Note or the Developer Note pursuant to Section 9.8.1, without further charge to or payment by Commission, and assign all rights of Developer in and to such materials to Commission. Developer shall deliver all such materials without any warranty or guaranty as to the correctness, accuracy or completeness of any such materials or the

ability of Commission to use any such material without the consent of the consultants or professionals (other than Developer) that prepared any of the materials. Developer shall Indemnify Commission against any amounts still owing to the consultants or professionals that prepared any of the materials.

9.13 Cost Reductions Or Increases; Additional Financing Sources. The Parties acknowledge and agree that the Commission Loan is intended to partially finance the financing “gap” of the Project (the amount needed to pay the excess of the Total Project Costs over the aggregate financing sources available to the Developer for acquisition of the Project Site and construction of the Project), but in no event to provide funding (when combined with all other financing sources available to the Developer for acquisition of the Project Site or construction of the Project) in excess of the Actual Project Costs. If the Actual Project Costs are less than the Total Project Costs (the difference between the Actual Project Costs and the Total Project Costs being a “**Cost Reduction**”), then fifty percent (50%) of the amount of the Cost Reduction shall be applied to repay any outstanding amount of Deferred Developer Fee (if any) and the other fifty percent (50%) of the amount of the Cost Reduction shall be applied to reduce or repay the principal amount of the Commission Loan and the Industry Funds Loan in the percentage that the original principal amount of each such loan bears to the sum of the original principal amounts of such loans. For illustration purposes only, if the original principal amount of the Industry Funds Loan is Two Million Dollars (\$2,000,000) and the original principal amount of the Commission Loan is Five Million Dollars (\$5,000,000), then the percentage of the Cost Reduction amount payable to Commission to reduce or repay the Commission Loan would be 5,000,000 divided by 7,000,000, with the result multiplied by one-half (.5), which equals thirty-six percent (36%) of the Cost Reduction amount (correspondingly, fourteen percent (14%) of the Cost Reduction amount would go to repayment of the Industry Funds Loan for a total of fifty percent (50%) of the Cost Reduction amount applied to reduction of repayment of the Commission Loan and the Industry Funds Loan). If the Actual Project Costs exceed the sum of all financing sources available to the Developer for acquisition of the Project Site and construction of the Project (the difference being a “**Project Deficit**”), the Developer shall be solely responsible for paying the Project Deficit (including, in whole or in part, from an increase in the amount of the Deferred Developer Fee, pursuant to Section 9.5); provided, however, that Commission agrees that Developer may transfer sums among line items within the Project Budget that are unexpended at the substantial completion of the work delineated in such line item to the account and line item for contingencies or another account for another line item in the Project Budget to reduce or eliminate any amount that would otherwise constitute a Project Deficit. If the Actual Project Costs are less than the sum of the aggregate financing sources available to Developer for acquisition of the Project Site and construction of the Project (the difference being a “**Project Surplus**”), then fifty percent (50%) of the amount of the Project Surplus shall be applied to repay any outstanding amount of Deferred Developer Fee (if any) and the other fifty percent (50%) of the amount of the Project Surplus shall be applied to reduce or repay the principal amount of the Commission Loan and the Industry Funds Loan in the same proportion as a Cost Reduction is applied to reduce or repay the principal amount of the Commission Loan and the Industry Funds Loan pursuant to this Section 9.13; provided, however, that the amount of a Project Surplus attributable to a Cost Reduction, if any, shall be first applied as provided in this Section 9.13 for application of a Cost Reduction and any remaining amount of Project Surplus shall be applied as provided in this Section 9.13 for application of a Project Surplus. The determination as to whether or not a Cost Reduction,

Project Deficit or Project Surplus has occurred regarding the Project shall be made by the Commission following Commission's receipt of a copy of the final CTCAC audit of the Project.

9.14 AHP Funds. Developer shall apply to the Federal Home Loan Bank of San Francisco for an award of Affordable Housing Program funds ("**AHP Funds**") for the Project. If Developer or the Project receives an award of AHP Funds, these AHP Funds shall first be applied to pay any Project Deficit (if any). If no Project Deficit exists or any AHP Funds are remaining after elimination of any Project Deficit (if any), then fifty percent (50%) of the AHP Funds or remaining amount of AHP Funds shall be applied to repay any outstanding amount of Deferred Developer Fee (if any) and the other fifty percent (50%) of AHP Funds or remaining amount of AHP Funds shall be applied to reduce or repay the principal amount of the Commission Loan and the Industry Funds Loan in the same proportion as a Cost Reduction is applied to reduce or repay the principal amount of the Commission Loan and the Industry Funds Loan pursuant to Section 9.13.

9.15 Developer Responsibility For Project Costs. The Developer acknowledges that the Actual Project Costs may exceed the Total Project Costs or the financing or other funding sources available to the Developer for acquisition of the Project Site and construction of the Project. Developer additionally acknowledges that the financing or other funding sources available to Developer for acquisition of the Project Site and construction of the Project may be different in type or amount from those set forth in this Agreement. Accordingly, Developer acknowledges and agrees that Developer shall be responsible for paying all of the Actual Project Costs, whether or not the Actual Project Costs exceed the financing or other funding sources available to the Developer for acquisition of the Project Site and construction of the Project.

9.16 Refinancing. Prior to issuance of a Completion Certificate for the Project, Refinancing shall only be allowed with the prior written consent of Commission, which may be given, withheld or conditioned in Commission's sole and absolute discretion.

9.17 Only Permitted Encumbrances. Developer shall not record and shall not allow to be recorded against the Project Site any Security Instrument, lien or other encumbrance that is not a Permitted Encumbrance. Developer shall remove or cause to be removed (or provide title insurance in form and substance reasonably acceptable to Commission and issued by a title insurance company reasonably acceptable to Commission, insuring the priority of this Agreement and the Deed of Trust securing the Commission Loan as superior to such lien, with such title insurance being in the minimum amount of the outstanding principal and interest under the Commission Loan plus 125% of the amount of the lien claim or providing a statutory bond resulting in removal of such lien) any Prohibited Encumbrance made or recorded against the Project Site or shall assure the complete satisfaction of any such Prohibited Encumbrance to the satisfaction of the Commission, in the Commission's sole and absolute discretion. The covenants of Developer set forth in this Section 9.17 regarding the placement of encumbrances on the Project Site shall run with the land of the Project Site and bind successive owners of the Project Site, until issuance (or deemed issuance) of a Completion Certificate for the Project.

9.18 Commission Right to Discharge Prohibited Encumbrances. After sixty (60) calendar days Notice to Developer of a Prohibited Encumbrance and provided that Developer has not caused such Prohibited Encumbrance to be removed (including by providing title

insurance in form and substance reasonably acceptable to Commission and issued by a title insurance company reasonably acceptable to Commission, insuring the priority of this Agreement and the Deed of Trust securing the Commission Loan as superior to such lien, with such title insurance being in the minimum amount of the outstanding principal and interest under the Commission Loan plus 125% of the amount of the lien claim or providing a statutory bond resulting in removal of such lien) during such time period, the Commission shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Project Site and receive reimbursement from Developer for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by the Commission to discharge a Prohibited Encumbrance that is not reimbursed to the Commission by Developer within thirty (30) calendar days following Notice that such amount is due shall accrue Default Interest from the date of such Notice, until paid in full. Nothing in this Section 9.18, though, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject all or any portion of the Project Site to forfeiture or sale.

10. RIGHTS OF LENDERS AND COMMISSION REGARDING PERMITTED SECURITY INSTRUMENTS.

10.1 Notice of Liens. The Developer shall promptly Notify the Commission of any Security Instrument or lien asserted against or attached to all or any portion of the Project or the Project Site, prior to the date of issuance of a Completion Certificate for the Project, whether by voluntary act of Developer or otherwise; provided, however, that no Notice of filing of preliminary notices or mechanic's liens need be given by Developer to the Commission, prior to suit being filed to foreclose any such mechanic's lien.

10.2 Notice of Default to Lenders. Whenever the Commission delivers any Notice of Default to Developer under this Agreement, the Commission shall send a copy of such Notice of Default to the Tax Credit Investor and each Permitted Lender of which the Commission has received Notice and a contact address for transmittal of such Notices. Failure of Commission to deliver any copies of Notices, as provided in the immediately preceding sentence, shall not affect any Notice given to Developer or any cure period allowed to Developer or any other Person under this Agreement. The Tax Credit Investor or a Permitted Lender receiving a copy of any such Notice of Default shall have the right, but no obligation, to commence the cure or remedy of any Default of Developer set forth in such Notice and to diligently and continuously proceed with the cure or remedy such Default, within the cure period allowed to Developer under this Agreement. The Commission shall accept such performance by the Tax Credit Investor or a Permitted Lender with the same force and effect as if furnished by Developer. If such Default can only be remedied or cured by the Permitted Lender upon obtaining possession of the Project Site, the Commission shall allow the Permitted Lender an opportunity to obtain possession of the Project Site with diligence and continuity through exercise of remedies under such Permitted Lender's Permitted Security Instrument and to remedy or cure such Default within ninety (90) days after obtaining possession of the Project Site. If the Default reasonably requires more than ninety (90) days to cure, however, then the time available to a Permitted Lender to cure pursuant to this Section 10 shall be the reasonable time required to complete such cure, as long as the Permitted Lender has commenced the cure of the Default within such ninety (90) day period and

diligently pursues the cure to completion. As long as the Permitted Lender diligently commences and pursues obtaining possession of the Project Site, including litigation or other legal process necessary to obtain possession of the Project Site, within a reasonable time, then while the Permitted Lender is pursuing possession of the Project Site and no other lender to Developer or related to the Project Site or the Project is exercising any remedies under its agreement(s) with Developer or otherwise related to the Project Site or the Project, Commission agrees that Commission will not terminate this Agreement by reason of such Default. Additionally, if the Tax Credit Investor can only cure the Default after replacing the general partner of the Developer and assuming control of Developer through installation of a new general partner (any Default that can be cured through the payment of money shall be considered and deemed capable of being cured by the Tax Credit Investor without removing or replacing the general partner), Commission will allow the Tax Credit Investor a reasonable time to remove such general partner of Developer, if the Tax Credit Investor delivers written notice to Commission, within the time period allowed to Developer for cure of such Default, stating that the Tax Credit Investor intends to remove such general partner pursuant to the Tax Credit Investor's rights under the Developer Partnership Agreement. The Tax Credit Investor shall cure all Defaults that are curable by the Tax Credit Investor within sixty (60) days after removal of the general partner of Developer (any Default that can be cured through the payment of money shall be considered and deemed capable of being cured by the Tax Credit Investor) or such longer time period reasonably required to complete such cure, as long as such cure is commenced by the Tax Credit Investor within such sixty (60) day period. As long as the Tax Credit Investor diligently commences and pursues removal of such general partner to completion (including litigation or other legal process necessary to complete the removal of the such general partner) within a reasonable time, then while the Tax Credit Investor is pursuing removal of such general partner and no other lender to Developer or related to the Project Site or the Project is exercising any remedies under its agreement(s) with Developer or otherwise related to the Project Site or the Project, Commission agrees that Commission will not terminate this Agreement by reason of such Default. All Developer Specific Defaults shall be deemed cured upon transfer of Developer's interest in the entire Project Site to a Permitted Lender, its assignee or nominee, pursuant to exercise of remedies under such Permitted Lender's Permitted Security Instrument. In addition, any Permitted Lender properly completing the Project with the consent of Commission shall be entitled, upon written request made to Commission, to a Completion Certificate from Commission. Nothing contained in this Agreement shall be deemed to permit, authorize or require any Permitted Lender to undertake or continue the construction of any portion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made) prior to or after acquiring title to or possession of the entire Project Site, without expressly assuming Developer's obligations under this Agreement by written agreement reasonably satisfactory to Commission, in which the Permitted Lender agrees to complete the Project in the manner provided in this Agreement. Any Permitted Lender desiring to complete the Project must provide the Commission with evidence reasonably satisfactory to Commission that the Permitted Lender has the qualifications (or will engage one or more licensed contractor(s) or consultant(s) with such qualifications) and financial capability necessary to perform such obligations.

10.3 No Termination of Permitted Security Instruments by Default. An Event of Default by Developer under this Agreement shall not defeat or render invalid the lien of any Permitted Security Instrument made in good faith and for value as to all or any part of the Project

Site, whether or not the Lender is subordinated to this Agreement; but unless otherwise provided in this Agreement, this Agreement shall be binding and effective against any owner of the Project Site, whose title to the Project Site is acquired pursuant to exercise of remedies under a Permitted Security Instrument or from a Person exercising any such remedies.

10.4 Lender Rights on Termination or Modification. No termination of this Agreement shall be binding upon a Lender unless the termination occurs after Notice to such Lender and such Lender's failure to cure all then existing Defaults under this Agreement (except any Developer Specific Defaults), pursuant to this Section 10, or with such Lender's prior written consent. No modification of this Agreement that materially affects the rights of a Lender shall be binding upon the Lender without its prior written consent.

10.5 Commission Right to Purchase Obligation. In any case where, after delivery of Notice of Default of Developer under this Agreement, an affected Lender has not exercised the option provided in Section 10.2 to construct the Project, or has exercised the option, but has not proceeded diligently with such construction, Commission shall have the option, in Commission's sole and absolute discretion, to purchase the rights of such Lender against or in reference to Developer, the Project Site or the Project secured by any Permitted Security Instrument held by such Lender by payment to the Lender of the amount of the unpaid obligations secured by such Permitted Security Instrument and, if the ownership of the Project Site has vested in such Lender, Commission, at its option, but not its obligation, shall be entitled to a conveyance from such Lender of any title or interest in the Project Site vested in such Lender to Commission or Commission's designee. After forty-five (45) days following expiration of the time period for an affected Lender to cure a Default of Developer under this Agreement, an affected Lender may demand by Notice, that Commission act to exercise or forego the right granted in this Section 10.5 by Notice to the Lender. If Commission fails to exercise the right granted in this Section 10.5 by Notice to the Lender within forty-five (45) calendar days following the date of the Commission's receipt of such written demand from the Lender, Commission shall be conclusively deemed to have waived its rights under this Section 10.5. If Commission timely exercises its rights under this Section 10.5, the purchase transaction shall close within sixty (60) days after the date of such Lender's receipt of the Commission's Notice exercising such rights.

10.6 No Construction Obligation of Lender. A Lender shall in no way be obligated by the provisions of this Agreement to construct or complete the development of the Project or to guaranty such construction or completion, but may do so pursuant to and in accordance with this Section 10. Nothing in this Agreement shall be deemed or construed to permit, or authorize any Lender to devote all or any portion of the Project Site to any uses, or to construct any improvements on the Project Site, other than those uses or the Project provided for or authorized by this Agreement.

10.7 Commission Right to Cure. In the event of a breach or default by Developer under any Permitted Security Instrument, prior to the date of issuance of a Completion Certificate for the Project, Commission may cure the breach or default of Developer under the applicable Permitted Security Instrument, but is under no obligation to do so, prior to completion of any sale or foreclosure of all or any portion of the Project Site under the applicable Permitted Security Instrument. Commission shall be entitled to reimbursement from Developer of all costs and reasonable expenses incurred by Commission in curing any breach or default of Developer

under any Permitted Security Instrument, upon demand. Any amount expended by the Commission to cure a breach or default of Developer under any Permitted Security Instrument that is not reimbursed to Commission by Developer within thirty (30) calendar days after Notice of such amount to Developer shall accrue Default Interest from the date of such Notice, until paid in full.

10.8 Foreclosure of Permitted Security Instrument. Foreclosure of any Permitted Security Instrument, whether by judicial proceedings or by power of sale, or any conveyance by deed in lieu of foreclosure, shall not require the consent of Commission nor constitute a Default under this Agreement. Following any foreclosure of a Permitted Security Instrument or conveyance of the Project Site to the holder of Permitted Security Instrument by deed in lieu of foreclosure, Commission shall recognize as "Developer" under this Agreement any purchaser or other transferee of the entire Project Site that assumes all of the obligations of Developer under this Agreement pursuant to a written assumption agreement reasonably satisfactory to Commission. If any Lender or its nominee or assignee acquires Developer's title to the entire Project Site as a result of a foreclosure of a Permitted Security Instrument or conveyance of the Project Site to the holder of a Permitted Security Instrument by deed in lieu of foreclosure, such Lender shall thereafter have the right to assign or transfer Developer's interest under this Agreement to an assignee upon obtaining Commission's prior written consent regarding such assignee, which consent shall not be unreasonably withheld or delayed. Upon such acquisition of the entire Project Site by a Lender, or the assignee or nominee of a Lender, or the purchaser from a Lender or such assignee or nominee, each with the prior written consent of Commission, Commission shall enter into an amendment to this Agreement with such Person, upon the written request of such Person given not later than one hundred twenty (120) days after such Person's acquisition of the entire Project Site. Such amended Agreement shall be substantially the same in form and content as this Agreement, except as to the parties, and the acknowledgment or elimination of any requirements that have been fulfilled prior to the date of such amendment and shall have priority equal to the priority of this Agreement.

10.9 Ancillary Agreements. Following written request from a Permitted Lender, Commission will enter into such ancillary agreements reasonably requested by such Permitted Lender to make the rights and obligations set forth in this Section 10 direct agreements between Commission and such Permitted Lender. Developer shall cause each Permitted Lender to enter into such ancillary agreements reasonably requested by Commission to make the rights of Commission under this Section 10 direct agreements between Commission and each Permitted Lender.

11. **PROPERTY TAXES AND ASSESSMENTS.** Developer shall pay prior to the delinquency all real property taxes and assessments assessed and levied on or against the Project Site. Nothing in this Agreement shall be deemed to prohibit Developer from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to Developer in respect thereto, or for claiming exemptions available under State Revenue and Taxation Code Section 214(g).

12. **REMEDIES AND INDEMNITY**

12.1 PRE-CLOSING LIQUIDATED DAMAGES TO COMMISSION. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, COMMISSION MAY CANCEL THE ESCROW AND TERMINATE THIS AGREEMENT. UPON CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT, COMMISSION SHALL BE RELIEVED OF ALL OBLIGATIONS OF COMMISSION UNDER THIS AGREEMENT, INCLUDING THE OBLIGATION TO SELL OR CONVEY THE PROJECT SITE TO DEVELOPER. ANY SUCH ESCROW CANCELLATION AND TERMINATION OF THIS AGREEMENT SHALL BE WITHOUT ANY LIABILITY OF COMMISSION TO DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTION. COMMISSION AND DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY COMMISSION, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES COMMISSION WOULD SUFFER, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, COMMISSION AND DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF COMMISSION'S DAMAGES IN SUCH EVENT IS THE LIQUIDATED DAMAGES AMOUNT (AS DEFINED IN THIS AGREEMENT). THEREFORE, UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT BY COMMISSION DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW, THE ESCROW AGENT SHALL IMMEDIATELY CANCEL THE ESCROW AND THE PARTIES AND ESCROW AGENT SHALL PROCEED IN ACCORDANCE WITH SECTIONS 6.13.1 AND 6.13.2. ALSO, DEVELOPER SHALL PAY THE LIQUIDATED DAMAGES AMOUNT (AS DEFINED IN THIS AGREEMENT) TO COMMISSION, WITHIN FIVE (5) DAYS FOLLOWING ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT (AS DEFINED IN THIS AGREEMENT) SHALL BE COMMISSION'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW.

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Commission Representative

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Developer Representative

12.2 DEVELOPER'S RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES PRIOR TO CLOSE OF ESCROW.

12.2.1 ELECTION OF REMEDIES. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY COMMISSION UNDER THIS AGREEMENT, DEVELOPER SHALL BE LIMITED TO EITHER OF THE FOLLOWING REMEDIES: (1) AN ACTION AGAINST COMMISSION FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT; OR (2) TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER UP TO A MAXIMUM AMOUNT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) OF AMOUNTS ACTUALLY PAID BY DEVELOPER PRIOR TO THE DATE OF SUCH EVENT OF DEFAULT TO THIRD PERSONS DIRECTLY RELATED TO OBTAINING PROJECT APPROVALS FROM THE CITY, BUT EXCLUSIVE OF AMOUNTS PAID OR ALLOCATED DIRECTLY OR INDIRECTLY TO INTERNAL COSTS OF DEVELOPER OR DEVELOPER'S EMPLOYEES, MEMBERS, SHAREHOLDERS, PARTNERS, AFFILIATES OR EMPLOYEES OR AGENTS OF ANY OF THEM. UNDER NO CIRCUMSTANCES SHALL COMMISSION BE LIABLE TO DEVELOPER UNDER THIS AGREEMENT FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY DEVELOPER.

12.2.2 WAIVER OF RIGHTS. COMMISSION AND DEVELOPER EACH ACKNOWLEDGE AND AGREE THAT COMMISSION WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, IF IT WERE TO BE LIABLE TO DEVELOPER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY COMMISSION PRIOR TO THE CLOSE OF ESCROW, OTHER THAN SPECIFIC PERFORMANCE OF THIS AGREEMENT OR TERMINATION OF THIS AGREEMENT AND PAYMENT OF THE AMOUNTS SPECIFIED IN SECTION 12.2.1. ACCORDINGLY, COMMISSION AND DEVELOPER AGREE THAT THE REMEDIES SPECIFICALLY PROVIDED FOR IN SECTION 12.2.1 ARE REASONABLE AND SHALL BE DEVELOPER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY COMMISSION. DEVELOPER WAIVES ANY RIGHT TO PURSUE ANY REMEDY OR DAMAGES OTHER THAN THOSE SPECIFICALLY PROVIDED IN SECTION 12.2.1.

12.2.3 CIVIL CODE SECTION 1542 WAIVER. DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 12.2, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

12.2.4 **ACKNOWLEDGMENT.** BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 12.2.

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12.2.5 **STATEMENT OF INTENT.** CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF DEVELOPER TO BE BOUND BY THE LIMITATION ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 12.2, AND DEVELOPER HEREBY RELEASES ANY AND ALL CLAIMS AGAINST COMMISSION FOR MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY EVENT OF DEFAULT UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 12.2, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO DEVELOPER AS OF THE EFFECTIVE DATE OF THIS AGREEMENT.

12.3 Commission Power of Termination Regarding Project Site.

12.3.1 **Reservation.** The Commission hereby reserves a power of termination pursuant to Civil Code Sections 885.010, *et seq.*, exercisable by the Commission, in its sole and absolute discretion, upon thirty (30) calendar days Notice to Developer referencing this Section 12.3, to terminate the fee interest of Developer in the Project Site or any improvements to the Project Site and revest such fee title in the Commission and take possession of all or any portion of such real property and improvements, without compensation to Developer, upon the occurrence of an Event of Default by Developer following the Close of Escrow and prior to the issuance of a Completion Certificate for the Project. The Commission shall not exercise such power of termination if Developer cures the Event of Default within the thirty (30) day Notice period set forth in this Section 12.3.1. The power of termination reserved in this Section 12.3 shall terminate on the date of issuance or deemed issuance of a Completion Certificate for the Project.

12.3.2 **Process.** The rights of the Commission under this Section 12.3 shall not defeat, render invalid or limit:

- (a) Any Permitted Security Instrument; or
- (b) Any leases, declarations of covenants, conditions and restrictions, easement agreements (except the Parking Deck Easement, which will be terminate on exercise of the power) or other recorded documents or interests applicable to the Project Site and specifically authorized by this Agreement or consented to in writing by the Commission; or
- (c) Upon the Commission's exercise of its power of termination pursuant to this Section 12.3, Developer shall convey fee title to the Project Site and all

improvements on or to the Project Site to the Commission by grant deed, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by Developer and a notary public in a manner suitable for recordation with County. The Commission may enforce its rights pursuant to this Section 12.3 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

(d) Upon the revesting in the Commission of title to the Project Site, whether by grant deed or court decree, the Commission shall exercise its reasonable good faith efforts to resell the Project Site at the Project Site's then fair reuse value, as soon and in such manner as the Commission shall, in its sole discretion, find feasible and consistent with the objectives of the Redevelopment Plan, to a qualified and responsible Person or Persons (as reasonably determined by the Commission) who will assume Developer's obligations to begin or complete or operate the Project, or such other replacement development acceptable to the Commission, in Commission's sole and absolute discretion. Upon any such resale of all or a portion of the Project Site, the proceeds received by the Commission from such sale shall be applied, as follows:

(i) First, to pay all amounts required to release/reconvey all Permitted Security Instruments recorded against the Project Site; and

(ii) Second, to reimburse the Commission on its own behalf or on behalf of the City for all actual internal and Third Person costs and expenses incurred by the Commission or the City related to the Project Site, the Project or this Agreement, including customary and reasonable fees or salaries to Third Person consultants (including Legal Costs) in connection with the recapture, management or resale of all or any portion of the Project Site; all taxes, assessments and utility charges paid by the City or the Commission with respect to all or any portion of the Project Site; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by Developer with respect to the Project Site or the construction of the Project; and amounts otherwise owing to the Commission by Developer pursuant to the terms of this Agreement, the Regulatory Agreement, the Developer Note or the Commission Deed of Trust; and

(iii) Third, to the extent that any proceeds from such resale are, thereafter, available, to reimburse Developer, the amount of the Third Person costs actually incurred and paid by Developer regarding the construction of the Project, including costs of carry, taxes, and other items as set forth in a cost certification to be made by Developer to the Commission, prior to any such reimbursement and, which certification shall be subject to the Commission's reasonable approval; provided, however, that Developer shall not be entitled to reimbursement for any expenses relating to any loans, liens or other encumbrances that are paid by the Commission pursuant to the provisions of sub-sections "(i)" or "(ii)" of this Section 12.3.2(d); and

(iv) Fourth, any portion of the proceeds from the resale of the Project Site remaining after the foregoing applications shall be retained by the Commission, as its sole and exclusive property.

12.3.3 **RIGHT OF RE-ENTRY.** IMMEDIATELY FOLLOWING THE THIRTY (30) DAY NOTICE PERIOD SPECIFIED IN SECTION 12.3.1, COMMISSION, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF ALL OR ANY PORTION OF THE PROJECT SITE AND ANY IMPROVEMENTS ON OR TO THE PROJECT SITE, WITHOUT FURTHER NOTICE OR COMPENSATION TO DEVELOPER. BY INITIALING BELOW, DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

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12.3.4 **DEVELOPER ACKNOWLEDGMENTS.** DEVELOPER ACKNOWLEDGES AND AGREES THAT COMMISSION'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 12.3 MAY WORK A FORFEITURE OF THE ESTATE IN THE PROJECT SITE CONVEYED TO DEVELOPER THROUGH THE QUITCLAIM DEED. DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT DEVELOPER MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. DEVELOPER FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. DEVELOPER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF COMMISSION'S POWER OF TERMINATION PROVIDED IN THIS SECTION 12.3. DEVELOPER FURTHER ACKNOWLEDGES THAT DEVELOPER HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR DEVELOPER'S WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO THIS SECTION 12.3.

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12.4 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 12.1, 12.2 and 12.3.

12.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

12.6 Indemnification.

12.6.1 **Commission Indemnity Obligations.** Commission shall Indemnify the Developer Parties against any Claim to the extent such Claim arises from any wrongful intentional act or negligence of the Commission Parties, but only to the extent that Commission may be held liable under applicable law for such wrongful intentional act or negligence and exclusive of any violation of law (including the State Constitution) relating to Commission's approval, entry into or performance of this Agreement. Nothing in this Agreement is intended nor shall be interpreted to waive any limitation on Commission's liability, any exemption from liability in favor of Commission, any claim presentment requirement for bringing an action regarding any liability of Commission or any limitations period applicable to liability of Commission, all as set forth in Government Code Sections 800, *et seq.*, Sections 900, *et seq.*, or in any other law, or require Commission to Indemnify any Person beyond such limitations on Commission's liability.

12.6.2 **Developer Indemnity Obligations.** Developer shall Indemnify the Commission Parties against any Claim to the extent such Claim arises from any wrongful intentional act or negligence of the Developer Parties. Developer shall also Indemnify the Commission Parties against any and all of the following: (a) any Application made by or at Developer's request; (b) any agreements that Developer (or anyone claiming by or through Developer) makes with a Third Person regarding the Project Site or the Project; (c) any workers compensation claim or determination relating to any employee of the Developer Parties or their contractors; (d) any Prevailing Wage Action relating to this Agreement or the Project; and (e) any Environmental Claim attributable to any action or failure to act by the Developer Parties.

12.6.3 **Independent of Insurance Obligations.** Developer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Agreement. Developer's obligation to Indemnify the Commission Parties under this Agreement is independent of Developer's insurance and other obligations under this Agreement. Developer's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Developer's indemnification obligations under this Agreement and are independent of Developer's indemnification and other obligations under this Agreement.

12.6.4 **Survival of Indemnification and Defense Obligations.** The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

12.6.5 **Indemnification Procedures.** Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

(a) *Prompt Notice.* The Indemnitee shall promptly Notify the Indemnitor of any Claim.

(b) *Selection of Counsel.* The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the Indemnitor shall defend the Claim, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the Claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel.

(c) *Cooperation.* The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

(d) *Settlement.* The Indemnitor may only settle a Claim with the consent of the Indemnitee. Any settlement shall procure a release of the Indemnitee from the subject Claims, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee nor the Indemnitor on behalf of Indemnitee admits any liability.

13. GENERAL PROVISIONS

13.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

13.2 City Not a Party. The City is not a Party to this Agreement.

13.3 Notices, Demands and Communications Between the Parties.

13.3.1 **Delivery.** Any and all Notices submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, nationally recognized overnight (one business day) courier (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in Section 13.3.2. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 13.3. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, one business day after deliver to a nationally recognized overnight carrier or two (2) calendar days after it is placed in the United States mail as heretofore provided. Any attorney representing a Party may give any Notice on behalf of such Party.

13.3.2 **Addresses.** The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Developer:

9065 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730
Attention: Richard J. Whittingham,
CFO

With Copy to:

Edward A. Hopson, Esq.
655A North Mountain Avenue
Upland, CA 91786

To Commission:

Downey CDC
Downey City Hall
11111 Brookshire Avenue
Downey, CA 90241
Attention: Executive Director

With Copy to:

Downey CDC
Downey City Hall
11111 Brookshire Avenue
Downey, CA 90241
Attention: Commission Counsel

13.4 Relationship of Parties. The Parties each intend and agree that Commission and Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

13.5 Warranty Against Payment of Consideration for Agreement. Developer represents and warrants to the Commission that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Developer and Third Persons to whom fees are paid for professional services related to planning, design or construction of the Project or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of Developer's agents, employees or representatives to any elected or appointed official or employee of either the City or the Commission in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 13.5 shall entitle the Commission to terminate this Agreement upon seven (7) days Notice to Developer and Escrow Agent. Upon any such termination of this Agreement, Developer shall immediately refund any payments made to or on behalf of Developer by the City or the Commission pursuant to this Agreement or otherwise related to the Project Site, any Approval, any CEQA Document, or the Project, prior to the date of any such termination.

13.6 No Discrimination or Segregation. Developer covenants by and for itself and all Persons claiming under or through it that this Agreement is made and accepted upon and subject to the following conditions:

13.6.1 **Standards.** That there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1,

subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Project Site nor shall Developer or any Person claiming under or through Developer 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 Project Site.

13.6.2 **Interpretation.** Notwithstanding Section 13.6.1, with respect to familial status, Section 13.6.1 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 13.6.1 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 13.6.1.

13.7 Non-liability of Commission Officials and Employees. No member, official or employee of Commission shall be personally liable to Developer, or any successor in interest to Developer, in the event of any Default by Commission under this Agreement or for any amount that may become due to Developer or to Developer's successor, or on any obligations under the terms of this Agreement, except to the extent resulting from the gross negligence or willful act of such member, officer or employee.

13.8 Inspection of Books and Records. Commission shall have the right at all reasonable times, at Commission's cost and expense, to inspect the books and records of Developer pertaining to the Project Site or the Project. Commission shall not disclose proprietary information of Developer to Third Persons, unless required by law or otherwise resulting from or related to the pursuit of any remedies by or the assertion of any rights of Commission under this Agreement.

13.9 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

13.10 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this

Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

13.11 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County of Los Angeles, State of California. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

13.12 Unavoidable Delay; Extension of Time of Performance.

13.12.1 **Notice.** Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within five (5) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its commercially reasonable best efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

13.12.2 **Assumption of Economic Risks.** EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE

ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

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Representative(s) of Commission

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Representative(s) of Developer

13.13 Tax Consequences. Developer acknowledges and agrees that Developer shall bear any and all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by Developer related to this Agreement.

13.14 Real Estate Commissions. Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission or finder's fee regarding this Agreement on account of any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of the representation and warranty set forth in clause "(a)" of this Section 13.14.

13.15 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

13.16 Developer Assumption of Risks of Legal Challenges. Developer assumes the risk of delays and damages that may result to Developer from any Third Person legal actions related to Commission's approval of this Agreement or any associated Approvals, even in the event that an error, omission or abuse of discretion by Commission is determined to have occurred. If a Third Person files a legal action regarding Commission's approval of this Agreement or any associated Approval (exclusive of legal actions alleging violation of Government Code Section 1090 by elected officials of Commission), Developer shall have the option to either: (1) cancel Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 6.13; or (2) Indemnify Commission against such Third Person legal action, including all Legal Costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action; provided, however, that option "(1)" under this Section 13.16 shall only be available to Developer prior to the Close of Escrow. Should Developer fail to Notify Commission of Developer's election pursuant to this Section 13.16 at least fifteen (15) days before response to the legal action is required by Commission, Developer shall be deemed to have elected to terminate this Agreement pursuant to this Section 13.16. Commission shall reasonably cooperate with Developer in defense of the Commission in any legal action subject to this Section 13.16, subject to Developer performing Developer's indemnity obligations for such legal action. Nothing contained in this Section 13.16 is intended to be nor shall be deemed or construed to be an express or implied admission that Commission may be liable to Developer or any other Person for damages or other relief regarding any alleged or established failure of Commission to comply with any Law. Any legal action that is subject to this Section 13.16 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this

Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

13.17 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13.18 Further Assurances. The Parties agree to reasonably consider such additional actions or the execution of such other documents as may be reasonably necessary or convenient to the financing, development, and operation of the Project, although nothing in this Section 13.18 shall be deemed a representation, guarantee or commitment by either Party to take any action or execute any document.

13.19 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

14. **ENTIRE AGREEMENT, WAIVERS AND AMENDMENT**

14.1 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to all or any portion of the Project Site and the development of the Project.

14.2 Waivers and Amendments. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the appropriate authorities of Commission and Developer.

14.3 Prohibition Against Changes in Ownership, Management or Control of Developer or Assignment.

14.3.1 **Developer Identity**. Developer acknowledges and agrees that the qualifications and identity of Developer are of particular importance and concern to Commission. Developer further acknowledges and agrees that Commission has relied and is relying on the specific qualifications and identity of Developer and that Commission would not have entered into this Agreement but for the specific qualifications and identity of Developer. As a consequence, Transfers by Developer are only permitted before issuance of a Completion Certificate with the prior written consent of Commission, in Commission's sole and absolute discretion. Developer represents and warrants to Commission that it has not made and agrees that it will not create or permit to be made or created any Transfer, except in accordance with this Section 14.3, either voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 14.3 shall be voidable at the election of Commission. Developer acknowledges and agrees that the restrictions on Transfers set forth in this Section 14.3 are reasonable.

14.3.2 **Delivery of Transfer Documents**. All instruments and other legal documents proposed to effect any proposed Transfer shall be submitted to Commission for review, at least thirty-five (35) calendar days prior to the proposed date of the Transfer, and the

written approval, disapproval or conditions of Commission regarding the proposed Transfer shall be provided to Developer, within thirty (30) calendar days following Commission's receipt of all proposed Transfer documents. Developer agrees to reimburse Commission for all costs and expenses incurred by Commission in connection with Commission's review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses.

14.4 Exhibit List. All of the exhibits attached to this Agreement are as follows:

Exhibit A	Property Legal Description
Exhibit B	Form of Completion Guaranty
Exhibit C	Form of Completion Certificate
Exhibit D	Form of Regulatory Agreement
Exhibit E	Form of Developer Note
Exhibit F	Form of Commission Deed of Trust
Exhibit G	Form of Notice of Affordability Restrictions
Exhibit H	Form of Developer Official Action
Exhibit I	Form of Property Deed
Exhibit J	Auxiliary Parking Site Map
Exhibit K	Design Option 1
Exhibit L	Design Option 2
Exhibit M	Design Option 1 Budget
Exhibit N	Design Option 2 Budget
Exhibit O	Form of Auxiliary Parking Parcel Deed
Exhibit P	Form of Parking Deck Easement

14.5 No Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

14.6 Executive Director Implementation. Commission shall implement this Agreement through its Executive Director. The Executive Director is hereby authorized by Commission to enter into agreements referenced in this Agreement or reasonably required to implement this Agreement on behalf of Commission, issue approvals, interpretations or waivers and enter into certain amendments to this Agreement on behalf of Commission, to the extent that any such action(s) does/do not materially or substantially change the Project or increase the monetary obligations of Commission by more than Fifty Thousand Dollars (\$50,000) in the aggregate. All other actions shall require the consideration and approval of the Commission governing body, unless expressly provided otherwise by action of the Commission governing body. Nothing in this Section 14.6 shall restrict the submission to the Commission governing body of any matter within the Executive Director's authority under this Section 14.6, in the Executive Director's sole and absolute discretion, to obtain the Commission governing body's express and specific authorization on such matter. The specific intent of this Section 14.6 is to authorize certain actions on behalf of Commission by the Executive Director, but not to require that such actions be taken by the Executive Director, without consideration by the Commission governing body.

14.7 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this Agreement.

14.8 Counterparts. This Agreement shall be signed in three (3) triplicate originals each of which is deemed to be an original. This Agreement includes seventy-one (71) pages and sixteen (16) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

14.9 Facsimile Signatures. Signatures delivered by facsimile shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of each Party shall be required for each document to be recorded.

[Signatures On Following Page]

**EXHIBIT A
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Property Legal Description

[Attached Behind This Page]

VERIZON PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-914

THAT PORTION OF BLOCK 8 OF THE TRACT OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2, PAGE 434 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 8, SAID POINT BEING SOUTH 71°30'00" EAST 135.15 FEET FROM THE NORTHWESTERLY CORNER OF SAID BLOCK 8;

THENCE CONTINUING SOUTH 71°30'00" EAST 149.85 FEET;

THENCE SOUTH 18°30'00" WEST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF A 20 FOOT WIDE ALLEY;

THENCE NORTH 71°30'00" WEST 149.85 FEET ALONG THE NORTHERLY LINE OF SAID ALLEY;

THENCE NORTH 18°30'00" EAST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID BLOCK 8, SAID POINT BEING THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 29.00 FEET.

SAID PARCEL IS BEING MORE PARTICULARLY DESCRIBED AS PARCEL 1 AS DEPICTED IN EXHIBIT "A" OF CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT NO. 08-38 RECORDED JUNE 02, 2008, INSTRUMENT NO. 20080966138, OF OFFICIAL RECORDS.

**CITY-OWNED PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-902**

THAT PORTION OF BLOCK 8 OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, AS PER MAP RECORDED IN BOOK 2, PAGE 434 MISCELLANEOUS RECORDS; IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID BLOCK 8, DISTANT THEREON 95 FEET EASTERLY ALONG SAID LINE FROM THE NORTHWEST CORNER OF SAID BLOCK 8; THENCE SOUTHERLY PARALLELL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET; THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINE OF SAID BLOCK, 40.15 FEET; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET TO SAID NORTHERLY LINE; THENCE WESTERLY ALONG SAID NORTHERLY LINE, 40.15 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Completion Guaranty

[Attached Behind This Page]

FORM OF COMPLETION GUARANTY

(Verizon Building:[INSERT NAME OF GUARANTOR])

THIS COMPLETION GUARANTY (Verizon Building) (“**Guaranty**”) is made as of [DATE TO BE DETERMINED] by [INSERT NAME OF GUARANTOR] (“**Guarantor**”), in favor and for the benefit of the Community Development Commission of the City of Downey, a public body, corporate and politic (“**CDC**”).

RECITALS

A. CDC and Developer have entered into that certain Disposition and Development Agreement (Verizon Building) dated as of [DATE TO BE DETERMINED] (“**Agreement**”), with respect to that certain real property generally located at 8314 2nd Street, Downey, California, and more specifically described and defined in the Agreement as the “**Property**”;

B. Pursuant to the terms and conditions of the Agreement, Developer is to develop a affordable housing project, more specifically described and defined in the Agreement as the “**Project**,” on the Property;

C. Also, pursuant to the terms and conditions of the Agreement, CDC is to make a loan to the Developer to pay for the purchase of the Property and a portion of the construction costs of the Project (more specifically described and defined in the Agreement as the “**Commission Loan**”);

D. CDC is not willing or required to either complete the sale of the Property to the Developer or make the Commission Loan to the Developer, each pursuant to the terms and conditions of the Agreement, unless Guarantor unconditionally guarantees to CDC that the Project will be constructed, equipped and furnished in accordance with the terms and conditions of the Agreement and the terms and conditions of this Guaranty;

E. [SPECIFY GUARANTOR/TENANT RELATIONSHIP]. Accordingly, Guarantor will directly or indirectly benefit from CDC completing the sale of the Property to Developer and making the Commission Loan to Developer.

AGREEMENT

NOW, THEREFORE, CONCURRENT WITH CDC COMPLETING THE SALE OF THE PROPERTY TO DEVELOPER AND MAKING THE COMMISSION LOAN TO DEVELOPER, AS AN INDUCEMENT TO CDC TO COMPLETE THE SALE OF THE PROPERTY TO DEVELOPER AND MAKE THE COMMISSION LOAN TO DEVELOPER, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND LEGAL SUFFICIENCY OF WHICH ARE ACKNOWLEDGED BY GUARANTOR, GUARANTOR COVENANTS AND AGREES AS FOLLOWS:

1. **Definitions.** The following words, terms and phrases are used in this Guaranty with the following meanings, unless the particular context of usage of a word, term or phrase requires another interpretation:

- 1.1 Actual Project Costs. Defined in the Agreement.
- 1.2 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "Affiliated" shall have the correlative meaning.
- 1.3 Agreement. The Agreement and all documents entered into, made or executed by Developer with or for the benefit of CDC regarding the Agreement, the Property or the Project, including any Modifications to such documents.
- 1.4 CDC. Community Development Commission of the City of Downey, a public body, corporate and politic, and its successors.
- 1.5 City. City of Downey, California, a municipal corporation.
- 1.6 Completion Certificate. Defined in the Agreement.
- 1.7 Construction Financing. Defined in the Agreement.
- 1.8 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person or bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.
- 1.9 Controlling and Controlled. Exercising or having Control.
- 1.10 County. The County of Los Angeles, California.
- 1.11 Developer. Defined in the Agreement.
- 1.12 Equity Interest. All or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.
- 1.13 Federal. The federal government of the United States of America.
- 1.14 Final Construction Drawings. Defined in the Agreement.
- 1.15 Guaranteed Obligations. All of the obligations of Developer to CDC under the Agreement to commence and complete the construction, equipping and furnishing of the entire Project, whether such obligations are in the nature or character of payment or performance and whether or not the Agreement is in effect, including all of the following:
- 1.15.1 *Commence Construction*. Commence the construction, equipping and furnishing of the entire Project in accordance with the Final Construction Drawings approved by CDC and within the time period provided in the Agreement for commencement of such construction, equipping and furnishing;
- 1.15.2 *Complete Construction*. Complete the construction, equipping and furnishing of the entire Project in accordance with the Final Construction Drawings approved by

CDC and within the time period provided in the Agreement for completion of such construction, equipping and furnishing. Completion of the construction, equipping and furnishing of the entire Project shall be evidenced by issuance of a Completion Certificate for the Project under the Agreement;

1.15.3 *Satisfy Liens.* Keep the Property and the Project free and clear of any and all liens relating to or arising from the design, construction, equipping or furnishing of the Project, including payment to CDC of all principal, interest and other amounts due or becoming due to CDC under the Agreement for amounts advanced by CDC to satisfy all or any part of any such liens and all expenses, including Legal Costs, incurred by CDC in satisfying such liens or recovering or trying to recover from Developer any amounts paid or incurred by CDC regarding such liens;

1.15.4 *Payment of Total Project Costs and Actual Project Costs.* Perform all obligations of Developer regarding payment of Total Project Costs and Actual Project Costs and all other costs related to or arising from the design, construction, equipping or furnishing of the entire Project, as and when such payment is required under the Agreement; and

1.15.5 *Payment of Additional Costs.* Pay all costs related to or arising from the design, construction, equipping or furnishing of the entire Project that are not the subject of Section 1.15.4, including Legal Costs incurred by Guarantor or CDC, whether or not in excess of Total Project Costs, arising as a result of Developer's Default under the Agreement or otherwise, it being the intent of Guarantor and CDC that Guarantor's obligations under this Guaranty shall be to complete the design, construction, equipping and furnishing of the entire Project at whatever cost is required to complete such work, regardless of whether any such cost arises from or is increased by any Default of Developer under the Agreement or otherwise, and Guarantor's liability under this Guaranty shall not be limited by any cost estimate or expectation express or implied in the Agreement or this Guaranty;

1.15.6 *Indemnity Obligations.* Completely perform all obligations of Developer under the Agreement to Indemnify CDC regarding any matter relating to or arising from the design, construction, equipping or furnishing of the entire Project, including each and every Prevailing Wage Action;

1.15.7 *Provide Insurance.* Procure and maintain all insurance coverage required to be procured and maintained by Developer at all times during the construction, equipping or furnishing of the entire Project, pursuant to the terms and conditions of the Agreement;

1.15.8 *Construction Surety.* Procure and maintain all required surety or other bonds (if any) at all times during the construction equipping or furnishing of the entire Project, in accordance with the terms and conditions of the Agreement; and

1.15.9 *Other Obligations.* Perform all obligations of Developer under the Agreement to be performed in relation to the design, construction, equipping or furnishing of the entire Project.

1.16 Guarantor. [TO BE DETERMINED]

1.17 Guarantor Claims. Defined in Section 13.1.

1.18 Guarantor Official Action. The official action of the directors, managers, partners or other Persons in Control of Guarantor in substantially the form attached to this Guaranty as Exhibit "A" authorizing Guarantor to enter into and perform this Guaranty.

1.19 Indemnify. Defined in the Agreement.

1.20 Institutional Lender. Defined in the Agreement.

1.21 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses and consultant and expert witness fees and expenses.

1.22 Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

1.23 Modify. Agree to, cause, make, or permit any Modification.

1.24 Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Guaranty, the Agreement, the Property, Developer, any collateral, any other guarantor, any surety or any other document, Person or property.

1.25 Perform, Performance, Performing, etc. Undertaking and completing activities, such as construction or paying money, as appropriate, to achieve a stated goal or result.

1.26 Person. Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.27 Project. Defined in the Agreement.

1.28 State. The State of California.

1.29 Third Person. Any Person that is not Guarantor, an Affiliate of Guarantor or a director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest in, employee or agent of Guarantor.

1.30 Total Project Costs. Defined in the Agreement.

2. **Guaranty of Performance.** Guarantor unconditionally guarantees to and agrees with CDC that Guarantor shall Perform the Guaranteed Obligations, at Guarantor's sole cost and expense, if Developer fails to Perform the Guaranteed Obligations as and when due under the Agreement, regardless of whether or not: (a) CDC re-enters, terminates Developer's estate in or

takes possession of the Property prior to the complete Performance of the Guaranteed Obligations following any Default or Event of Default by Developer under the Agreement; or (b) CDC terminates the Agreement prior to the complete Performance of the Guaranteed Obligations following any Default or Event of Default by Developer under the Agreement.

3. **Nature of Guaranty.** This Guaranty is an unlimited, irrevocable, absolute, unconditional, present and continuing guaranty of Performance of the Guaranteed Obligations and is not a guaranty of collection of the Guaranteed Obligations nor that the Guaranteed Obligations are collectible. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any and all Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after (if Guarantor is a natural person) Guarantor's death (in which event this Guaranty shall be binding upon Guarantor's estate and Guarantor's legal representatives and heirs).

4. **Duration of Guaranty.** This Guaranty shall only take effect when an original of this Guaranty signed by the authorized representative(s) of Guarantor and the Guarantor Official Action signed by the authorized representative(s) of Guarantor are received by CDC and the "Close of Escrow" under the Agreement has occurred, without the necessity of any acceptance by CDC, any Notice to Guarantor or Developer of acceptance of this Guaranty by CDC or reliance on this Guaranty by CDC or any other Notice to Guarantor or Developer. Once effective, this Guaranty will continue in full force and effect until the earlier of the following events, upon the occurrence of which this Guaranty shall automatically terminate and be of no further force or effect (except as specifically set forth in this Guaranty): (a) Notice from CDC to Guarantor that this Guaranty is released; or (b) complete Performance of the Guaranteed Obligations (which shall be conclusively evidenced by the issuance by CDC of a Completion Certificate to Developer under the Agreement) and complete Performance of all of Guarantor's other obligations under this Guaranty; or (c) termination of the Agreement in its entirety, with complete satisfaction of all of Developer's obligations regarding the Guaranteed Obligations accrued prior to or as a result of such termination. Notwithstanding any other provision of this Section 4, CDC shall not be required to accept this Guaranty for any purpose unless and until the Guarantor Official Action signed by the authorized representative(s) of Guarantor is received by CDC.

5. **Guarantor Authorizations.** Guarantor authorizes CDC to, from time to time, without Notice to Guarantor, without lessening or eliminating Guarantor's liability under this Guaranty and with the intent of Guarantor to waive any and all rights or defenses that are or may become available to Guarantor or any other guarantor or surety of the Guaranteed Obligations by reason of any of the following acts or omissions by CDC:

5.1 Modify Documents. Modify the Agreement or any other documents and in this regard, without limiting any provision of this Guaranty, Guarantor waives any and all rights or defenses that are or may be available to Guarantor by reason of California Civil Code Sections 2799 or 2819;

5.2 Extend Credit. Make one or more additional loans or advances of funds to Developer or otherwise extend additional credit to Developer pursuant to the Agreement or otherwise;

5.3 Accept and Deal with Collateral. Take and hold collateral as security for Performance of this Guaranty or the Guaranteed Obligations, and exchange, enforce, waive, subordinate, fail or decide not to perfect, or release any such collateral, with or without the substitution of new collateral, apply such collateral or direct the order or manner of sale of such collateral, including any non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, in the sole and absolute discretion of CDC, and without limiting any provision of this Guaranty, Guarantor waives any rights or defenses that are or may become available to Guarantor by reason of California Civil Code Sections 2819, 2822, 2845, 2848, 2849 or 2850. For all purposes of this Guaranty, the word “**collateral**” means and refers to any real or personal property (in any form) pledged, held in trust, subject to a security interest or otherwise held by or given to CDC or any other Person for the benefit of CDC to secure the Performance of this Guaranty, the Guaranteed Obligations or any other obligation;

5.4 Release or Compromise. Release, substitute, agree not to sue, or deal with Developer or any one or more of Developer’s guarantors, sureties, endorsers, creditors or any other guarantors, sureties, endorsers or creditors on any terms or in any manner CDC may choose, in the sole and absolute discretion of CDC;

5.5 Apply Payments or Credits. Determine how, when and what application of payments or credits shall be made on the Guaranteed Obligations, in the sole and absolute discretion of CDC;

5.6 Transfer. Assign or transfer this Guaranty, the Agreement or any or all respective rights or obligations regarding any such agreement to any other Person; and

5.7 Agreement Rights and Obligations. Exercise all rights or remedies of CDC under the Agreement and perform all obligations of CDC under the Agreement, including termination of the Agreement following Developer’s Event of Default or complying with the provisions of the Agreement providing rights to “Permitted Lenders” (as defined in the Agreement).

6. Guarantor Waivers.

6.1 Waivers of Notices. CDC shall not be required to deliver and Guarantor waives any and all demand, presentment, diligence, protest, notice of dishonor or any other Notice to which Guarantor might otherwise be entitled, regarding this Guaranty, the Guaranteed Obligations, the Agreement, Developer, the Property, the Project, any other guarantor or surety or any other documents or agreements evidencing, securing or relating to the Guaranteed Obligations, this Guaranty, the Agreement, Developer, the Property, the Project or any other guarantor or surety related to the Guaranteed Obligations or otherwise, including Notice of:

6.1.1 *Loans or Advances.* Any loan or advance made by CDC to Developer;

6.1.2 *Acceptance.* Acceptance of or reliance on this Guaranty, and without limiting any provision of this Guaranty, Guarantor waives all rights or defenses that are or may become available to Guarantor by reason of California Civil Code Section 2795;

6.1.3 *Modifications.* Any Modification or other change to the Agreement or any other document related to the Guaranteed Obligations, and without limiting any provision of this

Guaranty, Guarantor waives all rights or defenses that are or may become available to Guarantor by reason of California Civil Code Section 2799;

6.1.4 *Additional Documents.* The execution and delivery by Developer or CDC of any other loan or credit agreement, promissory note or other document arising under the Agreement or in connection with the Agreement, the Property or the Project;

6.1.5 *Default.* The occurrence of any breach, default, "Default" or "Event of Default" by: (a) Developer under any agreement between CDC and Developer or any agreement made by Developer for the benefit of CDC; or (b) any other guarantor or surety related to the Guaranteed Obligations;

6.1.6 *Transfer.* CDC's transfer or disposition of all or any part of CDC's interest in the Agreement, the Property, the Project, this Guaranty or the Guaranteed Obligations;

6.1.7 *Collateral.* Sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral securing Performance of the Guaranteed Obligations or any other obligation under the Agreement or otherwise relating to the Agreement, the Property, the Guaranteed Obligations or the Project, including the terms, time or place of any such sale or foreclosure;

6.1.8 *Protest.* Protest or proof of non-payment or non-performance by Developer; or

6.1.9 *Any Other Action or Omission.* Any other action at any time taken or omitted by CDC.

6.2 Pursuit of Other Persons or Property. CDC shall not be required and Guarantor waives any and all rights or defenses that are or may become available to Guarantor, including any rights or defenses that are or may become available to Guarantor by reason of California Civil Code Sections 2845 or 2850, to require CDC to:

6.2.1 *Pursue Developer or Other Persons.* Institute suit or exhaust its remedies against Developer or any other Person liable, at any time, on the Guaranteed Obligations;

6.2.2 *Pursue Collateral.* Enforce CDC's rights against any collateral ever given to secure Performance of the Guaranteed Obligations, exhaust any remedies available to CDC against any collateral that shall ever have been given to secure Performance of the Guaranteed Obligations or enforce CDC's rights against any collateral ever given to secure Performance of the Guaranteed Obligations, in any order;

6.2.3 *Pursue Other Guarantors.* Enforce CDC's rights against any other guaranty or surety (if any) relating to the Guaranteed Obligations;

6.2.4 *Join Developer or Other Persons.* Join Developer or any other Person liable on the Guaranteed Obligations, at any time, in any action or proceeding seeking to enforce this Guaranty; or

6.2.5 *Other Remedies.* Resort to any means of obtaining Performance of the Guaranteed Obligations, other than enforcing this Guaranty.

6.3 Real and Personal Property Collateral.

6.3.1 *Waivers.* Guarantor's liability under this Guaranty shall not be lessened or eliminated because the Guaranteed Obligations are secured by real or personal property. Guarantor waives all rights or defenses that are or may become available to Guarantor because the Guaranteed Obligations are secured by real or personal property and agrees that:

(a) **No Duty to Foreclose on Collateral.** CDC may collect from Guarantor without first foreclosing on any real or personal property collateral pledged to secure Performance of the Guaranteed Obligations.

(b) **Foreclosure on Collateral.** If CDC forecloses on any real or personal property collateral pledged to secure Performance of the Guaranteed Obligations:

(i) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(ii) CDC may collect from Guarantor even if CDC, by foreclosing on the real or personal property collateral or electing a specific procedure for conducting that foreclosure, such as conducting a trustee's sale under a power of sale, has destroyed any right Guarantor may have to collect from Developer.

(c) **No Reliance on Collateral.** Guarantor's liability under this Guaranty shall not be lessened or eliminated by any of the following circumstances and Guarantor waives all rights or defenses that are or may become available to Guarantor by reason of any of the following circumstances:

(i) Any failure of CDC or any other Person to exercise diligence, reasonable care or commercial reasonableness in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any collateral, property or security at any time existing in connection with, or assuring or securing Performance of the Guaranteed Obligations;

(ii) The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the Performance of the Guaranteed Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other claim, security interest or lien; or

(iii) Any deficiencies in any collateral securing Performance of the Guaranteed Obligations or any deficiency in the ability of CDC or inability of CDC to collect on any such collateral or to obtain Performance from any Person liable for the Performance of the Guaranteed Obligations.

(d) **Guarantor Acknowledgment.** Guarantor acknowledges and agrees that Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any real or personal property collateral securing Performance of the Guaranteed Obligations or any other obligation.

6.3.2 *Waivers of Rights and Defenses.* This Section 6.3 is intended to be an unconditional and irrevocable waiver of all rights or defenses that are or may become available to Guarantor because the Guaranteed Obligations are secured by real or personal property. These waived rights or defenses include all rights or defenses based on or pursuant to California Code of Civil Procedure Sections 580a, 580b, 580d or 726.

6.3.3 *Election of Remedies.* Guarantor waives all rights or defenses that are or may become available to Guarantor by reason of CDC's election of remedies, even though that election of remedies, including a non-judicial foreclosure with respect to collateral securing Performance of the Guaranteed Obligations, has destroyed Guarantor's rights of subrogation, reimbursement or contribution against Developer or any other Person by the operation of California Code of Civil Procedure Section 580d or otherwise.

6.4 Waiver of Subrogation, Reimbursement and Contribution. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor unconditionally and irrevocably waives, releases and abrogates all rights Guarantor may have on the date of this Guaranty or may obtain or receive after the date of this Guaranty under any agreement, at law or in equity (including any law subrogating Guarantor to the rights of CDC) to assert any claim against or seek reimbursement, contribution, indemnification or any other form of payment from Developer or any other Person liable under the Agreement or for Performance of the Guaranteed Obligations for any Performance made or to be made by Guarantor under or in connection with this Guaranty or otherwise. Specifically, and without in any way limiting any provision of this Guaranty, Guarantor waives all rights, benefits, limitations, conditions, restrictions, remedies, defenses, rights of subrogation, indemnification, contribution or reimbursement that are or may become available to Guarantor by reason of California Civil Code Sections 2809, 2810, 2819, 2822, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 or 3433 or California Code of Civil Procedure Sections 580a, 580b, 580d or 726. Without limiting any provision of this Guaranty, Guarantor further waives all rights of recourse to or with respect to Developer or the assets or property of Developer or to any collateral securing Performance of the Guaranteed Obligations. Guarantor acknowledges and agrees that Guarantor shall be liable to CDC for Performance of the Guaranteed Obligations even though Guarantor has no recourse against Developer. Without limiting any provision of this Guaranty, Guarantor further expressly waives: (1) all rights of subrogation to the rights of CDC against Developer that are or may become available to Guarantor; (2) all rights that are or may become available to Guarantor to enforce any remedy that CDC may have against Developer, including all rights or defenses that are or may become available to Guarantor by reason of California Civil Code Section 2848; and (3) all benefits or rights that are or may become available to Guarantor to participate in any collateral pledged as security for Performance of the Guaranteed Obligations, including all rights or defenses that are or may become available to Guarantor by reason of California Civil Code Section 2849, whether any such collateral is held by CDC, another guarantor or surety or any other Person. Further, Guarantor shall not have any right of recourse against CDC by reason of any action CDC may take or omit to take under the provisions of this Guaranty, the Agreement or any other document.

Guarantor acknowledges and agrees that Guarantor has no rights under the Agreement by virtue of this Guaranty.

6.5 Additional Guarantor Waivers. Without limiting any provision of this Guaranty, Guarantor agrees that Guarantor's liability under this Guaranty shall not be lessened or eliminated by any of the following circumstances and Guarantor waives any and all rights or defenses that are or may become available to Guarantor by reason of any of the following circumstances:

6.5.1 *Civil Code Section 2809.* The effect of California Civil Code Section 2809, which provides that Guarantor's obligations may not exceed nor be more burdensome than the principal obligation;

6.5.2 *Disability.* Any disability or other defense of any other guarantor, surety or other Person related to the Guaranteed Obligations;

6.5.3 *Cessation of Guaranteed Obligations.* The cessation of the Guaranteed Obligations from any cause whatsoever, other than complete Performance of the Guaranteed Obligations or a complete termination of the Agreement with complete satisfaction of all obligations of Developer regarding the Guaranteed Obligations accrued or arising as a result of such termination;

6.5.4 *Application of Proceeds.* The application of proceeds received from Developer or any other Person by CDC for purposes other than the purposes understood and intended by Guarantor or CDC;

6.5.5 *Increased Costs.* Any additional or increased costs of Performing the Guaranteed Obligations due to Developer's breach, default, Default or Event of Default under the Agreement or exercise of remedies by CDC under the Agreement or this Guaranty or otherwise;

6.5.6 *Discharge of Persons or Release of Collateral.* Any act or omission by CDC directly or indirectly resulting in or contributing to the discharge of Developer, any other guarantor, surety or other Person from the liability for the Guaranteed Obligations, or the loss or release of any collateral securing Performance of the Guaranteed Obligations, by operation of law or otherwise;

6.5.7 *Modifications of Documents.* Any Modification of the Agreement or the Guaranteed Obligations, whatsoever;

6.5.8 *Insolvency.* Any insolvency, bankruptcy, arrangement, rearrangement, adjustment, composition, liquidation, disability, dissolution, reorganization or lack of power of Developer, Guarantor or any other Person at any time liable for or related to the Performance of the Guaranteed Obligations;

6.5.9 *Sale of Assets.* Any sale, lease or transfer of any or all of the assets of Developer, Guarantor or any other Person;

6.5.10 *Change in Ownership.* Any change in the shareholders, partners, members or other owners of Developer, Guarantor or any other Person;

6.5.11 *Change in Name, Location or Structure.* Any change in the name, location, composition or structure of Developer, Guarantor or any other Person;

6.5.12 *Reorganization or Merger.* Any reorganization, merger or consolidation of Developer or Guarantor into or with any other Person;

6.5.13 *Invalidity.* Any invalidity, illegality or unenforceability of all or any part of the Guaranteed Obligations, the Agreement or any other document or agreement entered into or made in connection with the Guaranteed Obligations, the Property or the Project, for any reason whatsoever;

6.5.14 *Failure to Pursue Rights or Remedies.* Any failure, refusal, omission, delay by, or inability of CDC to assert or exercise any right, power or remedy conferred on CDC in this Guaranty, the Agreement or at law or in equity, as the case may be;

6.5.15 *Incapacity or Lack of Authority.* The incapacity, lack of authority, death or disability of any Person;

6.5.16 *Failure to Pursue Claims.* The failure of CDC to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Developer or any other Person;

6.5.17 *Marshaling of Assets.* Any right or claim of right to cause a marshaling of the assets of Developer, Guarantor or any other Person;

6.5.18 *Conflicts of Laws.* Any principle or provision of law, statutory or otherwise, that is or might be in conflict with the terms or conditions of this Guaranty;

6.5.19 *CDC Acts or Omissions.* Any other action taken or omitted to be taken by CDC with respect to the Agreement, the Guaranteed Obligations, or any collateral securing Performance of the Guaranteed Obligations, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to Perform the Guaranteed Obligations pursuant to the provisions of this Guaranty;

6.5.20 *Releases of Others.* Any full or partial release of the liability of Developer, any other guarantor or surety or any other Person liable on the Guaranteed Obligations, at any time; or

6.5.21 *Void Promises.* Any promise by CDC becomes void for any reason or is voidable by CDC at CDC's option.

6.6 General Waiver of Suretyship Defenses. Without limiting any other waiver or provision in this Guaranty, Guarantor waives all guaranty or suretyship rights or defenses that are or may become available to Guarantor under the California Civil Code, the California Code of Civil Procedure or the California Uniform Commercial Code.

6.7 Specific Waiver of Statutory Rights and Defenses. Without limiting any other waiver or provision in this Guaranty, Guarantor waives, to the maximum extent such waiver is permitted by law, any and all rights, benefits or defenses arising directly or indirectly under any one or more of: (a) California Civil Code Sections 2787, 2792, 2793, 2794, 2795, 2799, 2800, 2801, 2802, 2806, 2808, 2809, 2810, 2811, 2814, 2815, 2819, 2820, 2821, 2822, 2824, 2825, 2832, 2837, 2838, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 or 3433; (b) Chapter 2 of Title 14 of the California Civil Code; (c) California Code of Civil Procedure Sections 580a, 580b, 580c, 580d, and 726; or (d) California Uniform Commercial Code Section 3605.

6.8 Waiver of Statute of Limitations Defense. Without limiting any other waiver or provision in this Guaranty, Guarantor waives any right or defense that is or may become available to Guarantor based on any statute of limitations that, without this waiver, would affect Guarantor's or any other Person's liability under this Guaranty, the Agreement or any other document or the enforceability of this Guaranty, the Agreement or any other document. Further, Guarantor agrees that any occurrence that tolls any statute of limitations applicable to the Agreement shall also toll any statute of limitations applicable to Guarantor's liability under this Guaranty.

6.9 No Offset. The Guaranteed Obligations and the liabilities and obligations of Guarantor to CDC under this Guaranty, shall not be reduced, discharged or released because of or by reason of any existing or future right of offset, claim or defense of Developer or Guarantor against CDC or any other Person, or against Performance of the Guaranteed Obligations, whether such right of offset, claim or defense arises in connection with the Guaranteed Obligations, the Agreement or otherwise.

6.10 No Duty to Mitigate. CDC shall not be required and Guarantor waives all rights that are or may become available to Guarantor to require CDC to mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations.

6.11 Apply Payments. CDC shall not be required and Guarantor waives all rights that are or may become available to Guarantor to require CDC to apply any payments or proceeds received from any Person towards the Guaranteed Obligations in any order or manner.

6.12 Guarantor Acknowledgments and Waivers. Guarantor understands and agrees that the waivers set forth in this Section 6 are waivers of substantive rights and defenses to which Guarantor might otherwise be entitled under State or Federal law. The rights and defenses waived include those provided by California laws of suretyship and guaranty, anti-deficiency laws, and the California Uniform Commercial Code. Guarantor acknowledges and agrees that the provisions of this Section 7 are intended to result in the waivers of all of the rights permitted to be waived under California Civil Code Section 2856 and the provisions of this Section 6 evidence such intent and are sufficient to comply with the provisions of California Civil Code Section 2856 for accomplishing such waivers. Guarantor acknowledges that Guarantor has provided the waivers of rights and defenses contained in this Section 6 with the intention that they be fully relied upon by CDC, with complete understanding of the significance and consequences of such waivers, and after consultation with legal counsel selected by Guarantor regarding the significance of such waivers. Until this Guaranty terminates in accordance with its express terms, Guarantor waives all rights that are or may become available to Guarantor to

enforce any remedy Guarantor may have against Developer, any other guarantor, any surety, or other Person related to the Guaranteed Obligations. Guarantor shall be obligated to Perform the Guaranteed Obligations as and when the Guaranteed Obligations are due under the Agreement, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether or not contemplated and whether or not otherwise or particularly described in this Guaranty. Guarantor's obligations under this Guaranty shall be satisfied only upon the complete Performance of the Guaranteed Obligations. Guarantor further waives any right to participate in any collateral or the proceeds of the sale of any collateral securing Performance of the Guaranteed Obligations held by or for the benefit of CDC, whether held on the date of this Guaranty or given or held after the date of this Guaranty. Guarantor acknowledges and agrees that, under the circumstances, the waivers set forth in this Section 6 are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective to the extent permitted by applicable law or public policy.

7. **Refund of Prior Payments.** If CDC must rescind, refund, return or disgorge all or any part of any payment or value received by CDC towards or in satisfaction of the Guaranteed Obligations, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision under any such law, or for any other reason, then any prior release or discharge from the terms of this Guaranty given to Guarantor by CDC shall be without effect or value and this Guaranty shall remain in full force and effect and Guarantor shall remain liable to CDC for the amount rescinded, refunded, repaid, returned or disgorged, as if such payment or value had never been received by CDC, regardless of any termination of this Guaranty or cancellation of any other document evidencing the Guaranteed Obligations. The intent of Guarantor and CDC is that the Guaranteed Obligations are absolute and unconditional under any and all circumstances and until the Guaranteed Obligations are completely Performed and not subject to rescission, return, restoration, refund or disgorgement, the liability of Guarantor for the Guaranteed Obligations under this Guaranty shall not be discharged or released, in whole or in part, by any return of this Guaranty to Guarantor or any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of Guarantor or the Guaranteed Obligations.

8. **CDC Exercise of Remedies Against Developer.** Guarantor agrees that on Developer's Default or Event of Default under the Agreement, including any Default or Event of Default relating to the Guaranteed Obligations, CDC may exercise any rights or remedies that are or may become available to CDC under the Agreement, at law or in equity regarding such Default or Event of Default, may judicially or non-judicially foreclose against any real or personal property collateral securing Performance of the Guaranteed Obligations, accept an assignment of any such collateral in lieu of foreclosure or release or make any other accommodation with Developer or any other Person relating to the Guaranteed Obligations, all without lessening or terminating all or any part of Guarantor's liability under this Guaranty. Nothing in this Guaranty is intended to nor shall limit CDC's rights or remedies under the Agreement, at law or in equity. All of CDC's rights and remedies under the Agreement, this Guaranty, at law or in equity are cumulative and not alternative nor exclusive. Following any Default by Developer under the Agreement or any breach or default under this Guaranty by Guarantor, CDC shall be entitled to selectively, successively or cumulatively enforce any one or more of CDC's rights or remedies under the Agreement or this Guaranty, at law or in equity and such actions will not be deemed a waiver of

any other right or remedy available to CDC under the Agreement, this Guaranty, at law or in equity. Without limiting any provision of this Guaranty, Guarantor acknowledges and agrees that any termination of the Agreement arising from Developer's Default under the Agreement or any other act or omission by CDC in accordance with the Agreement shall not affect Guarantor's liability under this Guaranty, in any manner.

9. CDC Rights on Guarantor Default. If Guarantor fails to promptly Perform its obligations under this Guaranty, CDC shall have all of the following rights or remedies:

9.1 Perform Obligations. At the election of CDC, in the sole and absolute discretion of CDC and without any obligation, CDC may Perform the Guaranteed Obligations on behalf of Guarantor. Upon demand from CDC, regardless of whether or not Performance of the Guaranteed Obligations is actually completed by CDC or any other Person, Guarantor shall pay to CDC all amounts reasonably expended by CDC in Performing the Guaranteed Obligations or Guarantor's other obligations under this Guaranty, including Legal Costs. All amounts becoming due from Guarantor to CDC under this Guaranty that are not paid within thirty (30) days after Notice that such amount is owed, shall accrue interest at the rate of eight percent (8%) per annum, from the date of the Notice that such amount is owed until paid in full; or

9.2 Legal Actions. CDC may bring any action under contract, at law or in equity or all of them to compel Guarantor to Perform its obligations under this Guaranty or to collect compensation for all loss, cost, damage, injury or expense reasonably sustained or incurred by CDC in an amount equal to the costs reasonably required to completely Perform the Guaranteed Obligations, plus the costs incurred by CDC in enforcing this Guaranty, in all cases including Legal Costs.

10. Other CDC Rights and Remedies. If Guarantor becomes liable for any indebtedness or obligation owing by Developer to CDC, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected by this Guaranty and the rights of CDC under this Guaranty shall be cumulative of any and all other rights that CDC may ever have against Guarantor. The exercise by CDC of any right or remedy under this Guaranty or under any other document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy under this Guaranty or under any other document by CDC. To the extent that Guarantor owes any amount to CDC under this Guaranty, from time to time, CDC shall have the right, but not the obligation, to set off or credit such amount against any amount CDC owes to Developer under the Agreement or otherwise. The provisions of this Section 9 shall survive Performance of the Guaranteed Obligations or other termination or expiration of this Guaranty.

11. Payment of Expenses. If Guarantor breaches or fails to timely perform any provision of this Guaranty, Guarantor shall, immediately upon demand by CDC, pay all costs and expenses (including Legal Costs) incurred by CDC in the enforcement of this Guaranty or the preservation of the rights of CDC under this Guaranty, including Legal Costs incurred in connection with any and all bankruptcy proceedings, including relief from stay proceedings brought by CDC. All amounts becoming due from Guarantor to CDC under this Guaranty that are not paid within thirty (30) days after Notice that such amount is owed, shall accrue interest at the rate of eight percent (8%) per annum, from the date of the Notice that such amount is owed, until paid in full.

The provisions of this Section 11 shall survive Performance of the Guaranteed Obligations or other termination or expiration of this Guaranty.

12. **Guarantor Representations and Warranties.** To induce CDC to complete the sale of the Property to Developer and make the Commission Loan to Developer, Guarantor represents and warrants to CDC as follows:

12.1 Benefit. Guarantor has received, or will receive, direct or indirect benefit from the CDC completing the sale of the Property to Developer or making the Commission Loan to Developer.

12.2 Familiarity and Reliance. Guarantor is fully aware of Developer's financial condition and operation and is in a position by virtue of Guarantor's relationship to Developer to obtain all necessary financial and operational information concerning Developer. Guarantor is familiar with and has independently reviewed books and records regarding the financial condition of Developer and is familiar with the value of any and all collateral intended to be created as security for the Performance of the Guaranteed Obligations; however, Guarantor is not relying on such financial condition or any such collateral as an inducement to enter into this Guaranty. Guarantor has established adequate means of obtaining, on a continuing basis, information regarding: (a) Developer's financial condition; (b) the Property; (c) the progress of the construction, equipping and furnishing of the entire Project; and (d) the status of Developer's performance of the Guaranteed Obligations. Also, Guarantor will keep itself adequately informed by such means of any facts, events, or circumstances that might in any way affect Guarantor's risks under this Guaranty. CDC shall not have any obligation to disclose to Guarantor any information or documents acquired by CDC in the course of CDC's relationship with Developer.

12.3 No Reliance on Representation. Neither Developer, CDC nor any other Person has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty or that would limit or qualify in any way the terms of this Guaranty.

12.4 Developer Request. This Guaranty is executed by Guarantor at the request of Developer and not at the request of CDC.

12.5 Guarantor's Financial Condition. As of the date of this Guaranty and after giving effect to this Guaranty and the contingent obligation evidenced by this Guaranty, Guarantor is and will be solvent, Guarantor has and will have assets that, fairly valued, exceed the sum of all of Guarantor's obligations, liabilities (including contingent liabilities) and debts, and Guarantor has and will have property and assets sufficient to satisfy and repay all of Guarantor's obligations and liabilities (including contingent liabilities).

12.6 Legality. The execution, delivery and performance by Guarantor of this Guaranty and the consummation of the transactions contemplated under this Guaranty do not, and will not, contravene or conflict with any law, statute, regulation, court decree, judgment or order whatsoever to which Guarantor is subject nor constitute a breach or default (or an event that with Notice or lapse of time or both or neither would constitute a breach or default) under, trigger any rights or remedies under or result in the breach of, any indenture, mortgage, deed of trust, charge,

lien, contract, agreement or other instrument to which Guarantor is a party or that is applicable to Guarantor.

12.7 Review of Documents. Prior to entering into this Guaranty, Guarantor has thoroughly examined this Guaranty, the Agreement and all related documents and has had all such documents reviewed by legal counsel of Guarantor's selection.

12.8 Litigation. Except as otherwise disclosed to CDC in writing by Guarantor, there are no proceedings pending or, so far as Guarantor knows, threatened before any court or administrative agency (including for unpaid taxes) that, if decided adversely to Guarantor, would materially or adversely affect the financial condition of Guarantor, the authority of Guarantor to enter into this Guaranty or the validity or enforceability of this Guaranty with respect to Guarantor.

12.9 Tax Returns. Guarantor has filed all required Federal, State and local tax returns and has paid all taxes as shown on such returns as they have become due. No claims have been assessed and are unpaid with respect to any such taxes.

12.10 Transfer of Guarantor Assets. Guarantor has not and will not, without the prior written approval of CDC, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of any material portion of Guarantor's assets or any interest in such assets.

12.11 No Representation of Creditworthiness. CDC has not made any representation to Guarantor as to the creditworthiness of Developer.

12.12 Power to Perform Guaranteed Obligations. Guarantor has the right and the power, whether from assignment by Developer or otherwise, to completely Perform the Guaranteed Obligations, as and when required under this Guaranty.

12.13 Survival. All representations, warranties and covenants made by Guarantor in this Guaranty, including Guarantor's obligation to Perform the Guaranteed Obligations, are a material inducement to CDC to complete the sale of the Property to Developer and make the Commission Loan to Developer and shall survive: (a) the making of this Guaranty; (b) the complete Performance of the Guaranteed Obligations; (c) any bankruptcy, foreclosure, transfer of any collateral securing Performance of the Guaranteed Obligations or other event affecting Developer, Guarantor or any other Person; (d) termination of the Agreement arising from a Default or Event of Default by Developer; or (e) as provided in Section 11.

13. **Developer Obligations to Guarantor.**

13.1 Subordination of All Guarantor Claims. As used in this Guaranty, the term “**Guarantor Claims**” means all debts or liabilities of Developer to Guarantor, whether such debts or liabilities exist on the date of this Guaranty or are incurred or arise after the date of this Guaranty, whether the obligations of Developer on such debts or liabilities be direct, contingent, primary, secondary, joint, several, joint and several, or otherwise, irrespective of whether such debts or liabilities be evidenced by note, contract, open account or otherwise, irrespective of the Person(s) in whose favor such debts or liabilities may, at their inception, have been or after the date of this Guaranty may be created or assigned, or the manner in which they have been acquired by Guarantor as of or following the date of this Guaranty, including all rights or claims of Guarantor against Developer (arising as a result of subrogation or otherwise) as a result of Guarantor's Performance of all or a portion of the Guaranteed Obligations. Guarantor agrees with and for the benefit of CDC that any and all Guarantor Claims existing or claimed by Guarantor as of or after the date of this Guaranty are and shall remain inferior and subordinate to all obligations of Developer to CDC and all claims of CDC against Developer, at all times while this Guaranty is in effect. Guarantor agrees with and for the benefit of CDC that Guarantor shall not demand nor accept any payment of principal or interest from Developer related to any Guarantor Claims, shall not claim any offset or other reduction of Guarantor's obligations under this Guaranty because of any such Guarantor Claims and shall not take any action regarding any collateral pledged as security for Performance of the Guaranteed Obligations because of any Guarantor Claims.

13.2 Payments Held in Trust. Notwithstanding anything to the contrary in this Guaranty, if Guarantor receives any funds, payment, claim or distribution from or on behalf of Developer relating to any Guarantor Claim or otherwise, Guarantor agrees to and shall hold such funds, payment, claim or distribution in trust for CDC regarding Performance of the Guaranteed Obligations. Guarantor agrees that Guarantor shall have absolutely no dominion over such funds, payments, claims or distributions so received, except to pay them promptly to CDC in accordance with written instructions from CDC, and Guarantor covenants to promptly pay the same to CDC in accordance with such instructions.

13.3 Liens Subordinate. Guarantor agrees with and for the benefit of CDC that any and all liens, security interests, judgment liens, charges or other encumbrances upon Developer's assets securing payment or performance of Guarantor Claims are and shall remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Developer's assets securing Performance of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or CDC exist on the date of this Guaranty or are created or attach after the date of this Guaranty. Without the prior written consent of CDC, which consent may be given, withheld, conditioned or delayed in the sole and absolute discretion of CDC, Guarantor shall not: (a) exercise or enforce any creditor's right that is or may become available to Guarantor against Developer; or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any lien, mortgage, deed of trust, security interest, collateral right, judgment or other encumbrance on asset(s) of Developer. This Section 13.3 is intended by Guarantor and CDC to be a present subordination of all of the liens described in this Section 13.3

(including those liens arising in the future) in favor of Guarantor to those liens in favor of CDC and not an agreement to subordinate in the future; provided, however, if CDC determines, at any time in CDC's sole and absolute discretion, that a separate subordination agreement is desirable regarding any such lien, Guarantor agrees to enter into such a subordination agreement.

14. **Bankruptcy.**

14.1 Guarantor. In the event of receivership, bankruptcy, reorganization, arrangement, rearrangement, debtor's relief, or other insolvency proceedings involving Guarantor as debtor, CDC shall have the right to prove CDC's claims in any such proceeding so as to establish CDC's rights under this Guaranty and provide for CDC to receive directly from the receiver, trustee or other court custodian dividends and payments that would otherwise be payable upon Guarantor Claims. Guarantor assigns to CDC all dividends and payments that would otherwise be payable upon Guarantor Claims. Should CDC receive any such dividend or payment that is otherwise payable to Guarantor and that, as between Developer and Guarantor, shall constitute a credit upon the Guarantor Claims, then upon complete Performance of the Guaranteed Obligations, Guarantor shall become subrogated to the rights of CDC, to the extent that such dividend or payment to CDC on the Guarantor Claims directly contributed toward the Performance of the Guaranteed Obligations. Such subrogation shall be with respect to that proportion of the Guaranteed Obligations that would not have been Performed, if CDC had not received such dividend or payment upon the Guarantor Claims.

14.2 Developer. The intention of Guarantor and CDC is that the Guarantor shall not be deemed to be a "creditor" (as defined in Section 101 of the Bankruptcy Code (defined in Section 14.3.2)) of Developer, by reason of the existence of this Guaranty, in the event that Developer becomes a debtor in any proceeding under the Bankruptcy Code. Guarantor waives any and all rights Guarantor may have or acquire as a "creditor" of Developer under the Bankruptcy Code while this Guaranty is in effect. The waiver by Guarantor in this Section 14.2 is given to induce CDC to complete the sale of the Property to Developer and make the Commission Loan to Developer. After complete Performance of the Guaranteed Obligations, without any obligations or liabilities of Guarantor under this Guaranty outstanding, the waiver by Guarantor in this Section 14.2 shall be deemed terminated.

14.3 Effect of Developer's Bankruptcy. The liability of Guarantor under this Guaranty shall in no way be affected by:

14.3.1 *Release of Developer*. Release or discharge of Developer in any creditor proceeding, receivership, bankruptcy or other proceeding;

14.3.2 *Modification of Developer's Liability*. Impairment, limitation, or modification of Developer's liability or the estate's liability on the Guaranteed Obligations or of any remedy for the enforcement of Developer's liability or the estate's liability on the Guaranteed Obligations that may result from the operation of any present or future provision of the "**Bankruptcy Code**" (Title 11 of the United States Code, as amended; 11 USC §§ 101, 1532) or any bankruptcy, insolvency, debtor relief statute (State or Federal), any other statute, or from the decision of any court;

14.3.3 *Rejection of Obligation.* Rejection or disaffirmance of the Agreement or the Guaranteed Obligations in any creditor proceeding, receivership, bankruptcy or other proceeding;

14.3.4 *Cessation of Developer's Liability.* Cessation, from any cause whatsoever, whether consensual or by operation of law, of Developer's liability to CDC for the Guaranteed Obligations resulting from any creditor proceeding, receivership, bankruptcy or other proceeding; or

14.3.5 *Restructuring or Replacement of Guaranteed Obligations.* Any restructuring or replacement of the Agreement or the Guaranteed Obligations in connection with a bankruptcy proceeding or case, in which event Guarantor shall remain liable under this Guaranty for such restructured or replaced obligations.

14.4 Claims in Bankruptcy. Guarantor shall file all claims of Guarantor against Developer regarding Guarantor Claims in any bankruptcy or other proceeding in which the filing of claims is required or allowed by law on any Guarantor Claims and shall assign to CDC all rights of Guarantor on any such Guarantor Claims. If Guarantor does not file any such claims, CDC, as attorney-in-fact for Guarantor, is authorized to file such claims in Guarantor's name. In all such cases, whether in bankruptcy or otherwise, the Person or Persons authorized to pay such claims shall pay to CDC the full amount of each such claim, and to the full extent necessary for that purpose, Guarantor assigns to CDC all of Guarantor's rights to all such payments or distributions to which Guarantor would otherwise be entitled. If CDC so requests, any notes or credit agreements evidencing any Guarantor Claims, whether created before or after the date of this Guaranty, shall be marked with a legend stating that the same are subject to this Guaranty and certified copies of such marked notes or credit agreements shall be delivered to CDC, as requested. Guarantor authorizes CDC, in the name of Guarantor, from time to time to execute and file financing statements and continuation statements and to execute such other documents and to take such other actions as CDC deems necessary or appropriate to perfect, preserve or enforce the rights of CDC under this Guaranty.

14.5 Bankruptcy Waivers. Guarantor waives, to the fullest extent permitted by law; (1) all rights or defenses that are or may become available to Guarantor as a result of the election of CDC for the application of 11 United States Code Section 1111(b)(2) in any proceeding instituted under the Bankruptcy Code; and (2) all rights or defenses that are or may become available to Guarantor under 11 United States Code Section 364 based on any borrowing or grant of a security interest. Guarantor acknowledges that Guarantor has discussed with legal counsel of Guarantor's selection the significance and consequences of the waivers contained in this Section 14.5 on rights or remedies Guarantor might otherwise have.

15. **Application of Payments.** With or without Notice to Guarantor, at any time and from time to time, in such manner, order or priority or on such terms as CDC deems appropriate, in the sole and absolute discretion of CDC, CDC may apply any or all payments or recoveries from Developer, from Guarantor, or from any other Person, or realized from any collateral, to the obligations of Developer to CDC under the Agreement or otherwise, whether such obligation is guaranteed by this Guaranty or is otherwise secured or due at the time of such application.

16. **Financial Statements.** Guarantor shall furnish or cause to be furnished to CDC all of the following: (a) within ninety (90) days after the close of each fiscal year of Guarantor, a balance sheet and income statement for Guarantor dated as of the close of such fiscal year; and (b) from time to time, such additional financial statements and financial information as CDC shall reasonably require. All balance sheets provided by Guarantor to CDC shall include, among other things, disclosure of all contingent liabilities and changes in financial condition, together with such supporting schedules and documentation as CDC shall reasonably require. All balance sheets and other financial statements and financial information delivered by or on behalf of Guarantor to CDC pursuant to the terms of this Guaranty shall be certified by both the highest executive officer of Guarantor and the chief financial officer of Guarantor as materially true, accurate and complete, fairly representing the financial condition of Guarantor, and shall be prepared in accordance with Generally Accepted Accounting Principles and industry standard accounting practices consistently applied.

17. **General Provisions.**

17.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Guaranty are true and correct, are a material part of this Guaranty and are incorporated into this Guaranty in their entirety by this reference.

17.2 Invalid Provisions. If any provision of this Guaranty or its application to any Person or circumstance is held to be illegal, invalid, or unenforceable under present or future laws, then the remainder of this Guaranty or the application of such term or provision to other Persons or circumstances (other than those as to which it is invalid or unenforceable) shall not be affected by such invalidity or unenforceability. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws regarding all Persons and circumstances, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty.

17.3 Principles of Interpretation. No inference in favor of or against any Person shall be drawn from the fact that such Person has drafted any part of this Guaranty. Guarantor participated substantially in the negotiation, drafting, and revision of this Guaranty, with advice from legal and other counsel and advisers of Guarantor's own selection. Section headings in this Guaranty are for convenience of reference only and shall in no way affect the interpretation of this Guaranty. A word, term or phrase defined in the singular in this Guaranty may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Guaranty. The words "include" and "including" in this Guaranty shall be construed to be followed by the words: "without limitation." Each collective noun in this Guaranty shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Guaranty, refers to such document, as Modified from time to time (excepting any Modification that violates this Guaranty), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Guaranty includes the word "and." Every reference to a law,

statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

17.4 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Guaranty, without application of conflicts or choice of laws principles. The Parties acknowledge and agree that this Guaranty is entered into, is to be fully performed in and relates to real property located in the City of Downey, County of Los Angeles, State of California. All legal actions arising from this Guaranty shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

17.5 Binding on Successors and Assigns. This Guaranty shall be binding upon and inure to the benefit of Guarantor and CDC and their respective legal representatives, successors and assigns.

17.6 No Other Representations or Warranties. Except as expressly set forth in this Guaranty, neither CDC nor Guarantor makes any representation or warranty material to this Guaranty to any other Person.

17.7 Signature in Counterparts. This Guaranty may be signed in multiple counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

17.8 Integrated Guaranty. This Guaranty includes twenty-three (23) pages and one (1) attached exhibit that, with the Agreement, constitute the entire understanding and agreement of CDC and Guarantor regarding the subjects addressed in this Guaranty. This Guaranty supersedes all previous negotiations or agreements between CDC and Guarantor with respect to the subjects addressed in this Guaranty.

17.9 Modifications. All Modifications (including waivers) of the provisions of this Guaranty must be in writing and signed by the authorized representative(s) of the Person(s) against whom such Modification is sought to be enforced. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Guaranty shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Guaranty, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. The rights of CDC under this Guaranty shall be in addition to all other rights provided CDC by agreement, at law or in equity. No failure to exercise and no delay in exercising on the part of CDC of any right under this Guaranty shall operate as a waiver of such right, nor shall any single or partial exercise of a right preclude any other or further exercise of such right or the exercise of any other right. No Notice given in any situation shall constitute a waiver of the right to take other action in the same, similar or other situation, without such Notice.

17.10 Time Declared to be of the Essence. As to the performance of all obligations under this Guaranty of which time is a component, the performance of such obligations within the time specified is of the essence.

17.11 Facsimile Signatures. Signatures delivered by facsimile shall be binding as originals upon the Person (either CDC or Guarantor) on whose behalf such signature is delivered.

17.12 Incorporation of Defined Terms from Agreement. All terms indicated to be defined terms by initial capitalization in this Guaranty that are not specifically defined in this Guaranty or that are identified as being defined in the Agreement shall have the meanings, respectively, ascribed to such terms in the Agreement, whether or not the Agreement is in effect at the time of interpretation or enforcement of this Guaranty, and all such definitions are incorporated into this Guaranty by this reference.

17.13 No Modification of Agreement. Nothing in this Guaranty is intended to Modify (nor shall be deemed to Modify) any of the terms or conditions of the Agreement.

17.14 Assignment. Guarantor may only assign its rights or obligations under this Guaranty with the prior written consent of CDC, which consent may be given, withheld, conditioned or delayed in the sole and absolute discretion of CDC.

17.15 Control of Guarantor. Guarantor represents and warrants to CDC and shall ensure at all times that no Person in Control of Guarantor is a Person: (a) with whom CDC is in litigation; (b) that CDC reasonably determines has any connection with any terrorist organization, including any foreign governmental entity identified as a “State Sponsor of Terrorism” by the United States Department of State or subject to economic or political sanctions by the United States or any Person identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is a non-profit entity that is not also an Institutional Lender; (d) that is entitled to claim diplomatic immunity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

17.16 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between CDC and Guarantor arising from this Guaranty, including any proceeding to enforce this Guaranty, interpret this Guaranty, seek declaratory or injunctive relief in connection with this Guaranty, exercise any right or remedy under or arising from this Guaranty or in any Bankruptcy Proceeding affecting the Guarantor, the prevailing party shall be entitled to reimbursement of its Legal Costs, with interest at the rate of eight percent (8%) per annum, and all other reasonable costs and expenses incurred regarding such proceeding.

[Signatures on following page]

**Signature Page
To
Completion Guaranty
(Verizon Building:[INSERT NAME OF GUARANTOR])**

IN WITNESS WHEREOF, Guarantor has made and signed this Guaranty by and through the signatures of Guarantor's authorized representative(s) set forth below:

GUARANTOR:

[TO BE DETERMINED]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**Discussion Draft No. 2
May 7, 2010**

EXHIBIT "A"

To

Completion Guaranty

(Verizon Building: [INSERT NAME OF GUARANTOR])

Guarantor Official Action

[Form to be negotiated and attached behind this cover page]

Exhibit A

**EXHIBIT C
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Completion Certificate

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attention: _____

SPACE ABOVE FOR RECORDER'S USE ONLY

EXEMPT FROM RECORDING FEES – GOVERNMENT CODE SECTION 27383

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY

**FORM OF CERTIFICATE OF COMPLETION
(Verizon Building)**

I, _____, in my capacity as Executive Director of the Community Development Commission of the City of Downey, a public body, corporate and politic (“Agency”), certify that:

1. The Agency and **[TO BE DETERMINED]**, a California limited partnership (“Developer”), are parties to that certain Disposition and Development Agreement (**[TO BE DETERMINED]**), dated as of _____, 20__ (“Agreement”), pursuant to which that certain Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Verizon Building), dated as of _____, 20__, was recorded on _____, 20__, as Document Number _____ in the official records of the Recorder of the County of Los Angeles, California (“Regulatory Agreement”). The Project required to be constructed pursuant to the Agreement on that certain real property specifically described in the legal description attached to this Certificate of Completion as Exhibit ”A” (“Property”) is complete in accordance with the provisions of the Agreement.

2. This Certificate of Completion constitutes conclusive evidence of the Agency’s determination that the Developer’s obligation under the Agreement to construct the Project on the Property has been satisfied, including any and all buildings, parking areas, landscaping areas and related improvements necessary to support or meet any requirements applicable to the Project and its use and occupancy on the Property, exclusive of any normal and customary tenant improvements and any Punchlist Work. Notwithstanding any other provision of this Certificate of Completion, the operating, use, maintenance, non-discrimination, non-segregation and other terms, provisions, covenants, conditions, restrictions and agreements set forth in the Agreement and the Regulatory Agreement, other than those specifically requiring construction of the Project on the Property, shall continue in full force and effect and the Agency may enforce any and all

such terms, provisions, covenants, conditions, restrictions or agreements in accordance with the Agreement or the Regulatory Agreement. Nothing contained in this Certificate of Completion shall waive or modify any term, provision, covenant, condition, restriction or agreement contained in any other document.

3. The Agreement and the Regulatory Agreement are official records of the Agency and a copy of each document may be inspected in the office of the Agency located at 11111 Brookshire Avenue, Downey, California 92041, during the regular business hours of the Agency. All terms indicated to be defined terms in this Certificate of Completion by initial capitalization, but not defined in this Certificate of Completion, shall have the meaning ascribed to the same terms in the Agreement.

DATED AND ISSUED as of _____, 20__.

Chairperson

Attest:

Executive Director
Community Development Commission of the City of Downey

Secretary
Community Development Commission of the City of Downey

Exhibit "A"
To
Completion Certificate

Property Legal Description

[To be attached]

VERIZON PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-914

THAT PORTION OF BLOCK 8 OF THE TRACT OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2, PAGE 434 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 8, SAID POINT BEING SOUTH 71°30'00" EAST 135.15 FEET FROM THE NORTHWESTERLY CORNER OF SAID BLOCK 8;

THENCE CONTINUING SOUTH 71°30'00" EAST 149.85 FEET;

THENCE SOUTH 18°30'00" WEST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF A 20 FOOT WIDE ALLEY;

THENCE NORTH 71°30'00" WEST 149.85 FEET ALONG THE NORTHERLY LINE OF SAID ALLEY;

THENCE NORTH 18°30'00" EAST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID BLOCK 8, SAID POINT BEING THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 29.00 FEET.

SAID PARCEL IS BEING MORE PARTICULARLY DESCRIBED AS PARCEL 1 AS DEPICTED IN EXHIBIT "A" OF CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT NO. 08-38 RECORDED JUNE 02, 2008, INSTRUMENT NO. 20080966138, OF OFFICIAL RECORDS.

**CITY-OWNED PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-902**

THAT PORTION OF BLOCK 8 OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, AS PER MAP RECORDED IN BOOK 2, PAGE 434 MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID BLOCK 8, DISTANT THEREON 95 FEET EASTERLY ALONG SAID LINE FROM THE NORTHWEST CORNER OF SAID BLOCK 8; THENCE SOUTHERLY PARALLELL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET; THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINE OF SAID BLOCK, 40.15 FEET; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET TO SAID NORTHERLY LINE; THENCE WESTERLY ALONG SAID NORTHERLY LINE, 40.15 FEET TO THE POINT OF BEGINNING.

**EXHIBIT D
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Regulatory Agreement

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Community Development
Commission of the City of Downey
11111 Brookshire Avenue
Downey, CA 92041
Attn: Executive Director

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

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY

**FORM OF REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF
PROPERTY FOR AFFORDABLE HOUSING
(Verizon Building)**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING (this "**Regulatory Agreement**") is dated as of [TO BE DETERMINED], and is made by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, a public body, corporate and politic ("**Commission**"), and [TO BE DETERMINED], a California limited partnership ("**Owner**"), with reference to the following recited facts (each, a "**Recital**").

RECITALS

A. The Owner plans to construct and operate a fifty (50) unit (inclusive of a manager's unit) multi-family affordable rental housing complex on that certain real property specifically defined as the "**Property**" in Section 1.1.98 of this Regulatory Agreement;

B. The Property is located within the Commission's Firestone Redevelopment Project ("**Project Area**");

C. The Owner is willing to enter into and make this Regulatory Agreement to assure the Commission of the operation of the Project for the purpose of increasing and improving the supply of affordable rental housing in the City of Downey and, specifically, within the Project Area;

D. The Commission and the Owner have entered into that certain Disposition and Development Agreement (Verizon Building), dated as of November 9, 2010 ("**DDA**"), pursuant to which the Commission sold the Property to the Owner for development and operation of the Project;

E. This Regulatory Agreement shall, subject to the terms and conditions of this Regulatory Agreement, restrict the use of the Property for fifty-five (55) years following the date of the original occupancy of fifty percent (50%) of the Dwelling Units (as defined in Section 1.1.44 of this Regulatory Agreement), to be constructed in accordance with the DDA, to ensure that each Dwelling Unit to be constructed within the Project shall, at all times until expiration of such fifty-five (55) year period, be occupied or reserved for occupancy by a Qualifying Household (as defined in Section 1.1.100 of this Regulatory Agreement) at an Affordable Rent (as defined in Section 1.1.6 of this Regulatory Agreement);

F. The Commission and the Owner intend and agree that all of the Dwelling Units may be counted by the Commission towards the Commission's obligations under Health and Safety Code Section 33413 regarding the Project Area and for the benefit of the Commission;

G. In the DDA, the Owner agreed to develop and maintain the Project as an affordable multi-family rental housing project, for the use and benefit of Qualifying Households and, therefore, the Owner is willing to impose the conditions, covenants, restrictions and agreements set forth in this Regulatory Agreement upon the ownership and operation of the Property and the Project that will bind the Property, the Project, the Owner, and the Owner's successors and assigns; and

H. The purpose of this Regulatory Agreement is to create such conditions, covenants, restrictions, reservations, agreements, liens, servitudes and charges upon the Property and the Project and subject to which each and every part of the Property and the Project shall be developed, occupied, owned, maintained, held, leased, rented, sold and conveyed;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND UNDERTAKINGS SET FORTH IN THIS REGULATORY AGREEMENT AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE OWNER AND THE COMMISSION COVENANT, DECLARE AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS, AS FOLLOWS:

1. DEFINITIONS

1.1 Definitions. All words, terms or phrases indicated to be defined words, terms or phrases by initial capitalization in this Regulatory Agreement that are not specifically defined in this Regulatory Agreement shall have the meaning given to the word, term or phrase in the DDA. As used in this Regulatory Agreement, the following words, phrases and terms shall have the meaning as provided in the initial paragraph of this Regulatory Agreement, the Recitals or in this Section 1, unless the specific context of usage of a particular word, phrase or term may otherwise require:

1.1.1 **30% Household.** An individual or household with a household income equal to or less than the lesser of: (a) the then current maximum income limit published by CTCAC for CTCAC's thirty percent (30%) income level for the County, adjusted for family size; or (b) the then current maximum income for a "very low income household" in the County pursuant to California Health and Safety Code Section 50105, adjusted for family size.

1.1.2 **45% Household.** An individual or household with a household income equal to or less than the lesser of: (a) the then current maximum income limit published by CTCAC for CTCAC's forty-five percent (45%) income level for the County, adjusted for family size; or (b) the then current maximum income for a "lower income household" in the County pursuant to California Health and Safety Code Section 50079.5, adjusted for family size.

1.1.3 **50% Household.** An individual or household with a household income equal to or less than the lesser of: (a) the then current maximum income limit published by CTCAC for CTCAC's fifty percent (50%) income level for the County, adjusted for family size; or (b) the maximum income for "persons and families of moderate income" in the County pursuant to California Health and Safety Code Section 50093, adjusted for family size.

1.1.4 **60% Household.** An individual or household with a household income equal to or less than the lesser of: (a) the then current maximum income limit published by CTCAC for CTCAC's sixty percent (60%) income level for the County, adjusted for family size; or (b) the then current maximum income for "persons and families of moderate income" in the County pursuant to California Health and Safety Code Section 50093, adjusted for family size.

1.1.5 **Affiliate.** Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "**Affiliated**" shall have the correlative meaning.

1.1.6 **Affordable Rent.** "Affordable Rent" as defined in California Health and Safety Code Section 50053(b) and accompanying regulations of the California Department of Housing and Community Development, including Utilities Allowance, which rent shall not exceed the product of: (a) for 30% Households, a gross monthly rent, including Utilities Allowance, that is not more than 1/12th of the product of 30% times the maximum income for 30% Households, adjusted for family size appropriate for the Dwelling Unit; (b) for 45% Households, a gross monthly rent, including Utilities Allowance, that is not more than 1/12th of the product of 30% times the maximum income for 45% Households, adjusted for family size appropriate for the Dwelling Unit; (c) for 50% Households, a gross monthly rent, including Utilities Allowance, that is not more than 1/12th of the product of 30% times the maximum income for 50% Households, adjusted for family size appropriate for the Dwelling Unit; (d) for 60% Households, a gross monthly rent, including Utilities Allowance, that is not more than 1/12th of the product of 30% times the maximum income for 60% Households, adjusted for family size appropriate for the Dwelling Unit; or (e) for Median Income Households, a gross monthly rent, including Utilities Allowance, that is not more than 1/12th of the product of 30% times 80% of Area Median Income, adjusted for family size appropriate for the Dwelling Unit. Notwithstanding the foregoing provisions of this Section 1.1.6 or any other provision of this Regulatory Agreement, "Affordable Rent" for 30% Households or 45% Households shall not exceed a gross monthly rent, including Utilities Allowance, of 1/12th of the product of 30% times 50% of Area Median income, adjusted for family size appropriate for the Dwelling Unit and "Affordable Rent" for 50% Households or 60% Households shall not exceed a gross monthly rent, including Utilities Allowance, of 1/12th of the product of 30% times 60% of Area Median income, adjusted for family size appropriate for the Dwelling Unit. Notwithstanding the foregoing provisions of this Section 1.1.6 or any other provision of this Regulatory Agreement,

the rent for a HOME Unit shall never exceed the rent limitation established in Title 24 Code of Federal Regulations Section 92.295(a) or (b), as applicable. For purposes of the calculation of Affordable Rent “family size appropriate to the unit” shall mean a household of three (3) Persons for a Two Bedroom Unit or a household of four (4) Persons for a Three Bedroom Unit. Notwithstanding the immediately preceding sentence, while the CTCAC Regulatory Agreement is in effect, “family size appropriate to the unit” for a Three Bedroom Unit shall mean a household of five (5) Persons.

1.1.7 **Annual Report.** A report in substantially the form of Exhibit “C” attached to this Regulatory Agreement or in such other form as subsequently reasonably required by the Commission, together with a current rent roll for the Project and all Income Certification Forms completed and signed by Qualifying Households regarding each Dwelling Unit.

1.1.8 **Application.** Any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for the Project, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or such other instrument as Owner may reasonably request for the Project; or (b) to enable Owner to seek any Approval or to use and operate the Project in accordance with the DDA and this Regulatory Agreement.

1.1.9 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform, or complete the Construction of the Project.

1.1.10 **Area Median Income.** The then current area median income for the County of Los Angeles, California, Metropolitan Statistical Area, as determined by and published by the California Department of Housing and Community Development (HCD) in the California Code of Regulations or if no longer determined by HCD, then as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

1.1.11 **Automobile Liability Insurance.** Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by the Owner regarding the Project, with minimum limits for bodily injury and property damage of TWO MILLION DOLLARS (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Commission, which approval shall not be unreasonably withheld.

1.1.12 **Available.** When a Dwelling Unit is held available for occupancy by a Qualifying Household. A Dwelling Unit shall be considered to be held available for occupancy by a Qualifying Household, until occupied or reoccupied by a Qualifying Household appropriate to the income category of the Dwelling Unit, provided that the Owner is exercising bona fide good faith efforts to let or relet the Dwelling Unit to a Qualifying Household.

1.1.13 **Bankruptcy Law,** Title 11, United States Code, and any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment

of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.1.14 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.1.15 **Builder's Risk Insurance.** Builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject Construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property.

1.1.16 **Building Equipment.** All fixtures incorporated into the Project and used, useful, or necessary to operate the Project as such (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; irrigation systems; machinery; and pipes), as opposed to operating any business in the Project.

1.1.17 **Capital Improvements.** Any Restoration, Renovation or addition of any Structure, any Building Equipment or the exterior finishes of any Building.

1.1.18 **Capital Replacement Account.** An interest bearing account established by Owner with an Institutional Lender to be held in trust solely for making Capital Improvements to the Project.

1.1.19 **Certificate of Occupancy.** A Certificate of Occupancy as defined in the Uniform Building Code, 2007 Edition, published by the International Conference of Building Officials, as may be amended from time to time, as adopted by the City.

1.1.20 **City.** The City of Downey, California, a municipal corporation.

1.1.21 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) and any judgment.

1.1.22 **CNA.** Defined in Section 3.2.5.

1.1.23 **Commission.** The Community Development Commission of the City of Downey, a California public body, corporate and politic, and any assignee of or successor to the rights, powers or responsibilities of the Community Development Commission of the City of Downey.

1.1.24 **Commission Deed of Trust.** Defined in the DDA.

1.1.25 **Commission Loan.** A loan from Commission to Developer in an amount not to exceed [TO BE DETERMINED] evidenced by the Developer Note and secured by the Commission Deed of Trust.

1.1.26 **Commission Parties.** Collectively, Commission, its governing body, elected officials, employees, agents and attorneys.

1.1.27 **Commission Party.** Individually, Commission, its governing body, elected officials, employees, agents or attorneys.

1.1.28 **Completion Certificate.** Defined in the DDA.

1.1.29 **Condemnation.** Any of the following: (a) Any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Property, but creating a right to compensation, such as a change in grade of any street upon which the Property abuts.

1.1.30 **Construction.** Any alteration, construction, excavation, demolition, grading, development, expansion, reconstruction, redevelopment, repair, restoration, or other work affecting the Property, including new construction.

1.1.31 **Construction Financing.** One or more loans that Owner shall obtain from one or more Institutional Lenders, in an amount consistent with the Financing Plan approved by Commission pursuant to the DDA, the proceeds of which are to be used and applied solely to pay the reasonable costs of obtaining such loan(s) and either: (a) the excess of the Total Project Costs over the sum of the amount of the Commission Loan to be disbursed during Project construction, the amount of the Industry Funds Loan to be disbursed during Project construction (if any), the amount of the IIG Loan to be disbursed during Project construction (if any) and the amount of the Tax Credit Equity to be disbursed during Project construction pursuant to the Financing Plan and the Developer Partnership Agreement; or (b) to refinance only the outstanding amount owed under a prior loan obtained by Developer to finance the amount described in clause "(a)" of this Section 1.1.31 (without any other amounts). Such loan(s) shall provide for normal and customary disbursement controls for the payment of Total Project Costs and normal and customary fees and expenses for loan(s) of similar size and purpose.

1.1.32 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.1.33 **Controlling and Controlled.** Exercising or having Control.

1.1.34 **County.** The County of Los Angeles, California.

1.1.35 **CPI.** The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) published for the Los Angeles-Riverside-Orange County, California, Metropolitan Statistical Area, with a base of

1982-1984 = 100, or a successor index. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

1.1.36 **CPI Adjustment Factor.** As of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI for the date of this Regulatory Agreement.

1.1.37 **CTCAC.** The California Tax Credit Allocation Committee or its successor in function.

1.1.38 **CTCAC Regulatory Agreement.** The regulatory agreement required by CTCAC to be recorded against the Property to obtain the Tax Credits.

1.1.39 **Default.** Any Monetary Default or Non-Monetary Default.

1.1.40 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the Usury Limit.

1.1.41 **Developer Fee.** Defined in the DDA.

1.1.42 **Developer Partnership.** Defined in the DDA.

1.1.43 **Developer Partnership Agreement.** Defined in the DDA.

1.1.44 **Dwelling Unit.** Any one of the Two Bedroom Units or Three Bedroom Units within the Project (exclusive of the Manager Unit).

1.1.45 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.1.46 **Environmental Law.** Any Law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances.

1.1.47 **Equity Interest.** All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.1.48 **Event of Default.** The occurrence of any one or more of the following:

(a) *Monetary Default.* A Monetary Default that continues for ten (10) calendar days after Notice from the Commission, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment;

(b) *Reporting Default.* If the Owner fails to deliver any Annual Report as and when required in Section 2.9.6 or fails or refuses to allow and cooperate with any Commission audit of Project Records in accordance with Section 2.12, each after ten (10) calendar days Notice of such failure;

(c) *Bankruptcy or Insolvency.* Owner admits in writing that it is unable to pay its debts as they become due or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Owner's assets or Owner's interest in this Regulatory Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);

(d) *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Regulatory Agreement or the DDA;

(e) *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 1.1.1(b), Section 1.1.48(c) or Section 1.1.48(d), that is not cured within thirty (30) days after Notice to the Owner describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of such Notice, if the Owner does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the Commission of the intention of the Owner to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances; or

(f) *DDA Event of Default.* Any "Event of Default" pursuant to the terms and conditions of the DDA.

1.1.49 **Executive Director.** The Executive Director of Commission or his or her designee or successor in function.

1.1.50 **Federal.** The federal government of the United States of America.

1.1.51 **Foreclosure Event.** Defined in Section 3.17.7.

1.1.52 **Full Insurable Value.** The actual cost of replacing the property in question, without allowance for depreciation, as calculated from time to time (but not more often than once every calendar year) by the insurance company or companies providing property insurance coverage for such property.

1.1.53 **Government.** Each and every governmental Commission, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property or the Project (or any activity this Regulatory Agreement requires or allows), including the government of the United States of America, the State and the County governments and their subdivisions and municipalities, including the City, the Commission, and all other applicable governmental agencies, authorities, and subdivisions thereof. "Government" shall also include any planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, design review board or committee or similar body having or claiming jurisdiction over the Property or any activities on or at the Property.

1.1.54 **Gross Income.** All amounts received by Owner from the use or occupancy of or the right to use or occupy all or any portion of the Property or the Project including all revenue from vending machines, laundry facilities or other amenities of the Project, and all other revenue, income and receipts of every kind that accrue or are accounted for on an accrual basis in conformity with generally accepted accounting principles, exclusive of interest earned on the Operating Reserve or the Capital Replacement Account when such interest is deposited into the account on which it is earned and reserved exclusively for use in accordance with the purposes of such account pursuant to this Regulatory Agreement.

1.1.55 **Hazardous Substance.** Any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) any substance defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of

life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material.

1.1.56 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Construction, installation use or operation of the Project or any activities conducted at, on, under or from the Property, whether or not caused by a Party.

1.1.57 **HOME Unit.** Any of the Dwelling Units identified in Exhibit "D" attached to this Regulatory Agreement; provided, however, that: (a) the number of Dwelling Units identified in Exhibit "D" shall never exceed eleven (11); and (b) Owner may substitute other Dwelling Units in the Project for any of the Dwelling Units identified in Exhibit "D," as long as the Dwelling Unit being substituted is comparable in terms of size, features and number of bedrooms to the originally identified Dwelling Unit.

1.1.58 **HUD.** The Secretary of the United States Department of Housing and Urban Development.

1.1.59 **Income Certification Form.** A certification in substantially the form of Exhibit "B" attached to this Regulatory Agreement or in such other form subsequently reasonably required by Commission.

1.1.60 **Indemnify.** Where this Regulatory Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

1.1.61 **Indemnitee.** Any Person entitled to be Indemnified under the terms of this Regulatory Agreement.

1.1.62 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Regulatory Agreement.

1.1.63 **Institutional Lender.** Any of the following: (a) a bank (State or Federal), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank or a Fortune 500 company; or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clause "(a)" of this Section 1.1.63.

1.1.64 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule, and regulation of any Government applicable to the Property or the Project, in any

way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting the Property or the Project, or relating to any taxes, or otherwise relating to this Regulatory Agreement or any Party's rights, obligations or remedies under this Regulatory Agreement, or any Transfer of any of the foregoing, whether in force on the date of this Regulatory Agreement or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.1.65 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and consultant and expert witness fees and expenses.

1.1.66 **Lender.** The holder of any Security Instrument and its successors and assigns.

1.1.67 **Liability Insurance.** Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in, or about the Property, the Project or adjoining streets or passageways, at least as broad a Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Four Million Dollars [TO BE DETERMINED] for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Property and the Project or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.1.68 **Maintenance Deficiency.** Defined in Section 3.13.2.

1.1.69 **Maintenance Standard.** Defined in Section 3.13.1

1.1.70 **Management Agent.** A Person with significant experience managing affordable rental housing projects substantially similar to the Project and that is, at the time, managing other financially self-supporting, successful affordable rental housing projects substantially similar to the Project.

1.1.71 **Manager Unit.** The one (1) Three Bedroom Dwelling Unit within the Project reserved exclusively for use by the on-site manager employed by the Owner or the Management Agent, as applicable.

1.1.72 **Median Income Household.** An individual or household with a household income equal to or less than one hundred percent (100%) of the then current Area Median Income adjusted for family size and not exceeding the maximum income allowed for persons and families of moderate income under California Health and Safety Code Section 50093.

1.1.73 **Minimum Balance.** Defined in Section 3.3.

1.1.74 **Monetary Default.** Any failure by Owner to pay or deposit, when and as this Regulatory Agreement requires, any amount of money, any bond or surety or evidence of

any insurance coverage required to be provided under this Regulatory Agreement, whether to or with the Commission or a Third Person.

1.1.75 **Non-Monetary Default.** Except to the extent constituting a Monetary Default, the Owner's: (a) failure to perform any of its obligations under this Regulatory Agreement; (b) failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Regulatory Agreement or the DDA; or (c) any other event or circumstance that, with the passage of time or giving of Notice, or both, or neither, would constitute a breach of this Regulatory Agreement.

1.1.76 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Regulatory Agreement, including any Notice of Default. All Notices must be in writing.

1.1.77 **Notice of Default.** Any Notice claiming or giving Notice of a Default or alleged Default.

1.1.78 **Notify.** To give a Notice.

1.1.79 **Occupancy Date.** The first date on which fifty percent (50%) of the Dwelling Units in the Project are occupied by Qualifying Households under valid leases complying with this Regulatory Agreement and all applicable Laws.

1.1.80 **Operating Reserve.** An interest bearing account established by Owner with an Institutional Lender to be maintained by Owner to fund any short falls between Gross Income and the actual operating costs of the Project.

1.1.81 **Owner.** [TO BE DETERMINED], a California limited partnership, with [TO BE DETERMINED], as its general partner, and the successors and assigns of such limited partnership that are permitted by this Regulatory Agreement.

1.1.82 **Owner Parties.** Collectively, the Owner, members, directors, officers, employees, agents, partners, managers and holders of Equity Interests in the Owner.

1.1.83 **Owner Party.** Individually, the Owner, each of its members, directors, officers, employees, agents, partners, managers, and each holder of Equity Interests in the Owner.

1.1.84 **Parties.** Collectively, the Commission and the Owner.

1.1.85 **Party.** Individually, either the Commission or the Owner, as applicable.

1.1.86 **Permanent Loan.** A loan from an Institutional Lender to the Developer that will be used solely in combination with proceeds of the Tax Credit Equity not previously advanced to completely pay-off the Construction Financing, including the reasonable costs of obtaining the loan and any reasonable and customary fees or charges relating to pay-off of the Construction Financing.

1.1.87 **Permitted Encumbrance.** Any Permitted Security Instrument, the CTCAC Regulatory Agreement, the DDA, the Notice of Agreement (as set forth in Exhibit “K” to the DDA), the Commission Deed of Trust, any conditions, covenants and restrictions running with the land required to obtain the Industry Funds Loan described in the DDA (if any), utility easements directly related to the Project and any other document required or expressly allowed to be recorded against the Property by the express terms of this Regulatory Agreement or the DDA.

1.1.88 **Permitted Lender.** The holder of any Permitted Security Instrument.

1.1.89 **Permitted Security Instrument.** Any Security Instrument: (a) that encumbers only the Property or any interest in the Property; (b) a copy of which (recorded or unrecorded) is promptly after execution delivered to Commission, with a certification by the Lender that the copy is accurate and stating the Lender’s name and notice address; (c) that is held by a Lender that is an Institutional Lender, subject to the jurisdiction of the courts of the State, not immune from suit and cannot elect to be immune from suit; and (d) only secures: (i) the repayment of money used to pay or reimburse the Total Project Costs; (ii) the Permanent Loan; (iii) a delivery assurance fee regarding a Permanent Loan that is refundable to Owner at the close of the Permanent Loan; or (iv) a Refinancing permitted pursuant to the terms and conditions of this Regulatory Agreement.

1.1.90 **Permitted Transfer.** Any Transfer to an Institutional Lender that is not a Prohibited Transferee: (1) pursuant to a Permitted Security Instrument as collateral for bona fide Construction Financing to pay all or any part of the Total Project Costs; or (2) pursuant to a Permitted Security Instrument as collateral for a bona fide Permanent Loan.

1.1.91 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.92 **Prevailing Wage Action.** Any of the following: (a) any determination by the State Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code Sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code Section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code Section 1781.

1.1.93 **Prohibited Encumbrance.** Any lien, Security Instrument, mechanic’s lien, easement or other encumbrance recorded or asserted against the Property or the Project that is not a Permitted Encumbrance.

1.1.94 **Prohibited Transferee.** Any Person with whom Commission is in litigation, any Person that Commission reasonably determines has any connection with any terrorist organization, any Person entitled to claim diplomatic immunity, any domestic or foreign governmental entity, except as reasonably approved by Commission, any Person that is immune

or may elect to be immune from suit under State or Federal law, or any other Person that Commission reasonably disapproves.

1.1.95 **Project.** Defined in the DDA.

1.1.96 **Project Area.** Defined in Recital B to this Regulatory Agreement.

1.1.97 **Project Records.** All books, records, statements, contracts and other records of the Owner, any Affiliate and any Management Agent relating in any way to the Construction, use, occupancy or operation of the Property or the Project, including Income Certification Forms completed by applicants or tenants of the Project, Annual Reports, accounting of Project revenues, and accounting of Project expenses. All Project Records shall be prepared in accordance with industry standards and generally accepted accounting principles.

1.1.98 **Property.** That certain real property located within the City of Downey, County of Los Angeles, State of California, specifically described in the legal description attached as Exhibit "A" to this Regulatory Agreement, which is incorporated into this Regulatory Agreement by this reference.

1.1.99 **Property Insurance.** Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

1.1.100 **Qualifying Household.** A household that: (1) intends to reside in the Dwelling Unit; and (2) whose income does not exceed the maximum income allowable for the subject Dwelling Unit.

1.1.101 **Record, recorded, recording or recordation.** Recordation of the referenced document in the official records of the County.

1.1.102 **Refinancing.** Any loan secured by a Permitted Security Instrument that Developer obtains from an Institutional Lender subsequent to recordation of a Permitted Security Instrument securing repayment of the Permanent Loan for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer exceeding the amount of principal and interest under the existing loan being paid plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Developer without

paying off any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan.

1.1.103 **Restoration.** After a loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially consistent with their condition before the loss, subject to any changes in Law that would limit the foregoing.

1.1.104 **Restore.** Accomplish a Restoration.

1.1.105 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan does not itself constitute a Security Instrument.

1.1.106 **State.** The State of California.

1.1.107 **Tax Credits.** An allocation from CTCAC of nine percent (9%) Federal low income housing tax credits in an amount consistent with the Financing Plan approved by Commission pursuant to the DDA to finance a portion of the Total Project Costs, all in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, all associated Internal Revenue Service regulations, State law and all associated CTCAC regulations.

1.1.108 **Tax Credit Investor.** The Person that provides the Tax Credit Equity. The Tax Credit Investor shall be subject to the reasonable approval of Commission. In no event may the Tax Credit Investor be an Affiliate of Developer.

1.1.109 **Term.** The period of time beginning on the date of recordation of this Regulatory Agreement and ending on the fifty-fifth (55th) anniversary of the Occupancy Date.

1.1.110 **Third Person.** Any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.111 **Three Bedroom Unit.** Any one of the three bedroom, two bath residential accommodations within the Project.

1.1.112 **Two Bedroom Unit.** Any one of the two bedroom, two bath residential accommodations within the Project.

1.1.113 **Total Project Costs.** All of the costs set forth in Exhibit “J” attached to the DDA.

1.1.114 **Transfer.** Regarding any property, right or obligation means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c),” shall be deemed a Transfer by the Owner even though the Owner is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property and/or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the date this Regulatory agreement is recorded, holds an Equity Interest in the entity whose Equity Interest is being transferred; (iv) the original sale of limited partnership Equity Interests in Owner for the purpose of syndicating the Tax Credit Equity; (v) a conveyance to an Affiliate of Owner; (vi) a conveyance to an Affiliate of the Tax Credit Investor pursuant to the rights of the Tax Credit Investor under the Developer Partnership Agreement; (vii) a collateral pledge of the Equity Interests in the Developer Partnership to the Institutional Lender providing the Construction Financing or Permanent Loan for the Project; or (viii) a collateral pledge by the Tax Credit Investor of its Equity Interests in the Developer Partnership to an Institutional Lender that is making a loan to the Tax Credit Investor to finance the Tax Credit Investor’s acquisition of such Equity Interests in the Developer Partnership.

1.1.115 **Unavoidable Delay.** A delay in either Party performing any obligation under this Regulatory Agreement, except payment or deposit of money, arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party’s financial condition, illiquidity, or insolvency.

1.1.116 **Usury Limit.** The highest rate of interest, if any, that Law allows under the circumstances.

1.1.117 **Utilities Allowance.** An allowance for utilities services costs as established from time to time by the County of Los Angeles, California, Housing and Community Services Department.

1.1.118 **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Regulatory Agreement for any loss such policy covers.

1.1.119 **Workers Compensation Insurance.** Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of the Owner and the Management Agent.

2. **AFFORDABLE RENTAL HOUSING COVENANTS AND RESTRICTIONS**

2.1 Owner Acknowledgment of Potential Impact of Regulatory Agreement. The Owner acknowledges and agrees that this Regulatory Agreement imposes certain covenants, conditions and restrictions on the use and occupancy of the Property and the Project during the Term that may result in less than all of the Dwelling Units being leased or rented and that may not constitute the highest and best use of the Property.

Initials of Authorized
Owner Representative(s)

2.2 Agreement to Record. The Owner agrees that the Commission may record this Regulatory Agreement against the Property in the official records of the Recorder of the County.

2.3 Reservation of Property for Affordable Housing. The Owner covenants and agrees to reserve and restrict the Property for Construction of the Project and, thereafter, use and residential occupancy by individuals and families who, at the time of initial occupancy of a Dwelling Unit and continuously thereafter (subject to the other provisions of this Regulatory Agreement), until the end of the Term, are members of a Qualifying Household. Only one (1) Three Bedroom Unit within the Project may be used as a Manager Unit at any given time. Further, the Owner agrees to exercise commercially reasonable efforts to achieve LEED certification for the Project. For the purposes of the immediately preceding sentence, "LEED" shall mean ad refer to The U.S. Green Building Council's Leadership in Energy & Environmental Design standards administered by the Green Building Certification Institute as an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies intended to improve performance in metrics such as energy savings, water efficiency, CO2 emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

2.4 Affordable Multi-Family Residential Rental Property Restrictive Covenant. The Owner covenants to and for the benefit of the Commission that the Owner shall develop, own, manage and operate, or cause the management and operation of, the Project to provide multi-family residential rental housing available only to Qualifying Households at an Affordable Rent and for no other purposes. The Owner hereby confirms and remakes its covenant set forth in Section 5.1 of the DDA to develop the Property with the Project and such covenant is incorporated into this Regulatory Agreement in its entirety by this reference. The Owner will not

knowingly permit any Dwelling Unit to be used on a transient basis and will not lease or rent any Dwelling Unit for a period of less than twelve (12) months. No Dwelling Unit will, at any time, be leased or rented for use as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitary or rest home.

2.5 Continuous Operation Covenant. The Owner covenants to and for the benefit of the Commission to cause the Project to be continuously operated, in accordance with the other provisions of this Section 2, throughout the Term.

2.6 Abandonment. The Owner shall not abandon or surrender the operation of all or any part of the Project during the Term, except due to material casualty or condemnation.

2.7 Notice of Occupancy Date. Within thirty (30) days following the occurrence of the Occupancy Date, Owner shall deliver Notice of the occurrence of the Occupancy Date to Commission.

2.8 Rental Only to Qualifying Households. The Owner covenants that each Dwelling Unit shall be occupied or Available for occupancy by a Qualifying Household at an Affordable Rent on a continuous basis throughout the Term, in accordance with the following tenant income level mix:

2.8.1 Twenty-five (25) of the Two Bedroom Units shall be occupied or Available for occupancy by Qualifying Households that are Median Income Households; and

2.8.2 Ten (10) of the Two Bedroom Units shall be occupied or Available for occupancy by Qualifying Households that are 60% Households; and

2.8.3 at least three (3) of the Three Bedroom Units shall be occupied or Available for occupancy by Qualifying Households that are 30% Households; and

2.8.4 at least nine (9) of the Three Bedroom Units shall be occupied or Available for occupancy by Qualifying Households that are 50% Households; and

2.8.5 at least two (2) of the Three Bedroom Units shall be occupied or Available for occupancy by Qualifying Households that are 60% Households.

2.9 Affordable Rent. The monthly rent charged to a Qualifying Household for the occupancy of a Dwelling Unit may never exceed an Affordable Rent for such Dwelling Unit set forth in Section 2.8.

2.9.1 **Rent Increases.** Rent for Dwelling Units may be increased only once in any twelve (12) month period, based on changes in Area Median Income or changes in the income level of the Qualifying Household occupying the Dwelling Unit, consistent with Section 2.9.3; provided that the rent for each Dwelling Unit shall never exceed an Affordable Rent for the Qualifying Household occupying the Dwelling Unit and the tenant income mix specified in Section 2.8 shall be maintained at all times.

2.9.2 Determination of Household Income. Determination of Qualifying Household income shall be made by the Owner at the time of initial application by an individual or family for occupancy of a Dwelling Unit. At the time of initial application, the Owner shall require an applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. Also, at least once every twelve (12) months during the Term and within sixty (60) days following the expiration of the Term, the Owner shall require each Qualifying Household occupying a Dwelling Unit to recertify the Qualifying Household's income on the Income Certification Form. Additionally, on the renewal of a lease for a Dwelling Unit, the Owner shall require the Qualifying Household occupying the Dwelling Unit to recertify the Qualifying Household's income on the Income Certification Form. The Owner shall make a good faith effort to verify the accuracy of income information provided in any Income Certification Form by an applicant for occupancy of a Dwelling Unit or by a Qualifying Household occupying a Dwelling Unit, by taking one or more of the following steps, as reasonably required or indicated: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for the most recently concluded income tax year; (2) conduct a credit reporting Commission or similar search; (3) obtain an income verification form from the applicant's or the Qualifying Household's current employer(s); (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services, if the applicant or the Qualifying Household receives assistance from either of such agencies; or (5) if the applicant or an adult member of a Qualifying Household is unemployed and has no such income tax return, obtain another form of independent verification. For purposes of this Section 2.9.2, the Owner may conclusively rely upon the evidence of the age of the occupant(s) of a Dwelling Unit as presented in a valid California Driver's License or other form of identification issued by the State of California or the United States Government that includes a date of birth. All such verification information shall only be obtained by the Owner after obtaining the applicant's or the Qualifying Household's written consent for the release of such information to the Owner. Failure to consent in writing to the release of such income verification information to the Owner may disqualify an applicant for occupancy of a Dwelling Unit or be grounds for termination of Qualifying Household's occupancy of a Dwelling Unit.

2.9.3 The Dwelling Units are not specifically assigned to any qualifying income category (i.e., 30% Household, 45% Household, 50% Household, 60% Household or Median Income Household). The restricted income level of each Dwelling Unit may change as Dwelling Units become vacant, a Qualifying Household tenant's income changes or other Dwelling Units are occupied by Qualifying Households. In all circumstances, though, the rent for each Dwelling Unit shall be an Affordable Rent for the Dwelling Unit as necessary to maintain the tenant income level mix required under Section 2.8. If, upon any recertification, the income of a previously Qualifying Household exceeds one hundred forty percent (140%) of the qualifying income for a 60% Household, then the Owner or Management Agent shall notify such household that its lease for its Dwelling Unit will not be renewed upon the expiration of its lease, unless the household again becomes a Qualifying Household upon recertification prior to the expiration of its lease. If, upon any recertification, the income of a previously Qualifying Household that was a Median Income Household exceeds one hundred twenty percent (120%) of the then current Area Median Income, then the Owner or Management Agent shall notify such household that its lease for its Dwelling Unit will not be renewed upon the expiration of its lease, unless the household again becomes a Qualifying Household upon recertification prior to the expiration of its lease. In any event, if the income category of a Qualifying Household upon

recertification is different from the previous income of the Qualifying Household, the Owner or Management Agent shall rent the next available Dwelling Unit to a Qualifying Household with an income level that will maintain the tenant income level mix set forth in Section 2.8. Also, Affordable Rent for a Dwelling Unit shall increase or decrease in accordance with increases or decreases in the income level of the Qualifying Household occupying such Dwelling Unit, but not more than one time every twelve (12) months pursuant to an annual recertification in accordance with Section 2.9.2 and subject to Owner's obligation to maintain the tenant income level mix set forth in Section 2.8 at all times. While the CTCAC Regulatory Agreement is in effect nothing in this Section 2.9.3 shall require the Owner or Management Agent to take any action in violation of Title 26 of the United States Code, Subchapter A, Part IV, Section 42 concerning households whose incomes increase during their occupancy of the Project.

2.9.4 The Owner shall maintain on file all Income Certification Forms completed by applicants for occupancy of Dwelling Units and by Qualifying Households that occupied or are occupying Dwelling Units in accordance with Section 2.13.1 and shall provide copies of the rent roll and Income Certification Forms to the Commission with each Annual Report or within fifteen (15) days following Notice to the Owner requesting delivery of such information.

2.9.5 The Owner and each Qualifying Household occupying a Dwelling Unit shall permit the Commission to conduct inspections of the Property, the Project and each Dwelling Unit, from time-to-time, for purposes of verifying compliance with this Regulatory Agreement, upon fifteen (15) days prior written notice to the Owner.

2.9.6 The Owner shall submit its first Annual Report to the Commission on the March 31st immediately following the Occupancy Date. Thereafter, on each April 30 during the Term and within sixty (60) days following the expiration of the Term, the Owner shall submit an Annual Report to the Commission. The Commission shall maintain the confidentiality of the information contained in any Annual Report specifically relating to any particular Qualifying Household occupying a Dwelling Unit, to the extent reasonably allowed by Law, as determined by the Commission's general counsel.

2.10 Owner Covenant Regarding Lease of Dwelling Units. The Owner, for itself, its successors and assigns, covenants and agrees that, if any Dwelling Unit is rented or leased during the Term, the rental or lease of the Dwelling Unit shall be accomplished through a written lease agreement and all of the following restrictions shall apply:

2.10.1 A Qualifying Household shall be the record tenant and only occupant of the Dwelling Unit.

2.10.2 The Owner shall provide, upon request, a legible copy of this Regulatory Agreement to a prospective tenant of any Dwelling Unit, prior to entering into a lease with such tenant for any Dwelling Unit.

2.10.3 The lease for each Dwelling Unit shall expressly state that it is subject and subordinate to this Regulatory Agreement and shall incorporate each and every provision of this Regulatory Agreement, either expressly or by reference.

2.10.4 The lease for each Dwelling Unit shall be for a period of not less than twelve (12) months.

2.10.5 The lease for each Dwelling Unit shall not contain any of the following provisions:

(a) An agreement by the Qualifying Household to be sued, to admit guilt or to the entry of a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

(b) An agreement by the Qualifying Household that the Owner may take, hold or sell personal property of any member(s) of the Qualifying Household, without notice to the Qualifying Household and a court decision on the respective rights of the Owner and the member(s) of the Qualifying Household, other than an agreement by the Qualifying Household concerning disposition of personal property remaining in the Dwelling Unit after the Qualifying Household has moved out of the Dwelling Unit;

(c) An agreement by the Qualifying Household not to hold the Owner or its agents legally responsible for any action or failure to act, whether intentional or negligent;

(d) An agreement by the Qualifying Household that the Owner may institute a lawsuit, involving or affecting the Qualifying Household or any of the Qualifying Household's members, without notice to the Qualifying Household or any affected member;

(e) An agreement by the Qualifying Household that the Owner may evict the Qualifying Household or any of the Qualifying Household's members without instituting a civil court proceeding in which the Qualifying Household or any affected member of the Qualifying Household has an opportunity to present a defense, or before a court decision on the respective rights of the Owner and the Qualifying Household or any affected member of the Qualifying Household;

(f) An agreement by the Qualifying Household to waive any right to a trial by jury;

(g) An agreement by the Qualifying Household to waive the Qualifying Household's right to appeal or to otherwise challenge a court decision in connection with the lease;

(h) An agreement by the Qualifying Household to pay attorney's fees or other legal costs, even if the Qualifying Household wins in a court proceeding by the Owner against the Qualifying Household; provided, however, the Qualifying Household may be obligated to pay reasonable attorney's fees and other legal costs, if the Qualifying Household loses such a legal action;

(i) An agreement by the Qualifying Household to pay one (1) or more security deposits (or the equivalent) totaling in excess of the amount of one month's rent for such Dwelling Unit.

2.10.6 Each lease for a Dwelling Unit shall contain all of the following provisions:

(a) An agreement authorizing the Owner to immediately terminate the tenancy of a Qualifying Household occupying a Dwelling Unit, where one or more members of that Qualifying Household misrepresented any fact material to the qualification of such household as a Qualifying Household;

(b) An agreement providing that each Qualifying Household occupying a Dwelling Unit shall be subject to annual certification or recertification of income as a condition to continued occupancy of the Dwelling Unit;

(c) An agreement providing that each Qualifying Household occupying a Dwelling Unit may be subject to rental increases in accordance with this Regulatory Agreement; and

(d) Providing that the Owner will not discriminate on the basis of race, creed, color, gender, sexual orientation, national origin, ancestry, religion, marital status, age, disability or receipt of public assistance or housing assistance (including holders of certificates or vouchers under Title 24 Code of Federal Regulations Part 982-Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or comparable participation in a HOME tenant-based rental assistance program) in connection with rental of a Dwelling Unit, or in connection with the employment or application for employment of persons for operation and management of the Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.

2.10.7 The Owner shall not terminate the tenancy or refuse to renew the lease or rental agreement of a Qualifying Household except where: (i) the Qualifying Household has committed serious or repeated violations of the terms and conditions of the lease; (ii) except as otherwise provided in this Regulatory Agreement, the previously Qualifying Household is no longer a Qualifying Household; (iii) the Qualifying Household is in violation of applicable Federal, State, or local law; or (iv) there is other good cause. The Owner shall, in connection with termination of the tenancy of a Qualifying Household or a refusal to renew the lease or rental agreement of a Qualifying Household, serve written notice upon the Qualifying Household specifying the grounds for the action in accordance with all applicable Laws and at least sixty (60) days before the effective date of the termination of the tenancy.

2.11 Project Outreach; Tenant Selection Policies and Criteria. The Owner shall annually submit to Agency, on or before each July 1 during the Term, a plan for outreach and marketing of the Project to prospective Tenants. Each such plan shall be subject to the reasonable approval of Agency, through the Executive Director. The Owner shall also adopt written tenant selection policies and criteria that:

2.11.1 are consistent with the purpose of providing affordable rental housing for Qualifying Households at an Affordable Rent;

2.11.2 are reasonably related to tenant eligibility for Project occupancy and ability to perform the obligations of the lease for a Dwelling Unit;

2.11.3 subject to applicable fair housing laws, give reasonable preference and consideration to the housing needs of individuals that are involuntarily displaced by activities of the Commission;

2.11.4 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

2.11.5 give prompt written notice to any rejected applicant of the grounds for rejection;

2.11.6 provide for all of the Dwelling Units to be Available for occupancy on a continuous basis by Qualifying Households at an Affordable Rent;

2.11.7 do not give preference to any particular class or group of Persons in leasing or renting the Dwelling Units, except as provided in 2.11.3 and to the extent that a tenant must be a Qualifying Household;

2.11.8 provide that there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner 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, sublessees, subtenants, or vendees in the Property. Notwithstanding the immediately preceding sentence, with respect to familial status, this Section 2.11.8 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in this Section 2.11.8 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the Government Code shall apply to the first sentence of this Section 2.11.8. All deeds, leases or contracts made or entered into by the Owner as to Dwelling Units, the Project or the Property shall contain covenants prohibiting discrimination, as set forth in Health and Safety Code Section 33436(b).

2.11.9 provide for a statement in all advertisements, notices and signs for the availability of Dwelling Units for lease or rent to the effect that the Owner is an equal housing opportunity provider.

2.12 HOME Units. In addition to the other terms and conditions of this Regulatory Agreement, at least twenty percent (20%) of the HOME Units shall be occupied by Qualifying Households that are 30% Households and all of the HOME Units shall be subject to the requirements set forth in Exhibit "E" attached to this Regulatory Agreement.

2.13 Project Records Retention; Audit and Examination Rights.

2.13.1 **Retention of Project Records.** The Owner shall prepare and maintain and shall cause its Affiliates and Management Agent to prepare and maintain complete and accurate Project Records for all periods during the Term. The Owner shall, at all times during the Term and for a period of six (6) years following the end of the Term, maintain and cause to be maintained by its Affiliates and Management Agent, safe and intact, all of the Project Records. From time to time, upon request from the Commission, the Owner shall make all Project Records, whether in the custody or control of the Owner, its Affiliates or Management Agent, available to the Commission, the Commission's auditor, representative or agent for examination and copying at any reasonable time, on five (5) calendar days advance Notice. The Owner shall also provide the Commission any additional information concerning the Dwelling Units, the Project or the Property reasonably requested by the Commission.

2.13.2 **Audit Procedures.**

(a) The Commission may cause an audit of any and all Project Records by an independent auditor of the Commission's selection. The Commission shall preserve the confidentiality of information contained in the Project Records, to the extent permitted by Law, as determined by the Commission's general counsel.

(b) If the Owner fails to provide any Annual Report to the Commission, as and when required under Section 2.9.6, the Owner shall be in Default under this Regulatory Agreement. Notwithstanding any other provision of this Regulatory Agreement, if the Owner fails to deliver any Annual Report to the Commission, within ten (10) calendar days after Notice specifying such Default, the Commission shall have the right, in addition to any other rights or remedies the Commission may have under this Regulatory Agreement regarding such Default, to conduct an audit of any and all Project Records to attempt to identify the information that should have been provided by the Owner in such Annual Report. The Owner shall reimburse the Commission for the cost of any audit conducted pursuant to this Section 2.13.2(b), on Notice of such cost from the Commission. The Owner shall pay Default Interest to the Commission on the amount of any audit cost becoming due to the Commission from the Owner pursuant to this Section 2.13.2(b), that is not paid within fifteen (15) calendar days following Notice requesting such payment, from the date of such Notice until paid in full.

2.14 **Compliance.** The Owner shall, during the Term and at the Owner's sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

3. **PROJECT MANAGEMENT**

3.1 **Management.** The Owner and Management Agent shall operate the Project in a manner that will provide decent, safe and sanitary residential facilities to the occupants of the Project, will comply with all the provisions of this Regulatory Agreement, the DDA, any other applicable contract or agreement between the Commission and the Owner, any CTCAC Regulatory Agreement and all applicable Law. The Owner shall be responsible for management of the Project, including, without limitation, the selection of Qualifying Households, certification

and recertification of household size and income for Qualifying Households occupying all Dwelling Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Commission shall have no responsibility for the management or operation of the Project or the Property. The Project shall at all times be managed by an experienced Management Agent reasonably acceptable to Commission, with demonstrated ability to operate residential rental facilities similar to the Project in a manner that will provide decent, safe, and sanitary housing in a self-sufficient manner. For the purposes of this Regulatory Agreement, if the Owner directly performs the functions of the Management Agent by its employees or by means of a service contract with an Affiliate, Owner's role as the Management Agent shall be deemed approved by Commission. If the Management Agent is a Person other than the Owner or an Affiliate, the Owner shall submit for Commission's approval the identity of any proposed Management Agent, together with additional information relevant to the background, experience and financial condition of any proposed Management Agent, as reasonably requested by the Commission. If the proposed Management Agent meets the standard for a qualified Management Agent under this Regulatory Agreement, the Commission shall approve the proposed Management Agent by Notice to the Owner within thirty (30) days following the Commission's receipt of all requested information regarding such Management Agent, as provided for in the immediately preceding sentence. Unless the proposed Management Agent is disapproved by the Commission within such thirty (30) day period, the Management Agent shall be deemed approved by the Commission.

3.1.1 **Performance Review.** Upon Notice from the Commission, the Owner shall, with the participation of the Commission, periodically review the management practices and financial status of the Project and the Management Agent. The Commission shall not request such periodic review more frequently than twice each calendar year. The purpose of each periodic review will be to enable the Commission to determine whether or not the Project is being operated, maintained, and managed in accordance with the requirements and standards of this Regulatory Agreement, the DDA and all applicable Law.

3.1.2 **Replacement of Management Agent.** Any contract for the operation or management of the Project entered into by the Owner with a Management Agent shall provide that the contract shall have a term of no more than one (1) calendar year and that the contract is subject to the provisions of this Regulatory Agreement. If the Project is not being operated and managed in accordance with the requirements and standards of this Regulatory Agreement, the DDA, and all applicable Law, the Owner shall remove the Management Agent and replace the Management Agent with a different Management Agent approved by the Commission, pursuant to Section 3.1. The Owner's failure to remove and replace the Management Agent in any such circumstance shall constitute a Default by the Owner under this Regulatory Agreement.

3.2 **Capital Replacement Account.** Owner shall establish the Capital Replacement Account by depositing the amount of [TO BE DETERMINED] into the account within thirty (30) days following closing of the Permanent Loan for the Project or such earlier time as required by the Institutional Lender providing the Permanent Loan. Each calendar month thereafter during the Term, Owner shall deposit into the Capital Replacement Account an amount of at least [TO BE DETERMINED] per Dwelling Unit increased annually by multiplying such [TO BE DETERMINED] amount times the CPI Adjustment Factor. To the extent that the Institutional Lender providing the Permanent Loan requires Owner to maintain a reserve fund or account for

any or all of the same purposes as the Capital Replacement Account, Agency will allow Owner to credit any funds actually reserved for any or all of the same purposes pursuant to the requirements of the Institutional Lender providing the Permanent Loan against Owner's obligation to make deposits into the Capital Replacement Account, provided that Owner provides all information and performs all acts required pursuant to this Section 3.2 for the benefit of Agency regarding such reserve fund or account maintained pursuant to the requirements of the Institutional Lender providing the Permanent Loan.

3.2.1 **Use of Account.** Owner shall only withdraw funds from the Capital Replacement Account to pay for the reasonable costs of Capital Improvements that Owner may deem reasonably necessary for maintenance and repair of the Project consistent with this Regulatory Agreement.

3.2.2 **Documentation.** Annually or more frequently at Commission's request, but no more frequently than quarterly, Owner shall document the Capital Improvements made and associated costs paid during the preceding period. Owner shall maintain and shall provide as requested documentation showing the quantity and price of items purchased, price of materials and the cost of contracted labor or other services incurred in connection with such Capital Improvements, and such other items as Commission may reasonably request. Unless such cost has been approved by Commission in accordance with Section 3.2.3, if the cost of a Capital Improvement is anticipated to exceed Five Thousand Dollars (\$5,000) per year, Owner shall inform Commission and supply Commission with reasonable documentation concerning the need for and cost of the anticipated Capital Improvements.

3.2.3 **Withdrawals from Capital Replacement Account.** On an annual basis, Owner shall notify Commission of the anticipated cash requirements that will need to be withdrawn from the Capital Replacement Account. Amounts so budgeted and approved by Commission may be withdrawn by Owner from the indicated Capital Replacement Account without further Commission approval. Other withdrawals for unbudgeted, unanticipated or emergency Project expenditures or for repairs required by the Institutional Lender providing the Permanent Loan may be withdrawn by Owner without prior Commission approval, but Owner shall notify Commission in writing within ten (10) calendar days after each such withdrawal. All amounts so withdrawn by Owner shall be expended for Capital Improvements to the Project and in accordance with this Regulatory Agreement. Any lack of funds in the Capital Replacement Account shall not in any way relieve the Owner from any obligation to undertake any necessary or advisable Capital Improvements to the Project.

3.2.4 **Interest Earned on Funds in the Capital Replacement Account.** Any interest or other earnings from sums deposited into the Capital Replacement Account shall be retained in and added to the balance of the Capital Replacement Account.

3.2.5 **Capital Needs Assessment.** Owner shall deliver to Commission a capital needs assessment ("CNA") for Commission's approval between the ninth (9th) anniversary of the date of the issuance of a Completion Certificate for the Project and the tenth (10th) anniversary of the date of the issuance of a Completion Certificate for the Project. Thereafter, Owner shall deliver a CNA to Commission for Commission's approval between the fourth (4th) anniversary of the date of the delivery of the most recent CNA and the fifth (5th)

anniversary of the date of the delivery of the most recent CNA. Each CNA shall include an analysis of Owner's actual expenditures for Capital Improvements compared to the most recently approved CNA, Owner's original operating budget and its then-current operating budget. Each CNA shall include a ten (10) year assessment or analysis of replacement reserve requirements for Capital Improvements for the Project prepared by a qualified Person in accordance with reasonable and customary standards for similar residential rental projects.

3.3 Operating Reserve. Owner shall (or shall cause the Management Agent to) establish the Operating Reserve by depositing One Hundred Six Thousand Dollars (\$106,000) into the Operating Reserve within thirty (30) days following the close of the Permanent Loan for the Property. Interest earned on funds in the Operating Reserve shall remain in the Operating Reserve. Owner shall maintain the balance of the Operating Reserve at an amount equal to or greater than Fifty Thousand Dollars (\$50,000) ("**Minimum Balance**"). An equal, verified operating reserve requirement of any Permitted Lender may be used as a substitute. Owner shall provide to the Commission, at the same times and in the same manner as required for the submittal of the Annual Report, evidence reasonably satisfactory to the Executive Director of compliance with this Section 3.3. The Operating Reserve shall be used solely to cover shortfalls between Gross Income and actual Project operating expenses. Owner shall not make any disbursements from the Operating Reserve without the prior written consent of the Executive Director. After making any withdrawal from the Operating Reserve, Owner shall replenish the Operating Reserve to the Minimum Balance on the immediately following January 1. If the Operating Reserve cannot be replenished to the Minimum Balance through a single deposit, Owner shall develop a plan for restoring the required Minimum Balance, subject to the review and approval of such plan by the Commission. The balance of the Operating Reserve shall be transferred to the Capital Replacement Account on or after the later of: (i) the date that Project revenues achieve a minimum annual debt coverage ratio of 1.15 to 1.00 for three (3) consecutive years after the close of the Permanent Loan; or (ii) such date as required by either the Institutional Lender making the Permanent Loan or the Tax Credit Investor. Upon transfer of the balance of the Operating Reserve to the Capital Replacement Account, the requirement to maintain the Operating Reserve shall be terminated and of no further force or effect.

3.4 Minimum Reserve Requirement. Notwithstanding any other provision of this Regulatory Agreement to the contrary, the sum of the balances of the Capital Replacement Account and the Operating Reserve shall never total less than Fifty Thousand Dollars (\$50,000) and Owner agrees to maintain such minimum balance(s). Notwithstanding any other provision of this Regulatory Agreement to the contrary, following transfer of the balance of the Operating Reserve to the Capital Replacement Account and termination of the requirement to maintain the Operating Reserve, the Owner shall maintain a minimum balance in the Capital Replacement Account of Fifty Thousand Dollars (\$50,000).

3.5 Insurance.

3.5.1 **Owner to Insure.** To protect the Commission Parties against all insurable Claims resulting from the actions of Owner or the Management Agent in connection with this Regulatory Agreement, the Property or the Project, Owner shall maintain, at the sole cost and expense of Owner, the following insurance (or its then reasonably available equivalent):

(a) Liability Insurance; (b) Property Insurance; (c) Automobile Liability Insurance; (d) Builder's Risk Insurance (regarding any Construction); and (d) Workers Compensation Insurance.

3.5.2 **Nature of Insurance Program.** All Liability Insurance, Property Insurance, Builder's Risk Insurance and Automobile Liability Insurance policies this Regulatory Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State. The Owner may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (1) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Regulatory Agreement; and (2) such policy otherwise complies with the requirements of this Regulatory Agreement.

3.5.3 **Policy Requirements and Endorsements.** All insurance policies required by this Regulatory Agreement shall contain (by endorsement or otherwise) the following provisions:

(a) *Insured.* Liability Insurance and Automobile Liability Insurance policies shall name the Commission Parties as "additional insured." Property Insurance and Builders Risk Insurance policies shall name the Commission as a "loss payee." The coverage afforded to the Commission Parties shall be at least as broad as that afforded to Owner regarding the Property and the Project and may not contain any terms, conditions, exclusions or limitations applicable to the Commission Parties that do not apply to Owner.

(b) *Primary Coverage.* Any insurance or self-insurance maintained by the Commission Parties shall be excess of all insurance required under this Regulatory Agreement and shall not contribute with any insurance required by this Regulatory Agreement.

(c) *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for the Owner's indemnity obligations under this Regulatory Agreement. The Owner's obtaining or failure to obtain such contractual liability coverage shall not relieve the Owner from nor satisfy any indemnity obligation of the Owner under this Regulatory Agreement.

(d) *Notice to Commission.* Each insurance carrier shall give the Commission no less than thirty (30) calendar days' advance written notice of any cancellation or non-renewal of any insurance policy required by this Regulatory Agreement. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Commission Parties. The Owner shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy.

(e) *Deliveries to Commission.* Evidence of Owner's maintenance of all insurance policies required by this Regulatory Agreement shall be delivered to the Commission on the date of this Regulatory Agreement. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Owner shall deliver to the Commission evidence of Owner's maintenance of all insurance this Regulatory Agreement requires. Each insurance policy required by this Regulatory Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to Commission by certified mail, return receipt requested; provided; however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Commission Parties pursuant to this Regulatory Agreement.

(f) *Waiver of Certain Claims.* Owner shall cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Regulatory Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the Commission Parties, if not already in the policy. To the extent that the Owner obtains insurance with a Waiver of Subrogation, the Owner and the Commission release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to or in satisfaction of the provisions of this Regulatory Agreement.

(g) *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage this Regulatory Agreement requires are adequate or sufficient.

(h) *No Claims Made Coverage.* None of the insurance coverage required under this Regulatory Agreement may be written on a claims-made basis.

(i) *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Owner in satisfaction of the requirements of this Regulatory Agreement shall be fully paid for and non-assessable. However, Owner's policies may be subject to insurer audits.

(j) *Commission Option to Obtain Coverage.* During the continuance of an Event of Default arising from the failure of Owner to carry any insurance required by this Regulatory Agreement, the Commission may, at its sole option, purchase any such required insurance coverage and the Commission shall be entitled to immediate payment from the Owner of any premiums and associated reasonable costs paid by the Commission for such insurance coverage. Any amount becoming due and payable to the Commission under this Section 3.5.3(j) that is not paid within fifteen (15) calendar days after written demand from the Commission for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the Usury Limit, whichever is less. Any election by the Commission to purchase or not to purchase insurance otherwise required by the terms of this Regulatory Agreement to be carried by Owner

shall not relieve the Owner of its obligation to obtain and maintain any insurance coverage required by this Regulatory Agreement.

(k) *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Owner and the Commission Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

(l) *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions under insurance policies required by this Regulatory Agreement shall be declared to and approved by Commission. Owner shall pay all such deductibles or self-insured retentions regarding the Commission Parties or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to the Commission Parties.

(m) *No Separate Insurance.* Owner shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Regulatory Agreement, unless the Commission is made an additional insured thereon, as required by this Regulatory Agreement.

3.5.4 Insurance Independent of Indemnification. The insurance requirements of this Regulatory Agreement are independent of the Owner's indemnification and other obligations under this Regulatory Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Owner's indemnification or other obligations under this Regulatory Agreement or to limit the Owner's liability under this Regulatory Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage. Further, the Owner's provision of the insurance required by this Regulatory Agreement shall not preclude the Commission from taking such other actions as are available to the Commission under any other provision of this Regulatory Agreement or otherwise at law or in equity.

3.5.5 No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Regulatory Agreement require are adequate or sufficient.

3.5.6 Insurance Review. Once each calendar year after the fifth (5th) anniversary of the date of issuance of a Completion Certificate for the Project, either Party may initiate a review of the insurance requirements under this Regulatory Agreement regarding whether or not any such insurance coverage needs to be increased to protect the interests of Commission or Owner. Such an insurance review may be commenced by one Party delivering Notice of the commencement of such a review to the other Party. The effective date of a Notice initiating an insurance review shall commence a sixty (60) calendar day period during which Commission and Owner shall negotiate in good faith regarding increasing the insurance coverage to be required under this Regulatory Agreement. Neither Party shall unreasonably withhold, condition or delay its consent to a requested increase in the insurance coverage required under this Regulatory Agreement.

3.6 Hazardous Substances.

3.6.1 **Restrictions.** The Owner shall not cause or permit to occur on, under or at the Project or the Property during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Project or the Property of any Hazardous Substance, unless both: (i) reasonably necessary and customary to construct, operate or maintain the Project for uses this Regulatory Agreement permits; and (ii) in compliance with all Environmental Laws.

3.6.2 **Compliance; Clean-Up.** The Owner shall, at the Owner's sole cost and expense: (a) comply with all Environmental Laws applicable to the Project and the Property and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under any Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify the Commission Parties against any Hazardous Substances Discharge or violation of Environmental Law, in accordance with Section 3.10. The Owner's obligations under this Section 3.6 shall not limit the Owner's rights against Third Persons (exclusive of the Commission Parties).

3.7 Restrictions on Change in Management or Control of Owner, Assignment and Transfer.

3.7.1 **Restrictions.** Owner acknowledges and agrees that the qualifications and identity of Owner are of particular importance and concern to Commission. Owner further acknowledges and agrees that Commission has relied and is relying on the specific qualifications and identity of Owner in entering into this Regulatory Agreement with Owner and that Commission would not have entered into this Regulatory Agreement but for the specific qualifications and identity of Owner. As a consequence, Transfers are permitted only as expressly provided in this Regulatory Agreement. Owner represents to Commission that it has not made and agrees that it will not create or permit to be made or created, any Transfer, other than a Permitted Transfer, either voluntarily, involuntarily or by operation of Law, without the prior written approval of Commission, which may be given, withheld or conditioned in the sole and absolute discretion of Commission. Any Transfer made in contravention of this Section 3.7 shall be voidable at the election of Commission. Owner hereby acknowledges and agrees that the restrictions on Transfers set forth in this Section 3.7 are reasonable.

3.7.2 **Delivery of Transfer Documents.** All instruments and other legal documents proposed to effect any proposed Transfer shall be submitted to Commission for review, at least thirty-five (35) calendar days prior to the proposed date of the Transfer, and the written approval, disapproval or conditions of Commission regarding the proposed Transfer shall be provided to Owner, within thirty (30) calendar days following Commission's receipt of all proposed Transfer documents. Owner agrees to reimburse Commission for all reasonable costs and expenses incurred by Commission in connection with its review of each proposed Transfer,

including all Legal Costs and other Third Person consultant fees and expenses, all costs and expenses in reviewing each individual Transfer request.

3.8 Casualty. If any casualty occurs to the Project during the Term, Owner shall, except as otherwise provided in this Section 3.8, Restore the Project with reasonable promptness. If the cost of Restoration of the Project (inclusive of any deductible or self-insured retention amounts) following a casualty exceeds the sum of the amount in the Operating Reserve, plus the amount in the Capital Replacement Account, plus the amount of insurance proceeds available to Owner for such Restoration (if Owner maintains both the minimum balance(s) required pursuant to Section 3.4 and all insurance required by this Regulatory Agreement), then Owner shall not be required to Restore the Project, but this Regulatory Agreement shall not be affected.

3.9 Condemnation. If any portion of the Project is taken by exercise of the power of eminent domain by a Government during the Term, then Owner shall Restore the remaining portions of the Project with reasonable promptness, to the extent practicable.

3.10 Indemnity.

3.10.1 **Owner Indemnity Obligations**. Owner shall Indemnify the Commission Parties against any Claim to the extent such Claim arises from any wrongful intentional act or negligence of the Owner Parties. Owner shall also Indemnify the Commission Parties against any and all of the following: (a) any Application made by or at Owner's request; (b) any agreements that Owner (or anyone claiming by or through Owner) makes with a Third Person regarding the Property or the Project; (c) any workers' compensation claim or determination relating to any employee of the Owner Parties or their contractors; (d) any Prevailing Wage Action relating to this Agreement or the Project; and (e) any Environmental Claim attributable to any action or failure to act by the Owner Parties.

3.10.2 **No Commission Liability**. During the Term: (a) the Owner is and shall be responsible for operation of the Property and the Project; and (b) the Commission shall not be liable for any injury or damage to any property (of the Owner or any other Person) or to any Person occurring on or about the Property or the Project, except to the extent caused by the Commission's wrongful intentional act or negligence.

3.10.3 **Independent of Insurance Obligations**. The Owner's indemnification obligations under this Regulatory Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Owner's insurance or other obligations under this Regulatory Agreement. Owner's obligation to Indemnify the Commission Parties under this Regulatory Agreement is independent of the Owner's insurance and other obligations under this Regulatory Agreement. Owner's compliance with its insurance obligations and other obligations under this Regulatory Agreement shall not in any way restrict, limit or modify Owner's indemnification obligations under this Regulatory Agreement and are independent of Owner's other obligations under this Regulatory Agreement.

3.10.4 **Survival of Indemnification and Defense Obligations**. The indemnity and defense obligations of the Owner under this Regulatory Agreement shall survive the expiration or earlier termination of this Regulatory Agreement, until any and all actual or

prospective Claims regarding any matter subject to an indemnity obligation under this Regulatory Agreement are fully, finally, absolutely and completely barred by the applicable statutes of limitations.

3.10.5 **Immediate Duty to Defend.** The duty to defend under this Regulatory Agreement includes Claims for which an Indemnitee may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee at any stage of any claim or suit within the scope of the Indemnitor's indemnity obligations under this Regulatory Agreement.

3.11 Indemnification Procedures. Wherever this Regulatory Agreement requires any Indemnitor to Indemnify any Indemnitee:

3.11.1 **Prompt Notice.** The Indemnitee shall promptly Notify the Indemnitor of any Claim.

3.11.2 **Selection of Counsel.** The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the Indemnitor shall defend the Claim, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the Claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such Claim.

3.11.3 **Cooperation.** The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

3.11.4 **Settlement.** The Indemnitor may only settle a Claim without the consent of the Indemnitee, if the Claim is within the policy limits of applicable insurance policies provided in satisfaction of the requirements of this Regulatory Agreement and such settlement procures a release of Indemnitee from the subject Claims, does not require Indemnitee to make any payment to the claimant and neither Indemnitee nor Indemnitor on behalf of Indemnitee admits any liability. Notwithstanding the immediately preceding sentence or any other provision of this Regulatory Agreement, the Indemnitee's consent shall be required to settle any and all Claims under Builders Risk Insurance.

3.11.5 **Insurance Proceeds.** The Indemnitor's obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

3.12 **No Limitation.** The Owner hereby acknowledges and agrees that the Owner's duties, obligations and liabilities under this Regulatory Agreement, including without limitation, under Sections 3.6 and Section 3.10, are in no way limited or otherwise affected by any information any of the Commission Parties may have concerning the Project or the Property and/or the presence within the Project or the Property of any Hazardous Substance, whether the Commission Parties obtained such information from the Owner, from their own investigations or from a Third Person.

3.13 **Maintenance.** The Owner, for itself, its successors and assigns, covenants and agrees that:

3.13.1 **Maintenance Standard.** The entirety of the Property and the Project shall be maintained by the Owner in good condition and repair and a neat, clean and orderly condition, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future by or with the consent of the Owner, as necessary to maintain the appearance and character of the Property, as improved with the Project. The Owner's obligation to maintain the Property and the Project described in the immediately preceding sentence shall include, without limitation, all of the following, at the Owner's sole cost and expense: (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) installing, operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) providing security services as reasonably indicated; (vii) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping; (viii) properly maintaining the windows, structural elements, and painted exterior surface areas of the Project in a clean and presentable manner; (ix) keeping the common areas of the Project and the Property free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the Property; (x) parking of any commercial motor vehicle in excess of 7,000 pounds gross weight anywhere on the Property on other than on a temporary basis; and (xi) the use of garage areas on the Property for purposes other than the parking of motor vehicles and the storage of personal possessions and mechanical equipment of the Owner or persons residing in Dwelling Units on the Property. The Owner's obligation to maintain the Project and the Property described in the two immediately preceding sentences is, collectively, referred to in this Regulatory Agreement as the "**Maintenance Standard.**" The Owner may contract with a maintenance contractor to provide

for performance of all or part of the duties and obligations of the Owner with respect to the maintenance of the Property or the Project; provided, however, that the Owner shall remain responsible and liable for the maintenance of the Property and the Project, at all times.

3.13.2 **Maintenance Deficiency.** If, at any time during the Term, there is an occurrence of an adverse condition on any area of the Property or the Project in contravention of the Maintenance Standard (each such occurrence being a “**Maintenance Deficiency**”), then the Commission may notify the Owner in writing of the Maintenance Deficiency. If the Owner fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following its receipt of notice of the Maintenance Deficiency, the Commission may conduct a public hearing, following transmittal of written notice of the hearing to the Owner, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether the Owner has failed to comply with the provisions of Section 3.13.1. If, upon the conclusion of the public hearing, the Commission finds that a Maintenance Deficiency exists and remains uncured, the Commission shall have the right to enter the Property and/or the Project and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the Commission to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the Commission for the abatement of a Maintenance Deficiency pursuant to this Section 3.13.2 shall be reimbursed to the Commission by the Owner within thirty (30) calendar days after written demand to the Owner for payment. If any amount becoming due to the Commission under this Section 3.13.2 is not paid within thirty (30) calendar days after written demand to the Owner for payment, the Owner shall also pay Default Interest on such amount until paid in full.

3.13.3 **Graffiti.** Graffiti, as defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Owner by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, the Commission shall have the right to enter the Property and/or the Project and remove the graffiti, with three (3) calendar days notice to Owner. Any sum expended by the Commission for the removal of graffiti pursuant to this Section 3.13.3, shall be limited to an amount not to exceed Five Hundred Dollars (\$500) per entry by the Commission and shall be reimbursed to the Commission by the Owner within thirty (30) calendar days after written demand to the Owner for payment. If any amount becoming due to the Commission for graffiti removal under this Section 3.13.3 is not paid within thirty (30) calendar days after written demand to the Owner for payment, the Owner shall also pay Default Interest in such amount, until paid in full.

3.14 No Commission Responsibility for Project. The Commission shall have no responsibility for the Construction, installation, management, operation or maintenance of the Project or the Property.

3.15 Only Permitted Encumbrances. Owner shall not record and shall not allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is not a

Permitted Encumbrance. Owner shall remove or cause to be removed (or providing title insurance in form and substance reasonably acceptable to Commission and issued by a title insurance company reasonably acceptable to Commission, insuring the priority of this Regulatory Agreement and the Commission Deed of Trust securing the Commission Loan as superior to such lien, with such title insurance being in the minimum amount of the outstanding principal and interest under the Commission Loan plus 125% of the amount of the lien claim or providing a statutory bond resulting in removal of such lien) any Prohibited Encumbrance made or recorded against the Property or shall assure the complete satisfaction of any such Prohibited Encumbrance to the satisfaction of the Commission, in the Commission's sole and absolute discretion. Prior to the Occupancy Date, Refinancing shall only be allowed with Commission's prior written consent, in Commission's sole and absolute discretion. The covenants of Owner set forth in this Section 3.15 regarding the placement of encumbrances on the Property shall run with the land of the Property and bind successive owners of the Property, until recordation (or deemed issuance) of the Completion Certificate for the Project.

3.16 Commission Right to Discharge Prohibited Encumbrances. After sixty (60) calendar days Notice to Owner of a Prohibited Encumbrance and provided that Owner has not caused such Encumbrance to be removed (including by providing title insurance in form and substance reasonably acceptable to Commission and issued by a title insurance company reasonably acceptable to Commission, insuring the priority of this Regulatory Agreement and the Commission Deed of Trust securing the Commission Loan as superior to such lien, with such title insurance being in the minimum amount of the outstanding principal and interest under the Commission Loan plus 125% of the amount of the lien claim or providing a statutory bond resulting in removal of such lien) during such period, the Commission shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property or the Project and receive reimbursement from Owner for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by the Commission to discharge a Prohibited Encumbrance that is not reimbursed to the Commission by Owner within thirty (30) calendar days following written demand for payment from the Commission shall accrue Default Interest, until paid in full. Nothing in this Section 3.16, shall require Owner to pay or make provisions for the payment of any tax, assessment, lien or charge that Owner is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject all or any portion of the Property to forfeiture or sale.

3.17 Rights of Permitted Lender and Commission Regarding Permitted Security Instruments.

3.17.1 **Notice of Liens.** The Owner shall promptly Notify the Commission of any Security Instrument or lien asserted against or attached to all or any portion of the Project or the Property, whether by voluntary act of Owner or otherwise; provided, however, that no Notice of filing of preliminary notices or mechanic's liens need be given by Owner to the Commission, prior to suit being filed to foreclose any such mechanic's lien.

3.17.2 **Notice of Default to Permitted Lenders.** Whenever the Commission delivers any Notice of Default to Owner under this Regulatory Agreement, the Commission shall send a copy of such Notice of Default to the Tax Credit Investor and each Permitted Lender holding a Permitted Security Instrument of which the Commission has received Notice and a

contact address for transmittal of such Notices. Any failure of Commission to deliver any Notice copy described in the immediately preceding sentence shall not affect any Notice given to Owner or any cure period allowed to Owner or any other Person under this Regulatory Agreement. A Permitted Lender or the Tax Credit Investor, after receiving a copy of any such Notice of Default, shall have the right at such Person's option, to commence the cure or remedy of any Default of Owner set forth in such Notice and to diligently and continuously proceed with such cure or remedy of such Default, within the cure period allowed to Owner under this Regulatory Agreement. The Commission shall accept such performance by a Permitted Lender or the Tax Credit Investor with the same force and effect as if furnished by Owner. If such Default can only be remedied or cured by a Permitted Lender or the Tax Credit Investor upon obtaining possession of the Property, the Commission shall allow the Permitted Lender or the Tax Credit Investor an opportunity to obtain possession with diligence and continuity through exercise of remedies under such Permitted Lender's Permitted Security Instrument or the Developer Partnership Agreement, respectively, and to remedy or cure such Default within ninety (90) days after obtaining possession of the Property. If the Default reasonably requires more than ninety (90) days to cure, however, then the time available to a Permitted Lender or the Tax Credit Investor to cure pursuant to this Section 3.17.2 shall be the reasonable time required to complete such cure, as long as the Permitted Lender or the Tax Credit Investor has commenced the cure of the Default within such ninety (90) day period and diligently pursues the cure to completion. During such extension of time, the Commission shall not terminate this Regulatory Agreement or exercise other remedies under this Regulatory Agreement by reason of such Default. All Owner Specific Defaults shall be deemed cured upon transfer of Owner's interest in the entire Property to the Permitted Lender, its assignee or nominee, or the Tax Credit Investor pursuant to exercise of remedies under the Permitted Lender's Permitted Security Instrument or the Developer Partnership Agreement, respectively. Nothing contained in this Regulatory Agreement shall be deemed to permit, authorize or require any Permitted Lender or the Tax Credit Investor to undertake or continue the Construction or installation of any portion of the Project (beyond the extent necessary to conserve or protect improvements or Construction already made).

3.17.3 No Termination of Permitted Security Instruments by Default. An Event of Default by Owner under this Regulatory Agreement shall not defeat or render invalid the lien of any Permitted Security Instrument made in good faith and for value as to all or any part of the Property, whether or not the Permitted Lender is subordinated to this Regulatory Agreement; but unless otherwise provided in this Regulatory Agreement, this Regulatory Agreement shall be binding and effective against any owner of the Property, whose title thereto is acquired pursuant to a Permitted Security Instrument or from a Person holding or benefiting from a Permitted Security Instrument.

3.17.4 Permitted Lender Rights Regarding Termination or Modification. No termination or modification of this Regulatory Agreement that materially affects the rights of a Permitted Lender under its Permitted Security Instrument shall be binding upon the Permitted Lender without its prior written consent.

3.17.5 Commission Right to Purchase Obligation. In any case where, after delivery of Notice of default of Owner under a Permitted Security Instrument, the Commission shall have the option, in the Commission's sole and absolute discretion, to purchase the rights of such Permitted Lender against or in the reference to Owner, the Property or Project secured by

such Permitted Security Instrument held by such Permitted Lender by payment to the Permitted Lender of the amount of the unpaid obligations secured by such Permitted Security Instrument and, if the ownership of the Property has vested in such Permitted Lender, the Commission, at its option, but not its obligation, shall be entitled to a conveyance from such Permitted Lender of any title or interest in the Property vested in such Permitted Lender to the Commission or the Commission's designee. If the Commission has not exercised its right to purchase the obligation secured by a Permitted Security Instrument pursuant to this Section 3.17.5 within forty-five (45) days following receipt of the notice of default under the Permitted Security Instrument, the affected Permitted Lender may demand by Notice that the Commission act to exercise or forego the right granted in this Section 3.17.5 by Notice to the Permitted Lender. If the Commission fails to exercise the right granted in this Section 3.17.5 by Notice to the Permitted Lender within forty-five (45) calendar days following the date of the Commission's receipt of such written demand from the Permitted Lender, the Commission shall be conclusively deemed to have waived its rights under this Section 3.17.5. If the Commission timely exercises its rights under this Section 3.17.5, the purchase transaction shall close within sixty (60) days after the date of such Permitted Lender's receipt of the Commission's Notice exercising such rights.

3.17.6 Commission Right to Cure Obligations. In the event of a default by Owner under any Permitted Security Instrument, the Commission may cure the default of Owner under the applicable Permitted Security Instrument, but is under no obligation to do so, prior to completion of any sale or foreclosure of all or any portion of the Property under the applicable Permitted Security Instrument. The Commission shall be entitled to reimbursement from Owner of all costs and expenses incurred by the Commission in curing any default of Owner under any Permitted Security Instrument, under demand. Any amount expended by the Commission to cure a default of Owner under any Permitted Security Instrument that is not reimbursed to the Commission by Owner within thirty (30) calendar days after Notice of such amount to Owner, shall accrue Default Interest, until paid in full.

3.17.7 Foreclosure of Permitted Security Instrument. Foreclosure of any Permitted Security Instrument, whether by judicial proceedings or by power of sale, or any conveyance by deed in lieu of foreclosure ("**Foreclosure Event**"), shall not require the consent of the Commission or constitute a Default under this Regulatory Agreement. Following any Foreclosure Event, the Commission shall recognize as "Owner" under this Regulatory Agreement any purchaser or other transferee of the entire Property that assumes each and all the obligations of Owner under this Regulatory Agreement pursuant to an assumption agreement reasonably satisfactory to the Commission. If any Permitted Lender or its nominee or assignee acquires Owner's title to the entire Property as a result of a Foreclosure Event, such Permitted Lender shall thereafter have the right to assign or transfer Owner's interest under this Regulatory Agreement to an assignee upon obtaining the Commission's consent with respect to such assignee, which consent shall not be unreasonably withheld or delayed. Upon such acquisition of title by a Permitted Lender, or the assignee or nominee of a Permitted Lender, or the purchaser from a Permitted Lender or such assignee or nominee, the Commission shall execute and deliver an amendment to this Regulatory Agreement with such Person, upon the written request of such Person given not later than one hundred twenty (120) days after such Person's acquisition of title to the entire Property. Such amended Regulatory Agreement shall be substantially the same in form and content as the provisions of this Regulatory Agreement, except as to the parties thereto, and the acknowledgment or elimination of any requirements that have been fulfilled prior to the

date of such amendment and shall have priority equal to the priority of this Regulatory Agreement. Nothing in this Regulatory Agreement shall be deemed to permit or authorize any Permitted Lender to devote all or any portion of the Property to any uses, or to construct any improvements thereon, other than those uses of the Project provided for or authorized by this Regulatory Agreement.

3.17.8 **Ancillary Agreements.** Following written request from a Permitted Lender, Commission will enter into such ancillary agreements reasonably requested by such Permitted Lender to make the rights and obligations set forth in this Section 3.17 direct agreements between Commission and such Permitted Lender. Owner shall cause each Permitted Lender to enter into such ancillary agreements reasonably requested by Commission to make the rights of Commission under this Section 3.17 direct agreements between Commission and each Permitted Lender.

4. COVENANTS RUN WITH THE LAND

4.1 Covenants to Run With the Land. The Owner and the Commission hereby declare their mutual specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Regulatory Agreement are part of a plan for the promotion and preservation of affordable rental housing within the territorial jurisdiction of the Commission and that each shall be deemed covenants running with the land of the Property, binding upon and each successor-in-interest of the Owner in the Project or the Property for the duration of the Term. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Regulatory Agreement touch and concern the land of the Property and each of them is expressly declared to be for the benefit and in favor of the Commission for the duration of the Term, regardless of whether the Commission is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. The Commission, in the event of any breach of this Regulatory Agreement, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in this Regulatory Agreement, at law or in equity. The Owner hereby expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the reservations and restrictions set forth in this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of the Property or the Project or any interest in the Property or the Project or any Dwelling Unit shall incorporate all of the provisions of this Regulatory Agreement, either expressly or by reference, and any contract, deed or other instrument transferring any estate or interest in the Property or the Project shall conclusively be deemed to have been executed, delivered and accepted subject to the agreements, covenants, conditions, reservations, and restrictions of this Regulatory Agreement, regardless of whether such agreements, covenants, conditions, reservations and restrictions are set forth in or referenced such contract, deed or other instrument.

5. REMEDIES

5.1 **Remedies.** If an Event of Default occurs, then the Commission shall, at the Commission's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Regulatory Agreement. The Commission's remedies shall include:

5.1.1 **Suits Before End of Term.** The Commission may sue the Owner for damages or other relief, from time to time, at the Commission's election, without terminating this Regulatory Agreement, including by mandamus or other suit, action or proceeding at law or in equity, to require the Owner to perform the covenants or agreements or observe the conditions or restrictions of this Regulatory Agreement, or enjoin any acts or things that may be unlawful or in violation of the rights of the Commission under this Regulatory Agreement; or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Regulatory Agreement.

5.1.2 **Receipt of Moneys.** No receipt of money by the Commission from the Owner after any Notice of Default shall affect any Notice previously given to the Owner, or waive the Commission's right to enforce payment or deposit of any amount payable or later falling due, or the Commission's right to enter the Project, it being agreed that after service of Notice of Default or the commencement of suit or proceedings, or after final order or judgment, the Commission may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the Owner's liability to the Commission.

5.1.3 **No Waiver.** No failure by the Commission to insist upon strict performance of any condition, covenant, agreement, restriction or reservation of this Regulatory Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any amount due or becoming due to the Commission during the continuance of any such Default, shall waive any such Default or such condition, covenant, agreement, restriction or reservation. No obligation of the Owner under this Regulatory Agreement or the DDA, and no Default, shall be modified, except by a written instrument executed by the Commission. No waiver of any Default shall modify this Regulatory Agreement or the DDA. Each and every covenant, agreement, condition, restriction and reservation of this Regulatory Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such condition, covenant, agreement, restriction or reservation of this Regulatory Agreement.

5.1.4 **Damages.** The Commission may recover from the Owner all damages the Commission incurs by reason of the Owner's Default and reimbursement of the Commission's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. The Commission may recover such damages at any time after the Owner's Default, including after the expiration of the Term. Notwithstanding any Law to the contrary, the Commission need not commence separate actions to enforce the Owner's obligations for each amount or payment not paid, or each month's accrual of damages and costs for the Owner's Default, but may bring and prosecute a single combined action for all such damages and costs.

Nothing in this Section 5.1.4 shall expand or change the rights of the Commission under the Developer Note.

5.1.5 **Injunction of Breaches.** Whether or not an Event of Default has occurred, the Commission may obtain a court order enjoining the Owner from continuing any Default or from committing any threatened Default. The Owner specifically and expressly acknowledges that damages would not constitute an adequate remedy to the Commission for any Non-Monetary Default.

5.2 Specific Enforcement. The Owner agrees that specific enforcement of the Owner's non-monetary obligations under this Regulatory Agreement is one of the reasons that the Commission entered into the DDA and that, if the Owner breaches any such obligation, potential monetary damages to the Commission, as well as to prospective Qualifying Households, would be difficult, if not impossible, to evaluate and quantify. Therefore, in addition to any other relief to which the Commission may be entitled as a consequence of the Owner's default under this Regulatory Agreement, the Owner agrees to the imposition of the remedy of specific performance against the Owner under this Regulatory Agreement.

5.3 Enforcement. The Commission or the City, as successor in interest to the Commission, shall have the power to enforce this Regulatory Agreement and no other Person shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of the Commission or the City or to compel the Commission or the City to enforce any provision of this Regulatory Agreement against the Owner, the Project, the Property or any Dwelling Unit. Further, pursuant to Health and Safety Code Section 33334.3(f)(7), this Regulatory Agreement shall be enforceable by the City, any resident of a Dwelling Unit, any resident association with members who reside in Dwelling Units, former residents of Dwelling Units who last resided in any such Dwelling Unit, applicants for occupancy of Dwelling Units and persons on an affordable housing waiting list, subject to the specific requirements of such law.

5.4 Termination by Agreement. Any provision of this Regulatory Agreement may be terminated upon written agreement between the Commission and the Owner, if the Commission in its sole and absolute discretion determines that such a termination will not adversely affect the affordable rental housing goals or requirements of the Commission.

6. GENERAL PROVISIONS

6.1 Relationship of Parties. Nothing contained in this Regulatory Agreement shall be interpreted or understood by any of the Parties, or by any Third Person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Commission and the Owner or the Owner's agents, employees or contractors. The Owner 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 any services required of them by the terms of this Regulatory Agreement regarding the Project or the Property. Except as otherwise expressly provided in this Regulatory Agreement, the Owner has the right to exercise full control of employment, direction, compensation and discharge of all Persons assisting the Owner in the development, operation or maintenance of the Project or the Property. The Owner shall be solely responsible for all matters relating to payment of its employees, including

compliance with tax withholding and all other Laws governing such employees. The Owner shall be solely responsible for its own acts and those of its agents and employees.

6.2 No Subordination. Subject to the provisions of Sections 3.17.3 and 4.1, the Owner acknowledges and agrees that this Regulatory Agreement shall, at all times and under all circumstances, be prior, paramount, and senior to any other non-statutory lien, encumbrance, interest or estate (whether recorded or not) relating to all or any part of the Project or the Property. Subject to the provisions of Sections 3.17.3 and 4.1, the Commission shall be under no obligation, under any circumstance or for any reason, to subordinate all or any part of this Regulatory Agreement to any lien, encumbrance, interest, estate or other obligation of the Owner to any lender or any other Person claiming a security or other interest in all or any part of the Project or the Property.

6.3 No Claims. Nothing contained in this Regulatory Agreement shall create or justify any claim against the Commission by any Person that the Owner may have employed or with whom the Owner 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 operation or maintenance of the Project or the Property.

6.4 Approvals.

6.4.1 Any approvals required from the Commission under this Regulatory Agreement shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided in this Regulatory Agreement. Wherever this Regulatory Agreement states that a Party's approval shall be "reasonable" or not unreasonably withheld: (a) such approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

6.4.2 Except as otherwise specifically provided in this Regulatory Agreement, whenever this Regulatory Agreement calls for approval by a Party of a proposed document to be submitted by the other Party, the receiving Party shall notify the other Party of its approval or disapproval of such document within thirty (30) calendar days after receipt of the proposed document. Unless otherwise provided in this Regulatory Agreement, a Party's failure to respond within such thirty (30) calendar day period shall be deemed the Party's approval. A Party shall provide specific reasons for any disapproval.

6.5 Warranty Against Payment of Consideration for Regulatory Agreement. Owner represents and warrants to the Commission that: (a) it has not employed or retained any Person to solicit or secure this Regulatory Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Owner and Third Persons to whom fees are paid for professional services related to planning, design or Construction of the Project or documentation of this Regulatory Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Owner or any of its agents, employees or representatives to any elected or appointed official or employee of either the

City or the Commission in an attempt to secure this Regulatory Agreement or favorable terms or conditions for this Regulatory Agreement. Breach of the representations or warranties of this Section 6.5 shall entitle the Commission to terminate this Regulatory Agreement upon seven (7) days Notice to the other Parties and Escrow Agent. Upon any such termination of this Regulatory Agreement, Owner shall immediately refund any payments made to or on behalf of Owner by the City or the Commission pursuant to this Regulatory Agreement or otherwise related to the Property, any Approval, or the Project, prior to the date of any such termination.

6.6 Non-liability of Commission Officials or Employees. No Commission Party shall be personally liable to the Owner, or any successor in interest to the Owner, in the event of any Default by the Commission under this Regulatory Agreement.

6.7 Governing Law. This Regulatory Agreement shall be governed by the laws of the State, without application of conflicts of laws principles.

6.8 Amendment. This Regulatory Agreement may be amended only by a written instrument executed by both the Owner and the Commission.

6.9 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Regulatory Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Regulatory Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Regulatory Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which govern all language in this Regulatory Agreement. The words "include" and "including" in this Regulatory Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Regulatory Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Regulatory Agreement, refers to such document as modified from time to time (except, at the Commission's option, any modification that violates this Regulatory Agreement), and includes all exhibits, schedules, and riders to such document. The word "or" in this Regulatory Agreement includes the word "and."

6.10 Attorney's Fees. In the event that a Party brings an action to enforce in this Regulatory Agreement or otherwise arising out of this Regulatory Agreement, the prevailing Party in such action shall be entitled to recover from the other Party Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such suit. For the purposes of this Regulatory Agreement, the words "reasonable attorneys' fees" in the case of the Commission, include the salaries, costs and overhead of the lawyers employed in the Office of the City Attorney of the City who are legal counsel to the Commission in such an action, as allocated on an hourly basis.

6.11 Severability. If any term or provision of this Regulatory Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Regulatory Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected

by such invalidity. All remaining provisions of this Regulatory Agreement shall be valid and be enforced to the fullest extent Law allows.

6.12 Time is of the Essence. Time is of the essence with respect to the performance of each term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.13 Unavoidable Delay; Extension of Time of Performance.

6.13.1 **Notice.** Subject to any specific provisions of this Regulatory Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Regulatory Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within five (5) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its commercially reasonable best efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

6.13.2 **Assumption of Economic Risks.** EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS REGULATORY AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS REGULATORY AGREEMENT. ANYTHING IN THIS REGULATORY AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS REGULATORY AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized
Representative(s) of Commission

Initials of Authorized
Representative(s) of Owner

6.14 Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs and sections of this Regulatory Agreement are for convenience and reference only and are not to be considered a part of this Regulatory Agreement and shall not in any way interpret, modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.15 Notices.

6.15.1 Any and all Notices sent by either Party to the other Party pursuant to or as required by this Regulatory Agreement shall be proper, if in writing and transmitted to the principal office of the Commission or the Owner, as applicable, as designated in Section 6.15.2, by one or more of the following methods: (i) messenger for immediate personal delivery, (ii) a nationally recognized overnight delivery service (i.e., Federal Express, United Parcel Service, etc.) or (iii) registered or certified United States mail, postage prepaid, return receipt requested. Such Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice, in accordance with this Section 6.15. Any such Notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States mail, as provided in this Section 6.15. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no notice was given, shall be deemed receipt of the Notice. Any attorney representing a Party may give any Notice on behalf of such Party.

6.15.2 The following are the authorized addresses for the submission of Notices to the Parties:

If to the Commission: Community Development Commission of the
City of Downey
11111 Brookshire Avenue
Downey, CA 92041
Attention: Executive Director

With a courtesy copy to: Community Development Commission of the
City of Downey
11111 Brookshire Avenue
Downey, CA 92041
Attention: City Attorney

If to the Owner: 9605 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730
Attention: Richard J. Whittingham, CFO

With a courtesy copy to: Edward A. Hopson, Esq.
655A North Mountain Avenue
Upland, CA 91786

6.16 Entire Agreement.

6.16.1 This Regulatory Agreement may be executed in counterpart originals, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Regulatory Agreement includes forty-five (45) pages and four (4) exhibits.

6.16.2 This Regulatory Agreement and the DDA constitute the entire understanding and integrate all of the terms, conditions, covenants, restrictions, reservations, terms, provisions and agreements of the Commission and Owner regarding the Property and the Project, and supersede all negotiations or previous agreements between the Commission and the Owner with respect to all or any part of the Property or the Project.

6.16.3 None of the terms, conditions, covenants, restrictions, reservations, terms, provisions or agreements set forth in this Regulatory Agreement shall be deemed to be merged with any deed conveying title to any estate or interest in the Property or the Project.

6.16.4 Signatures delivered by facsimile shall be binding as originals upon the Parties so signing and delivering; provided, however, that original signature(s) shall be required for documents to be recorded.

[Signatures On Following Page]

**SIGNATURE PAGE
TO
REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF
PROPERTY FOR AFFORDABLE HOUSING
(Verizon Building)**

IN WITNESS WHEREOF, the Owner and the Commission have caused this Regulatory Agreement to be signed, acknowledged and attested on their behalf by their duly authorized representatives, as set forth below:

COMMISSION:

COMMUNITY DEVELOPMENT
COMMISSION OF THE CITY OF
DOWNEY, a public body, corporate
and politic

By: _____
Gerald Caton
Executive Director

ATTEST:

By: _____
Commission Secretary

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: _____
Commission Counsel

OWNER:

[TO BE DETERMINED]

By: **[TO BE DETERMINED]**

By: **[TO BE DETERMINED]**

By _____
[TO BE DETERMINED]

[SIGNATURES OF PRINCIPALS MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT "A"
TO
REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF
PROPERTY FOR AFFORDABLE HOUSING
(Verizon Building)

Property Legal Description
[To be inserted]

**VERIZON PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-914**

THAT PORTION OF BLOCK 8 OF THE TRACT OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2, PAGE 434 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 8, SAID POINT BEING SOUTH 71°30'00" EAST 135.15 FEET FROM THE NORTHWESTERLY CORNER OF SAID BLOCK 8;

THENCE CONTINUING SOUTH 71°30'00" EAST 149.85 FEET;

THENCE SOUTH 18°30'00" WEST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF A 20 FOOT WIDE ALLEY;

THENCE NORTH 71°30'00" WEST 149.85 FEET ALONG THE NORTHERLY LINE OF SAID ALLEY;

THENCE NORTH 18°30'00" EAST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID BLOCK 8, SAID POINT BEING THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 29.00 FEET.

SAID PARCEL IS BEING MORE PARTICULARLY DESCRIBED AS PARCEL 1 AS DEPICTED IN EXHIBIT "A" OF CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT NO. 08-38 RECORDED JUNE 02, 2008, INSTRUMENT NO. 20080966138, OF OFFICIAL RECORDS.

**CITY-OWNED PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-902**

THAT PORTION OF BLOCK 8 OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, AS PER MAP RECORDED IN BOOK 2, PAGE 434 MISCELLANEOUS RECORDS; IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID BLOCK 8, DISTANT THEREON 95 FEET EASTERLY ALONG SAID LINE FROM THE NORTHWEST CORNER OF SAID BLOCK 8; THENCE SOUTHERLY PARALLELL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET; THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINE OF SAID BLOCK, 40.15 FEET; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET TO SAID NORTHERLY LINE; THENCE WESTERLY ALONG SAID NORTHERLY LINE, 40.15 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"
TO
REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF
PROPERTY FOR AFFORDABLE HOUSING
(Verizon Building)

Income Certification Form

[Attached behind this cover page]

Exhibit -B-

Income Certification Form

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing "Adjusted Income" in accordance with the method set forth in the United States Department of Housing and Urban Development ("HUD") Regulations at United States Code of Federal Regulations, Title 24, Part 5, Section 5.611. You should make certain that this form is at all times up-to-date with the HUD Regulations.

Re: **[Address of Dwelling Unit]**

1. Members of Household. I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

Names of Members of Household	Relationship to Head of Household	Date of Birth	Social Security Number	Place of Employment
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

2. Adjusted Income Computation. The total anticipated annual income, calculated in accordance with the provisions of this Section 2, of all persons over the age of 18 years listed in Section 1 for the 12-month period beginning the date that (i) I/we plan to move into a unit or (ii) the date of this Certification, whichever is later, is \$ _____.

(a) Annual income means all amounts, monetary or not, that:

(1) Are paid to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Are not specifically excluded in paragraph (c) of this Section 2.

(4) Are derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this Section 2);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, workers compensation and severance pay (except as provided in paragraph (c)(3) of this Section 2);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 C.F.R. 260.31; and

(B) Are not otherwise excluded under paragraph (c) of this Section 2.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this Section 2).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this Section 2);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 24 C.F.R. 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the Owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 C.F.R. 5.609(c) apply.

3. Capital Asset and Savings Information. Do the persons whose income or contributions are included in Section 2 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)? ___ Yes ___ No; or

(b) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value? ___Yes ___No

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000? ___Yes ___No

(d) If the answer to (c) is yes, state:

(1) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: \$ _____; and

(2) the amount of such income, if any, that was included in Section 2 above: \$ _____

4. Full-Time Student Information.

(a) Are all of the individuals who propose to reside in the unit full-time students*? ___Yes ___No

*A full-time student is an individual enrolled as a full-time student during each of five calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, is at least one of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return? ___Yes ___No

5. No Relationship With Owner. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner or owns, directly or indirectly, any interest in the ownership. For purposes of this section, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member, and ownership, direct or indirect, by a partner of the individual.

6. Certification of Accuracy of Information. This certificate is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth herein is true, correct and complete and, based upon information I/we deem reliable and that the statement of total anticipated income contained in this Section 2 is reasonable and based upon such investigation as the undersigned deemed necessary. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate

my/our occupancy of the unit by institution of an action for eviction or other appropriate action or proceedings. I/we will assist the Owner in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

7. Housing Issuer Statistical Information (Optional--will be used for reporting purposes only):

Marital Status: _____

Race (Head of Household)

White _____ Asian _____ Hispanic _____
African-American _____ Native American _____ Other _____

Physical Disability: Yes _____ No _____

I/we declare under penalty of perjury under the laws of the United States of America and the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, ____ in the County of Los Angeles, California.

Applicant

Applicant

[Signature of all persons over the age of 18 years listed in Section 2 above required]

FOR COMPLETION BY OWNER ONLY:

8. Calculation of eligible income:

(a) Enter amount entered for entire household in Section 2: \$ _____

(b) (1) If answer to Section 3(c) is "yes," enter the total amount entered in paragraph 3(d)(1), subtract from that figure the amount entered in 3(d)(2) and enter the remaining balance (\$ _____);

(2) Multiply the amount entered in Section 8(b)(1) times the current passbook savings rate to determine what the total annual earnings on the amount in Section 8(b)(1) would be if invested in passbook savings (\$ _____), subtract from that figure the amount entered in Section 8(b)(1) and enter the remaining balance

(3) Enter at right the greater of the amount calculated under (1) or (2) above: \$ _____;

(c) TOTAL ELIGIBLE INCOME
(Line 8(a) plus line 8(b)(3)): \$ _____

9. The amount entered in Line 8(c):

_____ Qualifies the applicant(s) as a **[insert income category of Qualifying Household.]**

_____ Does not qualify the applicant(s) as a Qualifying Household.

10. Number of unit assigned: _____

Bedroom Size: _____ Rent: \$ _____ monthly/annually

11. The unit specified in Section 10 above [was/was not] last occupied for a period of, at least, 31 consecutive days by persons whose aggregate anticipated annual income, as certified in the above manner upon their initial occupancy of the unit, qualified them as a Qualifying Household that was a _____ Household (Extremely Low Income/Very Low Income/Low Income/Moderate Income).

EXHIBIT "C"
TO
REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF
PROPERTY FOR AFFORDABLE HOUSING
(Verizon Building)

Annual Report

[Attached behind this cover page]

Annual Report

The undersigned, _____, as the authorized representative of [TO BE DETERMINED], L.P., a California limited partnership ("Owner"), has read and is thoroughly familiar with the provisions of the various documents associated with the financial assistance provided by the Community Development Commission of the City of Downey ("Commission"), as established in numerous documents including that certain Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions Restricting Use of Property for Affordable Housing (Verizon Building), dated as of _____ ("Regulatory Agreement"), between the Owner and the Commission. All terms indicated to be defined terms by initial capitalization in this report that are not specifically defined in this report shall have the meanings given to the same terms, respectively, in the Regulatory Agreement.

As of the date of this Annual Report, the following percentage of completed Dwelling Units in the Project are (i) occupied by Qualifying Households or (ii) are currently vacant and are Available for such occupancy and have been held continuously Available for such occupancy since the later of: (y) the date a Certificate of Occupancy was issued for the Dwelling Unit or (z) a Qualifying Household vacated such Dwelling Unit, as indicated:

Number of Dwelling Units occupied by 30% Households: _____

Number of Dwelling Units occupied by 40% Households: _____

Number of Dwelling Units occupied by 50% Households: _____

Number of Dwelling Units occupied by 60% Households: _____

Number of HOME Units occupied by 30% Households: _____

Number of Vacant Dwelling Units: _____

Number of Qualifying Households who commenced occupancy during the preceding reporting period: _____

Attached is a separate sheet ("Occupancy Summary") listing, among other items, the identities of all occupants of each Dwelling Unit, the rent paid for each Dwelling Unit, the income level of the household occupying each Dwelling Unit and whether or not each Dwelling Unit is a HOME Unit. The information contained in the Occupancy Summary is true and accurate based on information submitted to the Owner and is certified in writing as true and accurate under penalty of perjury under the laws of the United States and the laws of the State of California by each tenant.

The undersigned hereby certifies that (1) a review of the activities of the Owner during such reporting period and of the Owner's performance under the Regulatory Agreement has been made under the supervision of the undersigned; and (2) to the best of the knowledge of the undersigned, based on the review described in clause (1) the Owner is not in default under any of the terms and provisions of the Regulatory Agreement

Dated: _____

OWNER

[TO BE DETERMINED]

OCCUPANCY SUMMARY

Total Number of Dwelling Units in the Project: _____

Total Number of Dwelling Units occupied by Qualifying Households: _____

Total Number of Dwelling Units Available for rent to Qualifying Households: _____

ATTACHED IS THE FOLLOWING INFORMATION:

- A. Resident and rental information for each occupied Dwelling Unit in the Project, including whether or not the Dwelling Unit is a HOME Unit..
- B. An Income Certification Form for all new Qualifying Households who have moved into a Dwelling Unit in the Project since the filing of the last Occupancy Summary.

The information in this occupancy summary is true and correct to the best of the undersigned's knowledge and belief.

Dated: _____

OWNER

[TO BE DETERMINED]

EXHIBIT "D"
TO
REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF
PROPERTY FOR AFFORDABLE HOUSING
(Verizon Building)

HOME Units

[Attached behind this cover page]

EXHIBIT "E"
TO
REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF
PROPERTY FOR AFFORDABLE HOUSING
(Verizon Building)

Additional HOME Unit Restrictions

1. All rents proposed by Owner for HOME Units must be submitted to the Executive Director and approved in writing by the Executive Director prior to such rents going into effect.
2. The income of each Qualifying Household occupying a HOME Unit shall initially be determined in accordance with Title 24 Code of Federal Regulations Section 92.203(a)(1)(i). Each year following the initial determination of the income of a Qualifying Household occupying a HOME Unit, Owner shall re-examine the Qualifying Household's annual income in accordance with one of the options set forth in Title 24 Code of Federal Regulations Section 92.203, as selected by the Executive Director in the Executive Director's sole and absolute discretion.
3. If at any time during the Term, any of the HOME Units fail to meet the affordability requirements set forth in Title 24 Code of Federal Regulations Section 92.252 or Section 92.254, as applicable, Owner shall immediately repay to Commission all HOME funds loaned to Owner by Commission in immediately available funds.
4. The HOME Units shall meet the housing quality standards set forth in Title 24 Code of Federal Regulations Section 982.401.
5. The HOME Units shall comply with the requirements set forth in Title 24 Code of Federal Regulations Part 92, Subpart F, as applicable.
6. The HOME Units shall comply with the property standards set forth in Title 24 Code of Federal Regulations Section 92.251 and the lead-based paint requirements set forth in Title 24 Part 35, Subparts A, B, J, K, M and R.
7. With respect to the HOME Units, Owner shall comply with the Commission's adopted affirmative marketing requirements.
8. Rental of the HOME Units shall be in compliance with the federal non-discrimination standards established in Title 24 Code of Federal Regulations Section 92.350.
9. Any displacement, relocation or acquisition regarding the HOME Units shall be consistent with the requirements set forth in Title 24 Code of Federal Regulations Section 92.353.

10. With respect to the HOME Units, Owner shall comply with the labor requirements set forth in Title 24 Code of Federal Regulations Section 92.354.

11. With respect to the HOME Units, Owner shall at all times comply with the conflict of interest provisions in Title 24 Code of Federal Regulations Section 92.356(f).

**EXHIBIT E
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Developer Note

[Attached Behind This Page]

FORM OF DEVELOPER PROMISSORY NOTE SECURED BY DEED OF TRUST

Principal Amount: Not to exceed [TO BE DETERMINED] Dollars (\$[TBD]) **Date of Note:** [TO BE DETERMINED]

Borrower: [TO BE DETERMINED], a California limited partnership **Lender:** Community Development Commission of the City of Downey, a public body, corporate and politic

Maturity Date: As stated in Section 6 (below) **Interest Rate:** 3% Simple Interest

FOR VALUE RECEIVED, the undersigned [TO BE DETERMINED], a California limited partnership, (“**Borrower**”), whose address is [TO BE DETERMINED], promises to pay, at the times stated in this Note, to the order of the Community Development Commission of the City of Downey, a public body, corporate and politic (“**Lender**”), a principal amount not to exceed [TO BE DETERMINED], together with interest on the unpaid principal balance of this Note from time to time outstanding at an annual rate as set forth in Section 4 from the date of advance until fully paid at 11111 Brookshire Avenue, Downey, California 92041, or at such other place as Lender may designate to Borrower in writing.

1. **Reference to Loan Documents.** This Note is made by Borrower to the order of Lender pursuant to that certain Disposition and Development Agreement (Verizon Building), dated as of [TO BE DETERMINED], by and between Borrower and Lender (“**Agreement**”). In the event of any conflict between the terms of this Note and the terms of the Agreement, the terms of the Agreement shall control. Additionally, Borrower and Lender entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants, Conditions and Restrictions Restricting use of Property for Affordable Housing (Verizon Building), dated as of [TO BE DETERMINED] (“**Regulatory Agreement**”).

2. **Definitions.** For the purposes of this Note, the following terms shall be defined as follows:

(a) **AMI.** The then current area median income for the County of Los Angeles, California, Metropolitan Statistical Area, as determined by and published by the California Department of Housing and Community Development (HCD) in the California Code of Regulations or if no longer determined by HCD, then as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(b) **Annual Project Revenue.** All amounts received by Borrower from the use or occupancy of or the right to use or occupy all or any portion of the Property or the Project including all revenue from vending machines, laundry facilities or other amenities of the Project, and all other revenue, income and receipts of every kind that accrue or are accounted for on an

accrual basis in conformity with generally accepted accounting principles, exclusive of any security deposits (unless and until such deposits are payable to Borrower), interest on security deposits, interest on the Operating Reserve or the Capital Replacement Reserve Account (each as defined in the Regulatory Agreement) when such interest is deposited into the account on which it is earned and reserved exclusively for use in accordance with the purposes of such account pursuant to the Regulatory Agreement, insurance or condemnation proceeds (except as paid to Borrower for loss of rents), or the proceeds from the refinancing of any obligation secured by the Property or Project (as defined in the Agreement) that do not exceed the payoff amount of the obligation being refinanced. Annual Project Revenues shall be determined on a cash basis.

(c) Asset Management Fee. A fee payable to either the Tax Credit Investor or its designated Affiliate in the amount of Five Thousand Dollars (\$5,000) per year. The amount of the Asset Management Fee shall be increased annually by a percentage equal to the percentage annual increase in the AMI (if any).

(d) Debt Service. Payments made in a calendar year towards obligations secured by Permitted Security Instruments pursuant to the Agreement, but excluding payments made or to be made under this Note.

(e) Deferred Developer Fee. Any Deferred Developer Fee (as defined in the Agreement) allowed pursuant to the Agreement.

(f) Gross Consideration. The sum of all of the following: (a) the gross amount of cash paid, or to be paid, (b) the fair market value of other property transferred, or to be transferred, (c) the outstanding amount of any liability assumed, or to be assumed, by the transferee or to which the property interest is subject immediately before and after the Transfer or, (d) in the case of a Transfer without any of the previously described forms of consideration, the fair market value of the estate or interest in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer.

(g) Loan Documents. Collectively, this Note, the Agreement, the Regulatory Agreement and the Commission Deed of Trust.

(h) Maximum Price. The sum of: (i) the principal amount of outstanding indebtedness secured by Permitted Security Instruments (other than indebtedness incurred within the 5-year period ending on the date of the closing of the real estate transfer transaction); and (ii) all Federal, State, and local taxes attributable to the real estate transfer (except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii)). In no event shall the Maximum Price exceed the "Minimum Purchase Price" as defined in United States Internal Revenue Code Section 42(i)(7)(B).

(i) Net Refinancing Proceeds. The proceeds of any Refinancing that are actually disbursed to or for the benefit of Borrower, other than to payoff all or part of a pre-existing loan to the Borrower regarding the Project that is secured by a Permitted Security Instrument.

(j) Operating Expenses. Actual, reasonable and customary (for comparable affordable rental housing developments in Los Angeles County) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a calendar year, including: (i) the cost of utilities supplied to and used for the Property and not paid by the tenants of the Property, including trash removal, electricity, water, sewer and gas; (ii) the cost of all insurance required for the Property to satisfy the requirements imposed by a Permitted Lender and/or the Regulatory Agreement; (iii) ad valorem tax and assessment payments, CFD payments and landscape and lighting maintenance district payments applicable to the Property; (iv) maintenance and repair expenses for services, material and labor, including painting, cleaning, pest control, gardening, rubbish removal and graffiti removal; (v) charges for public services such as sewer charges, license and permit fees; (vi) advertising, marketing and promotion costs; (vii) leasing commissions; (viii) accounting, audit and legal expenses incurred in operation of the Property; (ix) the allocable share of expenses of the Property for maintenance of roads and use of shared facilities; (x) salaries, wages, rent payments or allocation, and other compensation due and payable to the employees or agents of Borrower employed on-site in connection with the maintenance, administration or operation of the Property, along with all withholding taxes, insurance premiums, social security payments and other payroll taxes or payments required in connection with such employees; (xi) the Property Management Fee; (xii) the fee payable to Hope Through Housing Foundation, an Affiliate of Borrower, for the cost of social support services and programs offered to and available to the tenants of the Property, which shall not exceed Twenty dollars (\$20) per unit per month, increased or decreased annually by a percentage equal to the annual percentage increase or decrease, respectively, in AMI; (xiii) costs of security services supplied to the Property, if any; (ixx) the Partnership Management Fee; (xx) the Asset Management Fee; and (xxi) all other fees and expenses authorized in the annual budget for the Property approved by Lender (exclusive of Debt Service, Reserve Deposits and Developer Fee). Operating Expenses shall not include the following: (1) repairs or replacements paid out of insurance proceeds received by Borrower; (2) fees, costs or expenses of refinancing of any loan; (3) depreciation of buildings or other similar non-cash items of expense; or (4) any legal fees or other expenses, fees, costs incurred by Borrower in connection with obtaining the Agreement or in obtaining any loan. To the extent that any expense is paid out of reserves maintained by any lender or the Operating Reserve or Capital Replacement Account to be established and maintained by Borrower under the Regulatory Agreement, such expense shall not be part of "Operating Expenses." To the extent that all or any portion of the Property or Project is leased by Borrower and the sublessee or occupant pays any items described as Operating Expenses in this Section 2(i), then such items that are paid by such occupant shall not be Operating Expenses. No expense item shall be counted twice in determining Operating Expenses, regardless of whether or not such expense item is applicable to two or more categories of expenses described in this Section 2(j). Borrower shall be required to pay Operating Expenses for materials and services upon receipt of such materials and services and, to the extent services are not billed on a monthly basis, the bill for such services shall be prorated over the period during which such services were received. Real estate taxes and insurance premiums shall be prorated on a monthly basis based on the latest information available. If the actual cost of real estate taxes or insurance premiums are different from the information used to make such prorations, then an adjustment in the next month's Operating Expenses shall be made based upon the correct information. Under no circumstances shall Operating Expenses include expenses not directly related to the Project's operations, including without limitation, depreciation,

amortization, or accrued principal or interest expense on deferred payment debt. Operating Expenses shall be determined on a cash basis.

(k) Partnership Management Fee. A fee in the amount of Five Thousand Dollars (\$5,000) per year payable to the Borrower. The amount of the Partnership Management Fee shall be increased or decreased annually by a percentage equal to the percentage annual increase or decrease, respectively, in the AMI.

(l) Property Management Fee. A fee of Forty Dollars (\$40) per Dwelling Unit per month payable to National Community Renaissance of California, a California non-profit public benefit corporation. The amount of the Property Management Fee shall be increased or decreased annually by a percentage equal to the percentage annual increase or decrease in the AMI.

(m) Refinancing. Any loan secured by a Permitted Security Instrument that the Borrower obtains from an Institutional Lender for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument where the lender providing the new loan will disburse loan proceeds to or on behalf of Borrower exceeding the amount of principal and interest under the existing loan being paid plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Borrower and not rebated or refunded to Borrower, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Borrower without paying off any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification or equivalent regarding an existing loan to Borrower secured by a Permitted Security Instrument that results in the lender of the existing loan disbursing additional loan proceeds to or on behalf of Borrower in excess of the original principal amount of the loan.

(n) Reserve Deposits. Any deposits to the Operating Reserve account or the Capital Replacement Account, all pursuant to the Regulatory Agreement (as defined in the Agreement).

(o) Residual Receipts. Annual Project Revenue less the sum of: (1) Operating Expenses; (2) Debt Service; (3) Reserve Deposits; (4) repayment of loans to Borrower from Borrower's General Partner that Borrower's General Partner was required to make pursuant to the terms of the Developer Partnership Agreement; and (5) payments towards all or any portion of the Deferred Developer Fee, for each calendar year; provided, however, that if such calculation results in a negative number, Residual Receipts shall be zero for that year.

3. **Loan Disbursement.** All amounts of principal to be disbursed under this Note shall be disbursed pursuant to the terms and conditions of the Agreement. The principal amount of this Note is subject to reduction pursuant to Section 9.11 of the Agreement. Lender shall have no obligation to fund any disbursement, deposit, advance or otherwise fund any principal under this Note, if a Default of Borrower exists under this Note.

4. **Interest.** Interest on the unpaid principal balance of this Note will accrue from the date of advance of principal at the rate of three percent (3%) per annum.

5. **Method of Calculating Interest.** Interest shall be computed based on a 360-day year and the actual number of days elapsed.

6. **Payment of Principal and Interest.** All principal and interest under this Note shall be due and payable on or before the Maturity Date. All principal and interest under this Note shall be paid by the Borrower in annual payments to the Lender in an amount equal to fifty percent (50%) of the Residual Receipts from operation of the Project (as defined in the Agreement) each calendar year. Notwithstanding the immediately preceding sentence, if the Borrower obtains the Industry Funds Loan (as defined in the Agreement) and applies all of the proceeds of the Industry Funds Loan to construction of the Project, the percentage of Residual Receipts that shall be annually paid to the Lender in repayment of this Note shall equal one-half of the percentage determined by dividing the original principal amount of this Note by the sum of the original principal amount of this Note and the original principal amount of the Industry Funds Loan. For illustration purposes only, if the original principal amount of the Industry Funds Loan is Two Million Dollars (\$2,000,000) and the original principal amount of this Note is Five Million Dollars (\$5,000,000), then the percentage of Residual Receipts payable to the Lender annually would be 5,000,000 divided by 7,000,000, with the result multiplied by one-half (.5), which equals thirty-six percent (36%) of Residual Receipts (correspondingly, fourteen percent (14%) of Residual Receipts would go to repayment of the Industry Funds Loan for a total of fifty percent (50%) of Residual Receipts applied to repayment of this Note and the Industry Funds Loan annually). Such annual Residual Receipts payments for each calendar year shall be delivered on or before April 30 of the following calendar year. Such annual Residual Receipts payments shall commence with the calendar year in which the Project is placed in service (regardless of whether or not the Project is in service for the entirety of such calendar year), until the principal amount of this Note and all accrued and unpaid interest on such principal amount have been paid in full. Any unpaid principal amount and all accrued and unpaid interest on such principal amount shall be due and payable on the fifty-fifth (55th) anniversary of the "Occupancy Date" under the Regulatory Agreement ("**Maturity Date**"), regardless of whether or not Residual Receipts prior to the Maturity Date are sufficient to pay such principal and interest. Nothing in this Note is intended to limit repayment of this Note to the amount of available Residual Receipts. All sums due under this Note are payable in lawful money of the United States.

7. **Reporting.** On or before April 30 of each calendar year, commencing with the calendar year in which the "Occupancy Date" under the Regulatory Agreement occurs, the Borrower shall annually provide the Lender: (1) a Residual Receipts report in form and substance reasonably acceptable to Lender and the audited financial statements of Borrower covering the same time period; and (2) annual financial statements with respect to the Project that have been reviewed by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such financial statements present the financial position, results of operations, and cash flows of the Project fairly and in accordance with generally accepted accounting principles.

8. **Sale and Refinancing Participation.** In addition to and separate from any payments made to Lender pursuant to Section 6, Lender shall be entitled to receive the following payments:

(a) **Sale Revenue.** Upon the Transfer of all or a portion of the Property (other than leases to Qualifying Households in accordance with the Regulatory Agreement or Transfer of the Property, in its entirety, to one of the general partners of Borrower for no more than the Maximum Price), a payment shall be made towards the principal and interest under this Note in an amount equal to the lesser of: (i) fifty percent (50%) of the Gross Consideration received for the Property; or (ii) the outstanding balance of this Note.

(b) **Refinancing Revenue.** At the closing of a Refinancing (other than any Refinancing resulting in complete payoff of this Note), a payment shall be made to Lender to reduce the amounts of principal and interest outstanding under this Note in an amount equal to the lesser of: (i) fifty percent (50%) of the Net Refinancing Proceeds; or (ii) the outstanding balance of this Note.

9. **Application of Payments.** Each payment under this Note shall be credited in the following order: (a) costs, fees, charges, and advances paid or incurred by Lender under this Note or the Commission Deed of Trust or otherwise payable to Lender by Borrower under this Note or the Commission Deed of Trust, in such order as Lender, in its sole and absolute discretion, elects; (b) accrued interest; and then (c) principal due under this Note.

10. **Prepayment.** The principal and interest under this Note may be prepaid at any time; provided, however, that any such prepayment shall have no effect on the application of the Regulatory Agreement to the Property (as defined in the Agreement).

11. **Secured by Deed of Trust.** On and after the "Close of Escrow" under the Agreement, this Note shall be secured by, among other things, that certain Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement; Request for Notice, dated as of such Close of Escrow, made by Borrower, as trustor, to Fidelity National Title Insurance Company, as trustee, for the benefit of Lender, as beneficiary (the "**Commission Deed of Trust**").

12. **Interest on Default.** From and after a Default or the Maturity Date (either according to the terms of this Note or as the result of an acceleration of the then unpaid principal balance under the terms of this Note), the entire unpaid principal balance of this Note shall automatically bear an annual interest rate (instead of the rate specified in Section 4) equal to the lesser of: (a) ten percent (10%); or (b) the maximum interest rate allowed by law (the "**Default Rate**").

13. **Default.** Any of the following shall constitute a "**Default**" under this Note: (a) Borrower's failure to pay any installment or other sum due under this Note as and when due and payable (whether by extension, acceleration or otherwise); or (b) any breach of any other promise or obligation in this Note, the Commission Deed of Trust, the Regulatory Agreement or the Agreement or in any other instrument now or hereafter securing the indebtedness evidenced by this Note, subject to applicable notice and opportunity to cure. On and following any Default, Lender may, at its option, declare this Note (including, without limitation, all accrued interest) due and payable immediately, regardless of the Maturity Date.

14. **Collection Costs.** Borrower agrees to pay the following costs, expenses, and attorney fees paid or incurred by Lender, or adjudged by a court: (a) reasonable costs of collection and costs, expenses, and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses, and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; and (c) costs of suit and such sum as the court may adjudge as attorney fees in any action to enforce or collect payment of this Note or any part of it.

15. **Limitation on Liability After Issuance of Completion Certificate.** Notwithstanding anything to the contrary contained in this Note, after the date of issuance or deemed issuance of a Completion Certificate for the Project by Lender, in the event of any Default under this Note, Lender's monetary remedies under this Note and the Commission Deed of Trust shall be limited to realizing upon the assets of Borrower, including any collateral security provided by Borrower to secure repayment of the indebtedness evidenced by this Note and/or secured by the Commission Deed of Trust, and neither Borrower nor any general partner of Borrower shall be personally liable for the payment of any portion of the indebtedness evidenced by this Note, except to the extent of: (a) all losses sustained by Lender arising from or related to waste, fraud or misrepresentation by Borrower, or its members, partners, stockholders, trustees, beneficiaries or principals; (b) all rental income or other income arising with respect to the Property, insurance proceeds and/or condemnation awards received by Borrower, its members, partners, stockholders, trustees, beneficiaries or principals and not applied in accordance with the provisions of this Note and/or the Commission Deed of Trust, except to the extent that Borrower is so authorized by Lender in writing, or subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from applying such income in accordance with the provisions of this Note and/or the Commission Deed of Trust (but subject to Section 15(k) below excluding certain filings and/or relief under Insolvency Laws described and set forth therein); (c) the fair market value, as of the date of a Default, of any personalty or fixtures removed by Borrower after such date; (d) all legal costs and expenses reasonably incurred by Lender after giving Notice to Borrower of a Default, other than those customarily incurred by a lender in realizing upon its lien in an uncontested foreclosure sale after an undisputed default; (e) the full amount (including penalties and interest) of any and all taxes, assessments or other charges that Borrower fails to pay and are or may become a lien or liens on all or any portion of the Property with priority over the lien of the Commission Deed of Trust, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying such taxes, assessments or other charges (but subject to Section 15(k) below excluding certain filings and/or relief under Insolvency Laws described and set forth therein); (f) insurance premiums necessary to maintain in force any insurance policies and/or coverage required by the Commission Deed of Trust, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying such taxes, assessments or other charges (but subject to Section 15(k) below excluding certain filings and/or relief under Insolvency Laws described and set forth therein); (g) all amounts owing to Lender under indemnity or other provisions contained in the Loan Documents (other than the payment of principal, accrued interest and/or late charges evidenced by this Note); (h) the amount, if any, by which the sum of all amounts realized by Lender through the sale (or other reasonable disposition) of all assets pledged or assigned to Lender under the

Commission Deed of Trust is exceeded by the obligations secured by the Commission Deed of Trust, but only to the extent that any such deficiency is directly attributable to Borrower's failure to insure any such asset(s) in accordance with the requirements of the Loan Documents, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying the premiums for such insurance (but subject to Section 15(k) below excluding certain filings and/or relief under Insolvency Laws described and set forth therein); (i) all losses sustained by Lender arising from or related to the violation or alleged violation of any criminal or environmental laws by Borrower, including the Fraud Enforcement and Recovery Act of 2009; (j) all losses sustained by Lender arising from or related to any breach by Borrower of the terms or conditions of the Loan Documents pertaining to Transfers; or (k) all losses sustained by Lender arising from or related to the filing by Borrower (or the filing against Borrower by any of its partners, members, stockholders, trustees, beneficiaries, principals or other parties that are "insiders" pursuant to 11 U.S.C. Section 101(31) (collectively, "**Statutory Insiders**"), or applicable case law interpreting Federal Insolvency Laws (collectively, "**Non-Statutory Insiders**") of any proceeding for relief under any Federal or State bankruptcy, insolvency or receivership laws or any assignment for the benefit of creditors made by Borrower (any such proceeding for relief under any Federal or State bankruptcy, insolvency or receivership laws and/or any such assignment for the benefit of creditors shall collectively be referred to in this Note as the "**Insolvency Laws**"). Notwithstanding anything to the contrary contained in this Note, the limited partner(s) of Borrower shall have no liability for any payment obligations under this Note beyond their limited partnership interest (i.e., interest in capital, profits and losses and distributions) in Borrower. All action(s) as may be necessary at law or in equity for Lender to realize upon the assets of Borrower in the event of any Default under this Note, including any collateral security provided by Borrower to secure repayment of the indebtedness evidenced by this Note and/or secured by the Commission Deed of Trust, may be instituted and/or pursued by Lender without violating this Section 15.

16. **Waiver.** Borrower, endorsers, and all other persons liable or to become liable on this Note waive presentment, protest, and demand; notice of protest, demand, and dishonor; and all other notices or matters of a like nature. No extension of time for payment of this Note made by agreement by the Lender with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part. The provisions of this Note and the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

17. **Notice.** Any notice required to be provided under this Note shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight (one night) courier service, marked for next day business delivery. All notices shall be addressed to the Person to whom such notice is to be given at the property address stated in this Note or to such other address as a Person may designate by written notice. All notices shall be deemed effective on the earliest of: (i) actual receipt; (ii) rejection of delivery; (iii) if sent by certified mail, the fourth (4th) day on which regular United States mail delivery service is provided after the date of mailing; or (iv) if sent by

overnight delivery service, on the next day on which such service makes next business day deliveries after the date of sending.

18. **Forbearance Not a Waiver.** If Lender delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any Lender rights or of any breach, Default, or failure of condition under this Note. No waiver by Lender of any of its rights or of any such breach, Default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Lender.

19. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note nor any proceeds of it, nor assign or delegate any of its rights or obligations under this Note, without Lender's prior written consent in each instance, which consent may be given, withheld, delayed or conditioned in Lender's sole and absolute discretion. Lender in its sole discretion may transfer this Note, and may sell or assign participations or other interests in all or any part of this Note, all without notice to or the consent of Borrower.

20. **Governing Law.** This Note shall be construed and enforceable according to the laws of the State of California for all purposes, without application of conflicts or choice of laws principles.

21. **Usury.** To the extent that the indebtedness evidenced by this Note is determined not to be exempt from the usury laws of the State of California, all agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

22. **Non-Revolving Credit.** This Note evidences a non-revolving loan from Lender to Borrower. The accrued and unpaid interest and principal balance owing on this Note at any time may be evidenced by an unpaid balance acknowledgment of Lender on this Note or by the internal accounting records of Lender regarding this Note or the Agreement.

23. **Waiver of Statute of Limitations.** The pleading of any statute of limitations as a defense to the obligations or enforcement of the obligations evidenced by this Note is waived to the fullest extent permissible by law.

24. **Time Is of the Essence.** Time is of the essence with respect to all obligations of Borrower under this Note.

25. **Joint and Several Liability.** If more than one Person or entity is signing this Note as Borrower, their liability under this Note shall be joint and several.

26. **Cross-Default.** Any Default by Borrower as to any other agreement between or among Lender and Borrower shall, at Lender's option, in Lender's sole and absolute discretion, constitute a Default under this Note.

27. **Principles of Interpretation.** No inference in favor of or against either Lender or Borrower shall be drawn from the fact that such Person has drafted any part of this Note. Both Lender and Borrower have both participated substantially in the negotiation, drafting, and revision of this Note, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Note may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Note. The words "include" and "including" in this Note shall be construed to be followed by the words: "without limitation." Each collective noun in this Note shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Note, refers to such document, as modified from time to time (excepting any modification that violates this Note), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Note includes the word "and." Every reference in this Note to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

28. **Severability.** If any provision of this Note, or the application of it to any Person or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other persons or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

29. **Acknowledgment.** PRIOR TO SIGNING THIS NOTE, BORROWER HAS READ AND UNDERSTANDS ALL OF ITS PROVISIONS AND HAS CONSULTED WITH LEGAL COUNSEL OF BORROWER'S INDEPENDENT SELECTION REGARDING BORROWER'S OBLIGATIONS UNDER THIS NOTE. BORROWER AGREES TO THE TERMS AND CONDITIONS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.

30. **Incorporation of Defined Terms.** All terms, phrases and words indicated to be defined terms by initial capitalization in this Note that are not specifically defined in this Note shall have the meaning ascribed to the same term, phrase or word in the Agreement or, if not defined in the Agreement, the meaning ascribed to the same term, phrase or word in the Commission Deed of Trust.

[Signatures on following page]

Executed at _____, California, on the _____ day of _____, 20__.

BORROWER:

[TO BE DETERMINED], a California limited partnership

By: _____

By: _____

**EXHIBIT F
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Commission Deed of Trust

[Attached Behind This Page]

RECORDING REQUESTED BY:

WHEN RECORDED
MAIL TO:

Community Development Commission
of the City of Downey
11111 Brookshire Avenue
Downey, CA 92041
Attn: Executive Director

SPACE ABOVE FOR RECORDER'S USE ONLY
EXEMPT FROM RECORDING FEES - GOVERNMENT CODE §27383

APN _____

FORM OF DEED OF TRUST, ASSIGNMENT OF LEASES
AND RENTS, FIXTURE FILING, AND
SECURITY AGREEMENT; REQUEST FOR NOTICE
(Disposition and Development Agreement – Verizon Building: **[TO BE DETERMINED]**)

This DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND SECURITY AGREEMENT; REQUEST FOR NOTICE (“Deed of Trust”) is made as of **[TO BE DETERMINED]**, among **[TO BE DETERMINED]**, as trustor (“Borrower”), FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, as trustee (“Trustee”), and the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, a public body corporate and politic, as beneficiary (“Lender”).

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower GRANTS, BARGAINS, SELLS, AND CONVEYS to Trustee the Mortgaged Property, with power of sale and right of entry, subject only to the Permitted Encumbrances, to have and to hold the Mortgaged Property to Trustee, its successors in trust, and the Trustee’s assigns forever, and Borrower does hereby bind itself, its successors, and its assigns to warrant and forever defend the title to the Mortgaged Property to Trustee against anyone lawfully claiming it or any part of it; provided, however, that if the Indebtedness is paid in full as and when it becomes due and payable and the Obligations are performed on or before the date they are to be performed and discharged, then the liens, security interests, estates, and rights granted by this Deed of Trust shall terminate; otherwise, they shall remain in full force and effect. As additional security for the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower grants to Lender a security interest in the Personalty, Fixtures, Leases, and Rents under Article Nine of the Uniform Commercial Code in effect in the State of California. Borrower further grants, bargains, conveys, assigns, transfers, and sets over to Trustee, acting as both a trustee and an agent for Lender under this Deed of Trust, a security interest in and to all of Borrower’s right, title, and interest in, to, and under the Personalty, Fixtures, Leases, Rents, and Mortgaged

Property (to the extent characterized as personal property) to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

Borrower agrees to execute and deliver, from time to time, such further instruments, including, but not limited to, security agreements, assignments, and UCC financing statements, as may be requested by Lender to confirm the lien of this Deed of Trust on any of the Mortgaged Property.

Borrower further irrevocably grants, transfers, and assigns to Lender the Rents. This assignment of Rents is to be effective to create a present security interest in existing and future Rents of the Mortgaged Property under California Civil Code § 2938.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS DEED OF TRUST, TO SECURE THE FULL AND TIMELY PERFORMANCE BY BORROWER OF EACH AND EVERY OBLIGATION, COVENANT, AND AGREEMENT OF BORROWER UNDER THE LOAN DOCUMENTS, AND AS ADDITIONAL CONSIDERATION FOR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, BORROWER HEREBY COVENANTS, REPRESENTS, AND AGREES AS FOLLOWS:

1. DEFINITIONS

1.1 **Definitions.** For purposes of this Deed of Trust, each of the following terms shall have the following respective meanings and any term indicated in this Deed of Trust to be a defined term, by initial capitalization, that is not defined in this Paragraph 1.1 or elsewhere in this Deed of Trust shall have the meaning ascribed to the term in the Agreement, the Regulatory Agreement or the Note:

1.1.1 **Agreement.** That certain Disposition and Development Agreement (Verizon Building), dated as of [TO BE DETERMINED] , by and between Lender and Borrower's predecessor in interest.

1.1.2 **Attorney Fees.** Any and all attorney fees, paralegal, and law clerk fees, including, without limitation, fees for advice, negotiation, consultation, arbitration, and litigation at the pretrial, trial, and appellate levels, and attorney costs and expenses incurred or paid by Lender in protecting its interests in the Mortgaged Property and enforcing its rights under this Deed of Trust, including the salaries and benefits of attorneys employed in the office of the City Attorney of the City of Downey, as general counsel to Lender, and consultant and expert witness fees and costs.

1.1.3 **Automobile Liability Insurance.** Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by the Borrower regarding the Mortgaged Property, with minimum limits for bodily injury and property damage of TWO MILLION DOLLARS (\$2,000,000) times the CPI Adjustment Factor. Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by the Lender, which approval shall not be unreasonably withheld.

1.1.4 **Borrower.** The named Borrower in this Deed of Trust and the obligor under the Note, whether or not named as Borrower in this Deed of Trust, the heirs, legatees, devisees, administrators, executors, successors in interest to the Mortgaged Property, and the assigns of any such Person.

1.1.5 **Builder's Risk Insurance.** Builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal (subject to a policy sublimit), but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Mortgaged Property.

1.1.6 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Attorney Fees of counsel retained by the Indemnitee) and any judgment.

1.1.7 **CPI.** The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for All Urban Consumers (CPI-U) all items published for the Los Angeles-Riverside-Orange County Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

1.1.8 **CPI Adjustment Factor.** As of any date, the greater of: (a) 1.00; or (b) the CPI for such date divided by the CPI for the Effective Date.

1.1.9 **Default Rate.** Defined in the Note.

1.1.10 **Event of Default.** Defined in Paragraph 19 of this Deed of Trust.

1.1.11 **Environmental Laws.** Any Governmental Requirements pertaining to health, industrial hygiene, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 United States Code §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901-6992k); the Hazardous Materials Transportation Act (49 United States Code §§ 5101-5127); the Federal Water Pollution Control Act (33 United States Code §§ 1251-1376); the Clean Air Act (42 United States Code §§ 7401-7671q); the Toxic Substances Control Act (15 United States Code §§ 2601-2692); the Refuse Act (33 United States Code §§ 407-426p); the Emergency Planning and Community Right-To-Know Act (42 United States Code §§ 11001-11050); the Safe Drinking Water Act (42 United States Code §§ 300f-300j); the California Hazardous Waste Treatment Reform Act of 1995

(Stats 1995, ch 638 (SB 1222-Calderon)); the California Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Stats 1993, ch 418 (SB 1082-Calderon)); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§ 25300-25395.15); the California Expedited Remedial Action Reform Act of 1994 (Health and Safety Code §§ 25396-25399.2); and the Porter-Cologne Water Quality Control Act (Water Code §§ 13000-14076).

1.1.12 **Fixtures.** All right, title, and interest of Borrower in and to all materials, supplies, equipment, apparatus, and other items now or later attached to, installed on or in the Land or the Improvements, or that in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the State of California, including the California Uniform Commercial Code. "Fixtures" includes, without limitation, all items of Personalty to the extent that they may be deemed Fixtures under Governmental Requirements.

1.1.13 **Governmental Authority.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

1.1.14 **Governmental Requirements.** Any and all laws, statutes, codes, ordinances, regulations, enactments, decrees, judgments, and orders of any Governmental Authority.

1.1.15 **Hazardous Substance.** Any and all (a) substances defined as "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act (49 United States Code §§ 5101-5127), and in the regulations promulgated under those laws; (b) substances defined as "hazardous wastes" in California Health and Safety Code § 25117 and in the regulations promulgated under that law; (c) substances defined as "hazardous substances" in California Civil Code § 2929.5; (d) substances listed in the United States Department of Transportation Table (49 Code of Federal Regulations § 172.101 and amendments); (e) substances defined as "medical wastes" in the Medical Waste Management Act (Chapter 6.1 of the California Health and Safety Code); (f) asbestos-containing materials; (g) polychlorinated biphenyl; (h) underground storage tanks, whether empty, filled, or partially filled with any substance; (i) petroleum and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any such mixture; and (j) such other substances, materials, and wastes that are or become regulated under applicable local, state, or federal law, or that are classified as hazardous or toxic under any Governmental Requirements or that, even if not so regulated, are known to pose a hazard to the health and safety of the occupants of the Mortgaged Property or of real property adjacent to it.

1.1.16 **Impositions.** All real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges; charges imposed under any subdivision, planned unit development, or condominium declaration or restrictions; charges for any easement, license, or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges, and assessments and any interest, costs, or penalties of any kind and nature that at any time before or after the execution of this Deed of Trust may be assessed, levied, or imposed on the Mortgaged Property or on its ownership, use, occupancy, or enjoyment.

1.1.17 **Improvements.** Any and all buildings, structures, improvements, fixtures, and appurtenances now and later placed on the Mortgaged Property, including, without limitation, all apparatus and equipment, whether or not physically affixed to the land or any building, which is used to provide or supply air cooling, air conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dish washing, garbage disposal, or other services; and all elevators, escalators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, partitions, ducts, compressors, plumbing, ovens, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains, curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, pools, spas, pool and spa operation and maintenance equipment and apparatus, and trees and plants located on the Mortgaged Property, all of which, including replacements and additions, shall conclusively be deemed to be affixed to and be part of the Mortgaged Property conveyed to Trustee under this Deed of Trust.

1.1.18 **Indebtedness.** The principal of, interest on, and all other amounts and payments due under or evidenced by the following:

- (a) The Note (including, without limitation, late payment, and other charges payable under the Note);
- (b) This Deed of Trust and all other Loan Documents;
- (c) All funds later advanced by Lender to or for the benefit of Borrower under any provision of any of the Loan Documents;
- (d) Any future loans or amounts advanced by Lender to Borrower when evidenced by a written instrument or document that specifically recites that the Obligations evidenced by such document are secured by the terms of this Deed of Trust, including, but not limited to, funds advanced to protect the security or priority of the Deed of Trust; and
- (e) Any amendment, modification, extension, rearrangement, restatement, renewal, substitution, or replacement of any of the foregoing.

1.1.19 **Indemnitee.** Any Person entitled to be Indemnified under the terms of this Deed of Trust.

1.1.20 **Indemnitor.** A Person that agrees to Indemnify any other Person under the terms of this Deed of Trust.

1.1.21 **Land.** The real estate or any interest in it described in Exhibit "A" attached to this Deed of Trust and made a part of it, together with all Improvements and Fixtures and all rights, titles, and interests appurtenant to it.

1.1.22 **Leases.** Any and all leases, subleases, licenses, concessions, or other agreements (written or verbal, now or later in effect) that grant a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Mortgaged Property, and all other agreements, including, but not limited to, utility contracts, maintenance agreements, and service contracts that in any way relate to the use, occupancy, operation, maintenance, enjoyment, or ownership of the

Mortgaged Property, except any and all leases, subleases, or other agreements under which Borrower is granted a possessory interest in the Land.

1.1.23 **Legal Requirement(s).** Collectively, (a) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Borrower, any guarantor (with respect to the Indebtedness or the Mortgaged Property), or the Mortgaged Property, including, but not limited to, those concerning its ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction, (b) Borrower's or guarantor's presently or subsequently effective bylaws and articles of incorporation, or any instruments establishing any partnership, limited partnership, joint venture, trust, limited liability company, or other form of business association (if either, both, or all, by any of same), (c) any and all Leases and other contracts (written or oral) of any nature to which Borrower or any guarantor may be bound, and (d) any and all restrictions, reservations, conditions, easements, or other covenants or agreements now or later of record affecting the Mortgaged Property.

1.1.24 **Lender.** The named Lender in this Deed of Trust and the owner and holder (including a pledgee) of the Note, or any Indebtedness, or Obligations secured by this Deed of Trust, whether or not named as Lender in this Deed of Trust, and the heirs, legatees, devisees, administrators, executors, successors, and assigns of any such person.

1.1.25 **Liability Insurance.** Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in, or about the Mortgaged Property or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Four Million Dollars (\$4,000,000) times the CPI Adjustment Factor for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Mortgaged Property or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.1.26 **Loan.** The extension of credit made by Lender to Borrower under the terms of the Loan Documents.

1.1.27 **Loan Documents.** Collectively, this Deed of Trust, the Note, the Agreement and the Regulatory Agreement and all other instruments and agreements required to be executed by Borrower or any guarantor in connection with the Loan.

1.1.28 **Mortgaged Property.** The Land, Improvements, Fixtures, Personalty, Leases, and Rents, together with:

(a) All right, title, and interest (including any claim or demand or demand in law or equity) that Borrower now has or may later acquire in or to such Mortgaged Property; all easements, rights, privileges, tenements, hereditaments, and appurtenances belonging or in any way appertaining to the Mortgaged Property; all of the estate, right, title, interest, claim, demand, reversion, or remainder of Borrower in or to the Mortgaged Property, either at law or in equity, in possession or expectancy, now or later acquired; all crops growing

or to be grown on the Mortgaged Property; all development rights or credits and air rights; all water and water rights (whether or not appurtenant to the Mortgaged Property) and shares of stock pertaining to such water or water rights, ownership of which affects the Mortgaged Property; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Mortgaged Property and all royalties and profits from any such rights or shares of stock; all right, title, and interest of Borrower in and to any streets, ways, alleys, strips, or gores of land adjoining the Land or any part of it that Borrower now owns or at any time later acquires and all adjacent lands within enclosures or occupied by buildings partly situated on the Mortgaged Property;

(b) All intangible Mortgaged Property and rights relating to the Mortgaged Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, deposits for utility services, installations, refunds due Borrower, trade names, trademarks, and service marks;

(c) All of the right, title, and interest of Borrower in and to the land lying in the bed of any street, road, highway, or avenue in front of or adjoining the Land;

(d) Any and all awards previously made or later to be made by any Governmental Authority to the present and all subsequent owners of the Mortgaged Property that may be made with respect to the Mortgaged Property as a result of the exercise of the right of eminent domain, the alteration of the grade of any street, or any other injury to or decrease of value of the Mortgaged Property, which award or awards are assigned to Lender and Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of any such award or awards from the authorities making them and to give proper receipts and acquittances for them, and to apply them as provided in Paragraph 5.2;

(e) All certificates of deposit of Borrower in Lender's possession and all bank accounts of Borrower with Lender and their proceeds, and all deposits of Borrower with any Governmental Authority and/or public utility company that relate to the ownership of the Mortgaged Property;

(f) All Leases of the Mortgaged Property or any part of it now or later entered into and all right, title, and interest of Borrower under such Leases, including cash or securities deposited by the tenants to secure performance of their obligations under such Leases (whether such cash or securities are to be held until the expiration of the terms of such Leases or applied to one or more of the installments of rent coming due immediately before the expiration of such terms), all rights to all insurance proceeds and unearned insurance premiums arising from or relating to the Mortgaged Property, all other rights and easements of Borrower now or later existing pertaining to the use and enjoyment of the Mortgaged Property, and all right, title, and interest of Borrower in and to all declarations of covenants, conditions, and restrictions as may affect or otherwise relate to the Mortgaged Property;

(g) Any and all proceeds of any insurance policies covering the Mortgaged Property, whether or not such insurance policies were required by Lender as a condition of making the loan secured by this Deed of Trust or are required to be maintained by Borrower as provided below in this Deed of Trust; which proceeds are assigned to Lender, and

Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of such insurance policies from the insurers issuing the same and to give proper receipts and acquittances for such policies, and to apply the same as provided below;

(h) If the Mortgaged Property includes a leasehold estate, all of Borrower's right, title, and interest in and to the lease, more particularly described in Exhibit A attached to this Deed of Trust (the Leasehold) including, without limitation, the right to surrender, terminate, cancel, waive, change, supplement, grant subleases of, alter, or amend the Leasehold;

(i) All plans and specifications for the Improvements; all contracts and subcontracts relating to the Improvements; all deposits (including tenants' security deposits; provided, however, that if Lender acquires possession or control of tenants' security deposits Lender shall use the tenants' security deposits only for such purposes as Governmental Requirements permit), funds, accounts, contract rights, instruments, documents, general intangibles, and notes or chattel paper arising from or in connection with the Land or other Mortgaged Property; all permits, licenses, certificates, and other rights and privileges obtained in connection with the Land or other Mortgaged Property; all soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, letters of credit, bonds, surety bonds, any other intangible rights relating to the Land and Improvements, surveys, and other reports, exhibits, or plans used or to be used in connection with the construction, planning, operation, or maintenance of the Land and Improvements and all amendments and modifications; all proceeds arising from or by virtue of the sale, lease, grant of option, or other disposition of all or any part of the Land, Fixtures, Personalty, or other Mortgaged Property (consent to same is not granted or implied); and all proceeds (including premium refunds) payable or to be payable under each insurance policy relating to the Land, Fixtures, Personalty, or other Mortgaged Property;

(j) All trade names, trademarks, symbols, service marks, and goodwill associated with the Mortgaged Property and any and all state and federal applications and registrations now or later used in connection with the use or operation of the Mortgaged Property;

(k) All tax refunds, bills, notes, inventories, accounts and charges receivable, credits, claims, securities, and documents of all kinds, and all instruments, contract rights, general intangibles, bonds and deposits, and all proceeds and products of the Mortgaged Property;

(l) All money or other personal property of Borrower (including, without limitation, any instrument, deposit account, general intangible, or chattel paper, as defined in Division 9 of the California Uniform Commercial Code) previously or later delivered to, deposited with, or that otherwise comes into Lender's possession;

(m) All accounts, contract rights, chattel paper, documents, instruments, books, records, claims against third parties, money, securities, drafts, notes, proceeds, and other items relating to the Mortgaged Property;

(n) All construction, supply, engineering, and architectural contracts executed and to be executed by Borrower for the construction of the Improvements; and

(o) All proceeds of any of the foregoing.

1.1.29 As used in this Deed of Trust, "Mortgaged Property" is expressly defined as meaning all or, when the context permits or requires, any portion of it and all or, when the context permits or requires, any interest in it.

1.1.30 **Note.** That certain Promissory Note Secured by Deed of Trust made by Borrower to the order of Lender, dated [TO BE DETERMINED], in the maximum principal amount of [TO BE DETERMINED], evidencing the Loan, together with any and all rearrangements, extensions, renewals, substitutions, replacements, modifications, restatements, and amendments to the Note.

1.1.31 **Obligation(s).** Any and all of the covenants, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower to Lender or Trustee as set forth in the Loan Documents; any lease, sublease, or other agreement under which Borrower is granted a possessory interest in the Land; each obligation, covenant, and agreement of Borrower in the Loan Documents or in any other document executed by Borrower in connection with the Loan(s) secured by this Deed of Trust whether set forth in or incorporated into the Loan Documents by reference; each and every monetary provision of all covenants, conditions, and restrictions, if any, pertaining to the Mortgaged Property and, on Lender's written request, the enforcement by Borrower of any covenant by third parties to pay maintenance or other charges, if they have not been paid, or valid legal steps taken to enforce such payment within sixty (60) days after such written request is made; if the Mortgaged Property consists of or includes a leasehold estate, each obligation, covenant, and agreement of Borrower arising under, or contained in, the instrument(s) creating any such leasehold; all agreements of Borrower to pay fees and charges to Lender whether or not set forth in this Deed of Trust; and charges, as allowed by law, when they are made for any statement regarding the obligations secured by this Deed of Trust.

1.1.32 **Permitted Encumbrance(s).** At any particular time, (a) liens for taxes, assessments, or governmental charges not then due and payable or not then delinquent; (b) liens, easements, encumbrances, and restrictions on the Mortgaged Property that are allowed by Lender to appear as exceptions to coverage under an extended coverage lender's policy of title insurance issued to Lender upon recordation of this Deed of Trust; (c) liens in favor of or consented to in writing by Lender; and liens expressly permitted by the terms of the Agreement.

1.1.33 **Person.** Natural persons, corporations, partnerships, unincorporated associations, joint ventures, and any other form of legal entity.

1.1.34 **Personalty.** All of the right, title, and interest of Borrower in and to all tangible and intangible personal property, whether now owned or later acquired by Borrower, including, but not limited to, water rights (to the extent they may constitute personal property), all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, letter-of-credit rights, deposit accounts, investment property, documents,

minerals, crops, and timber (as those terms are defined in the California Uniform Commercial Code) and that are now or at any later time located on, attached to, installed, placed, used on, in connection with, or are required for such attachment, installation, placement, or use on the Land, the Improvements, Fixtures, or on other goods located on the Land or Improvements, together with all additions, accessions, accessories, amendments, modifications to the Land or Improvements, extensions, renewals, and enlargements and proceeds of the Land or Improvements, substitutions for, and income and profits from, the Land or Improvements. The Personalty includes, but is not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems); building materials, air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, maintenance, extermination of vermin or insects, dust removal, refuse and garbage equipment; vehicle maintenance and repair equipment; office furniture (including tables, chairs, planters, desks, sofas, shelves, lockers, and cabinets); safes, furnishings, appliances (including ice-making machines, refrigerators, fans, water heaters, and incinerators); rugs, carpets, other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, other window coverings; lamps, chandeliers, other lighting fixtures; office maintenance and other supplies; loan commitments, financing arrangements, bonds, construction contracts, leases, tenants' security deposits, licenses, permits, sales contracts, option contracts, lease contracts, insurance policies, proceeds from policies, plans, specifications, surveys, books, records, funds, bank deposits; and all other intangible personal property. Personalty also includes any other portion or items of the Mortgaged Property that constitute personal property under the California Uniform Commercial Code.

1.1.35 **Property Insurance.** Insurance providing coverage for the Mortgaged Property and all Improvements against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all Improvements relating to the Mortgaged Property (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Mortgaged Property; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal. Property Insurance shall also include rental or business interruption insurance in an amount, at least, equal to the average annual Gross Income from the Mortgaged Property for the preceding three (3) calendar years and providing for a 12-month extended period of indemnity.

1.1.36 **Regulatory Agreement.** That certain Regulatory Agreement and Declaration of Restrictive Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Verizon Building), dated [TO BE DETERMINED] , by and between Lender and Borrower.

1.1.37 **Rents.** All rents, issues, revenues, income, proceeds, royalties, profits, license fees, prepaid municipal and utility fees, bonds, and other benefits to which Borrower or the record title owner of the Mortgaged Property may now or later be entitled from or which are derived from the Mortgaged Property, including, without limitation, sale proceeds of the Mortgaged Property; any room or space sales or rentals from the Mortgaged Property; and other

benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting, or otherwise enjoying or using the Mortgaged Property.

1.1.38 **Trustee.** Fidelity National Title Insurance Company, a California corporation.

1.1.39 **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Lender or Borrower for any loss such policy covers.

1.1.40 **Water Rights.** All water rights of whatever kind or character, surface or underground, appropriative, decreed, or vested, that are appurtenant to the Mortgaged Property or otherwise used or useful in connection with the intended development of the Mortgaged Property.

1.1.41 **Workers Compensation Insurance.** Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) times the CPI Adjustment Factor per accident for bodily injury or disease, covering all employees of Borrower.

2. **REPAIR AND MAINTENANCE OF MORTGAGED PROPERTY.** Borrower shall (a) keep the Mortgaged Property in good condition and repair; (b) following completion of the original construction of the Project on the Mortgaged Property pursuant to the Agreement, not substantially alter, remove, or demolish the Mortgaged Property or any of the Improvements, except when incident to the replacement of Fixtures, equipment, machinery, or appliances with items of like kind; (c) following completion of the original construction of the Project on the Mortgaged Property pursuant to the Agreement, restore and repair to the equivalent of its original condition all or any part of the Mortgaged Property that may be damaged or destroyed, including, but not limited to, damage from termites and dry rot, soil subsidence, and construction defects, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair, and regardless of whether Lender permits the use of any insurance proceeds to be used for restoration under Paragraph 4 of this Deed of Trust; (d) pay when due all claims for labor performed and materials furnished in connection with the Mortgaged Property and not permit any mechanics' or materialman's lien to arise against the Mortgaged Property or furnish a loss or liability bond against such mechanics' or materialman's lien claims; (e) comply with all laws affecting the Mortgaged Property or requiring that any alterations, repairs, replacements, or improvements be made on it; (f) not commit or permit waste on or to the Mortgaged Property, or commit, suffer, or permit any act or violation of law to occur on it; (g) not abandon the Mortgaged Property; (h) cultivate, irrigate, fertilize, fumigate, and prune in accordance with prudent agricultural practices; (i) if required by Lender, provide for management satisfactory to Lender under a management contract approved by Lender; (j) notify Lender in writing of any condition at or on the Mortgaged Property that may have a significant and measurable effect on its market value; (k) if the Mortgaged Property is rental property, generally operate and maintain it in such manner as to realize its maximum rental potential; and (l) do all other things that the character or use of the Mortgaged Property may reasonably render

necessary to maintain it in the condition (reasonable wear and tear expected) as it shall exist following completion of the Project pursuant to the Agreement.

3. **USE OF MORTGAGED PROPERTY.** Unless otherwise required by Governmental Requirements or unless Lender otherwise consents in writing, Borrower shall not allow changes in the use of the Mortgaged Property from that which is contemplated by Borrower and Lender at the time of execution of this Deed of Trust, as specified in the Loan Documents. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, without Lender's prior written consent.

4. **INSURANCE.**

4.1 **Borrower.** Borrower shall maintain, to protect the Lender and Trustee against all insurable Claims resulting from the actions of Borrower in connection with the Mortgaged Property, at the sole cost and expense of Borrower, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance; (c) Property Insurance; (d) Builder's Risk Insurance; and (e) Workers Compensation Insurance.

4.2 **Nature of Insurance.** All Liability Insurance, Property Insurance and Automobile Liability Insurance policies this Deed of Trust requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State. Borrower may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Mortgaged Property, which amount(s) shall equal or exceed the amount(s) required by this Deed of Trust; and (ii) such policy otherwise complies with this Deed of Trust.

4.3 **Policy Requirements and Endorsements.** All insurance policies required by this Deed of Trust shall contain (by endorsement or otherwise) the following provisions:

4.3.1 **Insured.** Liability Insurance and Automobile Liability Insurance policies shall name the Lender and Trustee as "additional insured." Property Insurance and Builder's Risk Insurance policies shall name the Lender as a "loss payee." The coverage afforded to the Lender and Trustee shall be at least as broad as that afforded to Borrower regarding the Mortgaged Property and may not contain any terms, conditions, exclusions, or limitations applicable to the Lender or Trustee that do not apply to Borrower.

4.3.2 **Primary Coverage.** Any insurance or self-insurance maintained by the Lender or Trustee shall be excess of all insurance required under this Deed of Trust and shall not contribute with any insurance required under this Deed of Trust.

4.3.3 **Contractual Liability.** Liability Insurance policies shall contain contractual liability coverage, for the Borrower's indemnity obligations under this Deed of Trust. Borrower's obtaining or failure to obtain such contractual liability coverage shall not relieve the Borrower from nor satisfy any indemnity obligation of the Borrower under this Deed of Trust.

4.3.4 **Deliveries to the Lender.** Borrower shall deliver to the Lender evidence of all insurance required by this Deed of Trust prior to the first disbursement of money under the Note. No later than three (3) days before any insurance required by this Deed of Trust expires, is cancelled or its liability limits are reduced or exhausted, Borrower shall deliver to the Lender evidence of Borrower's maintenance of all insurance this Deed of Trust requires. Each insurance policy required by this Deed of Trust shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to Lender by certified mail, return receipt requested; provided; however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Lender or Trustee pursuant to this Deed of Trust.

4.3.5 **Waiver of Certain Claims.** Borrower shall cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Deed of Trust to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the Lender and Trustee, if not already in the policy. To the extent that the Borrower obtains insurance with a Waiver of Subrogation, the Lender, Borrower and Trustee release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this Deed of Trust.

4.3.6 **No Representation.** Neither Lender, Borrower nor Trustee makes any representation that the limits, scope, or forms of insurance coverage this Deed of Trust requires are adequate or sufficient.

4.3.7 **No Claims Made Coverage.** None of the insurance coverage required under this Deed of Trust may be written on a claims-made basis.

4.3.8 **Fully Paid and Non-Assessable.** All insurance obtained and maintained by Borrower in satisfaction of the requirements of this Deed of Trust shall be fully paid for and non-assessable. However, Borrower's policies may be subject to insurer audits.

4.3.9 **Lender Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Borrower to carry any insurance required by this Deed of Trust, the Lender may, at its sole option, purchase any such required insurance coverage and the Lender shall be entitled to immediate payment from the Borrower of any premiums and associated reasonable costs paid by the Lender for such insurance coverage. Any amount becoming due and payable to the Lender under this Section 4.3.9 that is not paid within fifteen (15) calendar days after written demand from the Lender for payment of such amount, within an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the maximum rate allowed by law, whichever is less. Any election by the Lender to purchase or not to purchase insurance otherwise required by the terms

of this Deed of Trust to be carried by Borrower shall not relieve Borrower of its obligation to obtain and maintain any insurance coverage required by this Deed of Trust.

4.3.10 **Separation of Insured.** All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Borrower and the Lender and Trustee. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Deed of Trust may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

4.3.11 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions under insurance policies required by this Deed of Trust shall be declared to and approved by Lender. Borrower shall pay all such deductibles or self-insured retentions regarding the Lender and Trustee or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to the Lender and Trustee.

4.3.12 **No Separate Insurance.** Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Deed of Trust, unless the Lender and Trustee are made additional insured thereon, as required by this Deed of Trust.

4.3.13 **Insurance Independent of Indemnification.** The insurance requirements of this Deed of Trust are independent of Borrower's indemnification and other obligations under this Deed of Trust and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify Borrower's indemnification or other obligations or to limit Borrower's liability under this Deed of Trust, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude the Lender or Trustee from taking such other actions as are available to it under any other provision of this Deed of Trust or otherwise at law or in equity.

4.4 Duty to Restore After Casualty. If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) results in damage to or loss or destruction of the Mortgaged Property, Borrower shall immediately give notice of such loss or damage to Lender and, if Lender so instructs, shall promptly, at Borrower's sole cost and expense, regardless of whether any insurance proceeds will be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace, and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately before the damage, loss, or destruction.

5. CONDEMNATION AND INSURANCE PROCEEDS.

5.1 Assignment to Lender. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part of it, or for conveyance in lieu of condemnation, are assigned to and shall be paid to Lender, who shall hold them in a non-interest-bearing general account, regardless of whether Lender's security is impaired. All causes of action, whether accrued before or after the date of this Deed of Trust, of all types for damages or injury to the

Mortgaged Property or any part of it, or in connection with any transaction financed by funds lent to Borrower by Lender and secured by this Deed of Trust, or in connection with or affecting the Mortgaged Property or any part of it, including, without limitation, causes of action arising in tort or contract or in equity, are assigned to Lender as additional security, and the proceeds shall be paid to Lender. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement of such action. Borrower shall notify Lender in writing immediately on obtaining knowledge of any casualty damage to the Mortgaged Property or damage in any other manner in excess of Twenty-Five Thousand Dollars (\$25,000) or knowledge of the institution of any proceeding relating to condemnation or other taking of or damage or injury to all or any portion of the Mortgaged Property. Lender, in its sole and absolute discretion, may participate in any such proceedings and may join Borrower in adjusting any loss covered by insurance. Borrower covenants and agrees with Lender, at Lender's request, to make, execute, and deliver, at Borrower's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards, causes of action, or claims of damages or proceeds to Lender free, clear, and discharged of any and all encumbrances of any kind or nature;

5.2 Insurance Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Lender may become entitled with respect to the Mortgaged Property, if any damage or injury occurs to the Mortgaged Property, other than by a partial condemnation or other partial taking of the Mortgaged Property, shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with their recovery and disbursement, and shall then be applied as follows:

5.2.1 Lender shall consent to the application of such payments to the restoration of the Mortgaged Property so damaged only if Borrower has met all the following conditions (a breach of one of which shall constitute a default under this Deed of Trust, the Note, and any Loan Documents): (a) Borrower is not in default under any of the terms, covenants, and conditions of the Loan Documents; (b) all then-existing Leases affected in any way by such damage will continue in full force and effect; (c) Lender is satisfied that the insurance or award proceeds, plus any sums added by Borrower, shall be sufficient to fully restore and rebuild the Mortgaged Property under then current Governmental Requirements; (d) within 60 days after the damage to the Mortgaged Property, Borrower presents to Lender a restoration plan satisfactory to Lender and any local planning department, that includes cost estimates and schedules; (e) construction and completion of restoration and rebuilding of the Mortgaged Property shall be completed in accordance with plans and specifications and drawings submitted to Lender within a reasonable time after receipt by Lender of the restoration plan and thereafter approved by Lender, which plans, specifications, and drawings shall not be substantially modified, changed, or revised without Lender's prior written consent; (f) within 3 months after such damage, Borrower and a licensed contractor satisfactory to Lender enter into a fixed price or guaranteed maximum price contract satisfactory to Lender, providing for complete restoration in accordance with such restoration plan for an amount not to exceed the amount of funds held or to be held by Lender; (g) all restoration of the Improvements so damaged or destroyed shall be made with reasonable promptness and shall be of a value at least equal to the value of the Improvements so damaged or destroyed before such damage or destruction; (h) Lender reasonably determines that there is an identified source (whether from income from the Mortgaged Property, rental loss

insurance, or another source) sufficient to pay all debt service and operating expenses of the Mortgaged Property during its restoration as required above; and (i) any and all funds that are made available for restoration and rebuilding under this Paragraph 4 shall be disbursed, at Lender's sole and absolute discretion to Lender, through Lender, the Trustee, or a title insurance or trust company satisfactory to Lender, in accordance with standard construction lending practices, including a reasonable fee payable to Lender from such funds and, if Lender requests, mechanics' lien waivers and title insurance date-downs, and the provision of payment and performance bonds by Borrower, or in any other manner approved by Lender in Lender's sole and absolute discretion; or

5.2.2 If fewer than all conditions (a) through (i) in Paragraph 5.2.1 are satisfied, then such payments shall be applied in the sole and absolute discretion of Lender (a) to the payment or prepayment, with any applicable prepayment premium, of any Indebtedness secured by this Deed of Trust in such order as Lender may determine, or (b) to the reimbursement of Borrower's expenses incurred in the rebuilding and restoration of the Mortgaged Property. If Lender elects under this Paragraph 5 to make any funds available to restore the Mortgaged Property, then all of conditions (a) through (i) in Paragraph 5.2.1 shall apply, except for such conditions that Lender, in its sole and absolute discretion, may waive in writing.

5.3 Material Loss Not Covered. If any material part of the Mortgaged Property is damaged or destroyed and the loss, measured by the replacement cost of the Improvements according to then current Governmental Requirements, is not adequately covered by insurance proceeds collected or in the process of collection, Borrower shall deposit with Lender, within thirty (30) days after Lender's request, the amount of the loss not so covered.

5.4 Total Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property, in the event of a total condemnation or other total taking of the Mortgaged Property, shall be paid over to Lender and shall be applied first to reimbursement of all Lender's costs and expenses in connection with their recovery, and shall then be applied to the payment of any Indebtedness secured by this Deed of Trust in such order as Lender may determine, until the Indebtedness secured by this Deed of Trust has been paid and satisfied in full. Any surplus remaining after payment and satisfaction of the Indebtedness secured by this Deed of Trust shall be paid to Borrower as its interest may then appear.

5.5 Partial Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments ("funds") that Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property in the event of a partial condemnation or other partial taking of the Mortgaged Property, unless Borrower and Lender otherwise agree in writing, shall be divided into two portions, one equal to the principal balance of the Note at the time of receipt of such funds and the other equal to the amount by which such funds exceed the principal balance of the Note at the time of receipt of such funds, if at all. The first such portion shall be applied to the sums secured by this Deed of Trust, whether or not then due, including but not limited to principal, accrued interest, and advances, and in such order or combination as Lender may determine, with the balance of the funds paid to Borrower.

5.6 No Cure of Waiver of Default. Any application of such amounts or any portion of it to any Indebtedness secured by this Deed of Trust shall not be construed to cure or waive any default or notice of default under this Deed of Trust or invalidate any act done under any such default or notice.

6. **TAXES AND OTHER SUMS DUE.** Borrower shall promptly pay, satisfy, and discharge: (a) all Impositions affecting the Mortgaged Property before they become delinquent; (b) such other amounts, chargeable against Borrower or the Mortgaged Property, as Lender reasonably deems necessary to protect and preserve the Mortgaged Property, this Deed of Trust, or Lender's security for the performance of the Obligations; (c) all encumbrances, charges, and liens on the Mortgaged Property, with interest, which in Lender's judgment are, or appear to be, prior or superior to the lien of this Deed of Trust or all costs necessary to obtain protection against such lien or charge by title insurance endorsement or surety company bond; (d) such other charges as Lender deems reasonable for services rendered by Lender at Borrower's request; and (e) all costs, fees, and expenses incurred by Lender in connection with this Deed of Trust, whether or not specified in this Deed of Trust.

6.1 Notices. On Lender's request, Borrower shall promptly furnish Lender with all notices of sums due for any amounts specified in the preceding clauses 6(a) through (e), and, on payment, with written evidence of such payment. If Borrower fails to promptly make any payment required under this Paragraph 6 Lender may (but is not obligated to) make such payment. Borrower shall notify Lender immediately on receipt by Borrower of notice of any increase in the assessed value of the Mortgaged Property and agrees that Lender, in Borrower's name, may (but is not obligated to) contest by appropriate proceedings such increase in assessment. Without Lender's prior written consent, Borrower shall not allow any lien inferior to the lien of this Deed of Trust to be perfected against the Mortgaged Property and shall not permit any improvement bond for any unpaid special assessment to issue.

7. **LEASES OF MORTGAGED PROPERTY BY BORROWER.** At Lender's request, Borrower shall furnish Lender with executed copies of all Leases of the Mortgaged Property or any portion of it then in force. All Leases later entered into by Borrower with a term of more than one (1) year are subject to Lender's prior review and approval and must be acceptable to Lender in form and content. At Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all Leases of the Mortgaged Property, and all security deposits made by tenants in connection with such Leases. On assignment to Lender of any such Lease, Lender shall succeed to all rights and powers of Borrower with respect to such Lease, and Lender, in Lender's sole and absolute discretion, shall have the right to modify, extend, or terminate such Lease and to execute other further leases with respect to the Mortgaged Property that is the subject of such assigned Lease.

8. **RIGHT TO COLLECT AND RECEIVE RENTS.** Despite any other provision of this Deed of Trust, Lender grants permission to Borrower to collect and retain the Rents of the Mortgaged Property as they become due and payable; however, such permission to Borrower shall be automatically revoked on default by Borrower in payment of any Indebtedness secured by this Deed of Trust or in the performance of any of the Obligations, and Lender shall have the rights set forth in California Civil Code § 2938 regardless of whether declaration of default has been delivered to Trustee as provided in Paragraph 21 of this Deed of Trust, and without regard

to the adequacy of the security for the Indebtedness secured by this Deed of Trust. Failure of or discontinuance by Lender at any time, or from time to time, to collect any such Rents shall not in any manner affect the subsequent enforcement by Lender at any time, or from time to time, of the right, power, and authority to collect these Rents. The receipt and application by Lender of all such Rents under this Deed of Trust, after execution and delivery of declaration of default and demand for sale, as provided in this Deed of Trust, or during the pendency of trustee's sale proceedings under this Deed of Trust, shall neither cure such breach or default nor affect such sale proceedings, or any sale made under them, but such Rents, less all costs of operation, maintenance, collection, and Attorney Fees, when received by Lender, may be applied in reduction of the entire Indebtedness from time to time secured by this Deed of Trust, in such order as Lender may decide. Nothing in this Deed of Trust, nor the exercise of Lender's right to collect, nor an assumption by Lender of any tenancy, lease, or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to, any such tenancy, lease, or option, shall be, or be construed to be, an affirmation by Lender of any tenancy, lease, or option.

8.1 Costs Added to Indebtedness. If the Rents of the Mortgaged Property are not sufficient to meet the costs, if any, of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become Indebtedness of Borrower to Lender secured by this Deed of Trust. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable on notice from Lender to Borrower requesting such payment and shall bear interest from the date of disbursement at the rate of 10% per annum or the highest rate that may be collected from Borrower under Governmental Requirements, whichever is less.

8.2 No Liability of Lender. Borrower expressly understands and agrees that Lender will have no liability to Borrower or any other person for Lender's failure or inability to collect Rents from the Mortgaged Property or for failing to collect such Rents in an amount that is equal to the fair market rental value of the Mortgaged Property. Borrower understands and agrees that neither the assignment of Rents to Lender nor the exercise by Lender of any of its rights or remedies under this Deed of Trust shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to: (i) the Mortgaged Property; (ii) the use, occupancy, enjoyment, or operation of all or any portion of the Mortgaged Property; (iii) the control, care, management or repair of all or any portion of the Mortgaged Property; (iii) performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (iv) any waste committed on the Mortgaged Property by the lessees under any of the Leases or any other parties; (v) any dangerous or defective condition of the Mortgaged Property; or (vi) any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person or entity, unless and until Lender, in person or by agent, assumes actual possession of the Mortgaged Property. Nor shall appointment of a receiver for the Mortgaged Property by any court, at the request of Lender or by agreement with Borrower, or the entering into possession of the Mortgaged Property or any part of it by such receiver be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment, or operation of all or any portion of it.

8.3 Rents Held in Trust. During an Event of Default, any and all Rents collected or received by Borrower shall be accepted and held for Lender in trust and shall not be commingled with Borrower's funds and property, but shall be promptly paid over to Lender.

9. **FUNDS FOR TAXES AND INSURANCE.** If Borrower is in default under this Deed of Trust or any of the Loan Documents, regardless of whether the default has been cured, then Lender may at any subsequent time, at its option to be exercised on thirty (30) days written notice to Borrower, require Borrower to deposit with Lender or its designee, at the time of each payment of an installment of interest or principal under the Note, an additional amount sufficient to discharge the obligations of Borrower under Paragraphs 4 and 6 of this Deed of Trust, as they become due. The calculation of the amount payable and of the fractional part of it to be deposited with Lender shall be made by Lender, in its sole and absolute discretion. These amounts shall be held by Lender or its designee not in trust and not as agent of Borrower and shall not bear interest, and shall be applied to the payment of any of the Obligations under the Loan Documents in such order or priority as Lender shall determine. If at any time within thirty (30) days before the due date of these obligations the amounts then on deposit shall be insufficient to pay the obligations under Paragraphs 4 and 6 in full, Borrower shall deposit the amount of the deficiency with Lender within ten (10) days after Lender's demand. If the amounts deposited are in excess of the actual obligations for which they were deposited, Lender may refund any such excess, or, at its option, may hold the excess in a reserve account, not in trust and not bearing interest, and reduce proportionately the required monthly deposits for the ensuing year. Nothing in this Paragraph 9 shall be deemed to affect any right or remedy of Lender under any other provision of this Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness secured by this Deed of Trust. Lender shall have no obligation to pay insurance premiums or taxes, except to the extent the fund established under this Paragraph 9 is sufficient to pay such premiums or taxes, to obtain insurance, or to notify Borrower of any matters relative to the insurance or taxes for which the fund is established under this Paragraph 9.

9.1 Additional Security. Lender or its designee shall hold all amounts so deposited as additional security for the sums secured by this Deed of Trust. Lender may, in its sole and absolute discretion and without regard to the adequacy of its security under this Deed of Trust, apply such amounts or any portion of it to any Indebtedness secured by this Deed of Trust, and such application shall not be construed to cure or waive any default or notice of default under this Deed of Trust.

9.2 Delivery of Statements. If Lender requires deposits to be made under this Paragraph 9, Borrower shall deliver to Lender all tax bills, bond and assessment statements, statements for insurance premiums, and statements for any other obligations referred to above as soon as Borrower receives such documents.

9.3 Cessation of Additional Payments. If Borrower has timely cured all defaults under this Deed of Trust or under any of the Loan Documents and no further defaults have occurred for one (1) year after the first payment required by Lender pursuant to this Paragraph 9, Borrower may cease making the payments required by this Paragraph 9 and payments shall only be required thereafter, if a subsequent default occurs.

9.4 Transfer. If Lender sells or assigns this Deed of Trust, Lender shall have the right to transfer all amounts deposited under this Paragraph 9 to the purchaser or assignee. After such a transfer, Lender shall be relieved and have no further liability under this Deed of Trust for the application of such deposits, and Borrower shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

10. ASSIGNMENT OF CAUSES OF ACTION, AWARDS, AND DAMAGES. All causes of action, and all sums due or payable to Borrower for injury or damage to the Mortgaged Property, including, without limitation, causes of action and damages for breach of contract, fraud, concealment, construction defects, or other torts, or compensation for any conveyance in lieu of condemnation, are assigned to Lender, and all proceeds from such causes of action and all such sums shall be paid to Lender for credit against the Indebtedness secured by this Deed of Trust. Borrower shall notify Lender immediately on receipt by Borrower of notice that any such sums have become due or payable and, immediately on receipt of any such sums, shall promptly remit such sums to Lender.

10.1 Lender Rights. After deducting all expenses, including Attorney Fees, incurred by Lender in recovering or collecting any sums under this Paragraph 10, Lender may apply or release the balance of any funds received by it under this Paragraph 10, or any part of such balance, as it elects. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any cause of action assigned to it under this Paragraph 10 and may make any compromise or settlement in such action whatsoever. Borrower covenants that it shall execute and deliver to Lender such further assignments of any such compensation awards, damages, or causes of action as Lender may request, from time to time. If Lender fails or does not elect to prosecute any such action or proceeding and Borrower elects to do so, Borrower may conduct the action or proceeding, at its own expense and risk.

11. DEFENSE OF DEED OF TRUST; LITIGATION. Borrower shall give Lender immediate written notice of any action or proceeding (including, without limitation, any judicial, whether civil, criminal, or probate, or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Mortgaged Property, this Deed of Trust, Lender's security for the performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents. Despite any other provision of this Deed of Trust, Borrower agrees that Lender or Trustee may (but is not obligated to) commence, appear in, prosecute, defend, compromise, and settle, in Lender's or Borrower's name, and as attorney-in-fact for Borrower, and incur necessary costs and expenses, including Attorney Fees in so doing, any action or proceeding, whether a civil, criminal, or probate judicial matter, nonjudicial proceeding, arbitration, or other alternative dispute resolution procedure, reasonably necessary to preserve or protect, or affecting or purporting to affect, the Mortgaged Property, this Deed of Trust, Lender's security for performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents, and that, if neither Lender nor Trustee elects to do so, Borrower shall commence, appear in, prosecute, and defend any such action or proceeding. Borrower shall pay all costs and expenses of Lender and Trustee, including costs of evidence of title and Attorney Fees, in any such action or proceeding in which Lender or Trustee may appear or for which legal counsel is sought, whether by virtue of being made a party defendant or otherwise, and whether or not the interest of Lender or Trustee in the Mortgaged Property is directly questioned in such action or

proceeding, including, without limitation, any action for the condemnation or partition of all or any portion of the Mortgaged Property and any action brought by Lender to foreclose this Deed of Trust or to enforce any of its terms or provisions.

12. **BORROWER'S FAILURE TO COMPLY WITH DEED OF TRUST.** If Borrower fails to make any payment or do any act required by this Deed of Trust, or if there is any action or proceeding (including, without limitation, any judicial or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Mortgaged Property, this Deed of Trust, Lender's security for the performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Lender or Trustee may (but is not obligated to) (a) make any such payment or do any such act in such manner and to such extent as either deems necessary to preserve or protect the Mortgaged Property, this Deed of Trust, or Lender's security for the performance of Borrower's Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents, Lender and Trustee being authorized to enter on the Mortgaged Property for any such purpose; and (b) in exercising any such power, pay necessary expenses, retain attorneys and pay Attorney Fees incurred in connection with such action, without notice to or demand on Borrower and without releasing Borrower from any Obligations or Indebtedness.

13. **SUMS ADVANCED TO BEAR INTEREST AND TO BE SECURED BY DEED OF TRUST.** At Lender's request, Borrower shall immediately pay any sums advanced or paid by Lender or Trustee under any provision of this Deed of Trust or the other Loan Documents. Until so paid, all such sums and all other sums payable to Lender or Trustee shall be added to, and become a part of, the Indebtedness secured by this Deed of Trust and bear interest from the date of advancement or payment by Lender or Trustee at the rate of 10% per annum or the maximum rate allowed by Governmental Requirements, whichever is less. All sums advanced by Lender under this Deed of Trust or the other Loan Documents, whether or not required to be advanced by Lender under the terms of this Deed of Trust or the other Loan Documents, shall conclusively be deemed to be mandatory advances required to preserve and protect this Deed of Trust and Lender's security for the performance of the Obligations and payment of the Indebtedness, and shall be secured by this Deed of Trust to the same extent and with the same priority as the principal and/or interest payable under the Note.

14. **INSPECTION OF MORTGAGED PROPERTY.** In addition to any rights Lender may have under California Civil Code §2929.5, Lender may make, or authorize other persons, including, but not limited to, appraisers and prospective purchasers at any foreclosure sale commenced by Lender, to enter on or inspect the Mortgaged Property, at reasonable times and for reasonable durations. Borrower shall permit all such entries and inspections to be made as long as Lender has given Borrower written notice of such inspection at least twenty-four (24) hours before the entry and inspection.

15. **FINANCIAL STATEMENTS; ESTOPPEL CERTIFICATES.**

15.1 Borrower's Audited Financial Statements. On receipt of Lender's written request and without expense to Lender, Borrower shall furnish to Lender (a) Borrower's annual audited financial statement prepared and certified by Borrower, showing in reasonable detail satisfactory to Lender total Rents, assessments and other income received and total expenses, together with

an annual balance sheet, within 120 days after the close of each calendar year, beginning with the fiscal year first ending after the date of recordation of this Deed of Trust; (c) copies of Borrower's annual state and federal income tax returns within 30 days after filing them. Borrower shall keep accurate books and records, and allow Lender, its representatives and agents, on notice, at any time during normal business hours, access to such books and records regarding acquisition, construction, and development of the Mortgaged Property, including any supporting or related vouchers or papers, shall allow Lender to make extracts or copies of any such papers, and shall furnish to Lender and its agents convenient facilities for the audit of any such statements, books, and records.

15.2 Recordkeeping. Borrower shall keep adequate records and books of account in accordance with generally accepted accounting principles and practices and shall permit Lender, by its agents, accountants, and/or attorneys, to examine Borrower's records and books of account and to discuss the affairs, finances, and accounts of Borrower with the officers of Borrower, at such reasonable times as Lender may request.

15.3 Public Records Act. Borrower acknowledges that Lender is subject to the California Public Records Act and that any information disclosed by Borrower to Lender may be subject to public disclosure by Lender, as required under the California Public Records Act.

15.4 Estoppel Certificates. Within ten (10) days after Lender's request for such information, Borrower shall execute and deliver to Lender, and to any third party designated by Lender, in recordable form, a certificate of the principal financial or accounting officer of Borrower, dated within three (3) days after delivery of such statements, or the date of such request, as the case may be, reciting that the Loan Documents are unmodified and in full force and effect, or that the Loan Documents are in full force and effect as modified and specifying all modifications asserted by Borrower. Such certificate shall also recite the amount of the Indebtedness and cover other matters with respect to the Indebtedness or Obligations as Lender may reasonably require, the date(s) through which payments due on the Indebtedness have been paid and the amount(s) of any payments previously made on the Indebtedness. The certificate shall include a detailed statement of any right of setoff, counterclaim, or other defense that Borrower contends exists against the Indebtedness or the Obligations; a statement that such person knows of no Event of Default or prospective Event of Default that has occurred and is continuing, or, if any Event of Default or prospective Event of Default has occurred and is continuing, a statement specifying the nature and period of its existence and what action Borrower has taken or proposes to take with respect to such matter; and, except as otherwise specified, a statement that Borrower has fulfilled all Obligations that are required to be fulfilled on or before the date of such certificate.

15.5 Failure To Deliver Estoppel Certificate. If Borrower fails to execute and deliver the certificate required by Paragraph 15.4 within the 10-day period specified in Paragraph 15.4, then: (a) the Loan Documents shall, as to Borrower, conclusively be deemed to be either in full force and effect, without modification, or in full force and effect, modified in the manner and to the extent specified by Lender, whichever Lender reasonably and in good faith may represent; (b) the Indebtedness shall, as to Borrower, conclusively be deemed to be in the amount specified by Lender and no setoffs, counterclaims, or other defenses exist against the Indebtedness; and (c)

Borrower shall conclusively be deemed to have irrevocably constituted and appointed Lender as Borrower's special attorney-in-fact to execute and deliver such certificate to any third party.

15.6 Reliance on Estoppel Certificate. Borrower and Lender expressly agree that any certificate executed and delivered by Borrower under Paragraph 15.4, or any representation in lieu of a certificate made by Lender under Paragraph 15.5, may be relied on by any prospective purchaser or any prospective assignee of any interest of Lender in the Note and other Indebtedness secured by this Deed of Trust or in the Mortgaged Property, and by any other person, without independent investigation or examination, to verify the accuracy, reasonableness, or good faith of the recitals in the certificate or representation.

15.7 No Waiver of Default or Rights. Lender's exercise of any right or remedy provided by this Paragraph 15 shall not constitute a waiver of, or operate to cure, any default by Borrower under this Deed of Trust, or preclude any other right or remedy that is otherwise available to Lender under this Deed of Trust or Governmental Requirements.

16. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Deed of Trust is intended to be and shall constitute a security agreement under the California Uniform Commercial Code for any of the Personalty specified as part of the Mortgaged Property that, under Governmental Requirements, may be subject to a security interest under the California Uniform Commercial Code, and Borrower grants to Lender a security interest in those items. Borrower authorizes Lender to file financing statements in all states, counties, and other jurisdictions as Lender may elect, without Borrower's signature, if permitted by law. Borrower agrees that Lender may file this Deed of Trust, or a copy of it, in any real estate records or other appropriate index or in the Office of the Secretary of State of the State of California and such other states, as the Lender may elect, as a financing statement for any of the items specified above as part of the Mortgaged Property. Any reproduction of this Deed of Trust or executed duplicate original of this Deed of Trust, or a copy certified by a County Recorder in the State of California, or of any other security agreement or financing statement, shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, at Lender's request, any UCC financing statements, as well as any extensions, renewals, and/or amendments and copies of this Deed of Trust in such form as Lender may require to perfect a security interest with respect to the Personalty. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases of such statements, and shall pay all reasonable costs and expenses of any record searches for financing statements that Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created any other security interest in the items, including any replacements and additions.

16.1 Lender Remedies. On any Event of Default, Lender shall have the remedies of a secured party under the California Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in Paragraph 21 of this Deed of Trust as to such items. In exercising any of these remedies, Lender may proceed against the items of Mortgaged Property or any items of Personalty separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the California Uniform Commercial Code or under Paragraph 21 of this Deed of Trust.

17. **FIXTURE FILING.** This Deed of Trust constitutes a financing statement filed as a fixture filing under California Uniform Commercial Code § 9502(c), as amended or recodified from time to time, covering any portion of the Mortgaged Property that now is or later may become a fixture attached to the Mortgaged Property or to any Improvement.

18. **WAIVER OF STATUTE OF LIMITATIONS.** Borrower waives the right to assert any statute of limitations as a defense to the Loan Documents and the Obligations secured by this Deed of Trust, to the fullest extent permitted by Governmental Requirements.

19. **EVENTS OF DEFAULT.** The term “Event of Default” as used in this Deed of Trust means the occurrence or happening, at any time and from time to time, of any one or more of the following:

19.1 Payment of Indebtedness. Borrower fails to pay any installment of interest and/or principal under the Note or any other Indebtedness when due and such failure continues for more than seven (7) days after the date such payment was due and payable whether on maturity, the date stipulated in any Loan Document, by acceleration, or otherwise.

19.2 Performance of Obligations. The failure, refusal, or neglect to perform and discharge fully and timely any of the Obligations as and when required, and the continuance of such failure for thirty (30) days after Lender gives written notice of such failure to Borrower.

19.3 Judgment. If any final judgment, order, or decree is rendered against Borrower or a guarantor and is not paid or executed on, or is not stayed by perfection of an appeal or other appropriate action, such as being bonded, or is not otherwise satisfied or disposed of to Lender’s satisfaction within sixty (60) days after entry of the judgment, order, or decree.

19.4 Voluntary Bankruptcy. If Borrower or any guarantor: (a) seeks entry of an order for relief as a debtor in a proceeding under the Bankruptcy Code; (b) seeks, consents to, or does not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (c) files a petition seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or any other competent jurisdiction; (d) makes a general assignment for the benefit of its creditors; or (e) states in writing its inability to pay its debts as they mature.

19.5 Involuntary Bankruptcy. If (a) a petition is filed against Borrower or any guarantor seeking relief under any bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or other competent jurisdiction; or (b) a court of competent jurisdiction enters an order, judgment, or decree appointing, without the consent of Borrower or any guarantor, a receiver or trustee for it, or for all or any part of its property; and (c) such petition, order, judgment, or decree is not discharged or stayed within ninety (90) days after its entry.

19.6 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without implying Lender’s consent to the existence, placing, creating, or permitting of any lien or security interest) institutes foreclosure or other proceedings to enforce its remedies thereunder and any such proceedings is not stayed or discharged within sixty (60) days after institution of such foreclosure proceedings.

19.7 Sale, Lease, Encumbrance, or Other Transfer. Any sale, lease, exchange, assignment, conveyance, encumbrance (other than a Permitted Encumbrance), transfer of possession, or other disposition of all or any portion of the Land or Improvements or any of Borrower's interest in the Land or Improvement, in violation of the Loan Documents, or any sale, lease, exchange, assignment, conveyance, encumbrance (other than a Permitted Encumbrance), or other disposition of any portion of the Personalty, in violation of the Loan Documents.

19.8 Title and Lien Priority. If Borrower's title to any or all of the Mortgaged Property or the status or priority of this Deed of Trust as a lien and security interest on the Mortgaged Property is endangered in any manner, and Borrower fails to cure the same on Lender's demand; provided, however, that Borrower shall not be in default under this Paragraph 19.8, if Borrower is diligently pursuing a contest or cure of such title or lien issue and Borrower has posted adequate security to protect Lender's rights, interest, and priority under this Deed of Trust, as determined by Lender.

19.9 Other Defaults. The occurrence of an Event of Default or any default, as defined or described in the other Loan Documents, or the occurrence of a default on any Indebtedness or Obligations.

19.10 Levy on Assets. A levy on any of the assets of Borrower or any guarantor, and such levy is not stayed or abated within sixty (60) days after such levy.

19.11 Breach of Representations. The breach of any representation, warranty, or covenant in this Deed of Trust or other Loan Documents.

19.12 Default Under Prior Deed of Trust, Security Instrument, or Lien. The failure to pay on a timely basis, or the occurrence of any other default under any note, deed of trust, contract of sale, lien, charge, encumbrance, or security interest encumbering or affecting the Mortgaged Property and having priority over the lien of this Deed of Trust.

19.13 Borrower's Right To Cure. If for more than thirty (30) days after receipt of notice from Lender, Borrower remains in default under any term, covenant, or condition of this Deed of Trust, the Note or any of the other Loan Documents except as otherwise specified in this Paragraph 19 or the Loan Documents; provided, however, that if the cure of any such default cannot reasonably be made within thirty (30) days and Borrower promptly and diligently commences to cure such default within thirty (30) days, then the period to cure shall be deemed extended for up to an additional sixty (60) days after Lender's default notice, as long as Borrower diligently and continuously proceeds to cure such default to Lender's satisfaction.

20. **ACCELERATION ON TRANSFER OR ENCUMBRANCE.**

20.1 Acceleration on Transfer or Encumbrance of Mortgaged Property. Subject to the express terms of the Agreement, the Regulatory Agreement and/or the Note, if Borrower sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Mortgaged Property, or any interest in it, or suffers its title to, or any interest in, the Mortgaged Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in Borrower equal to twenty-five percent (25%)

or more of the beneficial ownership interests of Borrower outstanding at the date of this Deed of Trust; or if Borrower changes or permits to be changed the character or use of the Mortgaged Property, or drills or extracts or enters into any lease for the drilling or extracting of oil, gas, or other hydrocarbon substances or any mineral of any kind or character on the Mortgaged Property; or if title to such Mortgaged Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Lender's prior written consent, then Lender, at Lender's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust, including those set forth in Paragraph 21.

20.2 Replacement Personalty. Despite the provisions of Paragraph 20.1, Borrower may from time to time replace Personalty constituting a part of the Mortgaged Property, as long as: (a) the replacements for such Personalty are of equivalent value and quality; (b) Borrower has good and clear title to such replacement Personalty free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise), or charges of any kind, or the rights of any conditional sellers, vendors, or any other third parties in or to such replacement Personalty have been expressly subordinated to the lien of this Deed of Trust in a manner satisfactory to Lender and at no cost to Lender; and (c) at Lender's option, Borrower provides at no cost to Lender satisfactory evidence that this Deed of Trust constitutes a valid and subsisting lien on and security interest in such replacement Personalty of the same priority as this Deed of Trust has on the Mortgaged Property and is not subject to being subordinated or its priority affected under any Governmental Requirements, including §9334 of the California Uniform Commercial Code.

21. **ACCELERATION AND SALE ON DEFAULT.** If an Event of Default occurs, Lender, at its option, in addition to other remedies provided at law, may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written affidavit or declaration of default and demand for sale, executed by Lender and reciting facts demonstrating such default by Borrower, together with a written notice of default and election to sell the Mortgaged Property. Lender shall also deposit with Trustee the Note, this Deed of Trust, and documents evidencing any additional advances or expenditures secured by this Deed of Trust. On receipt by Trustee of such affidavit or declaration of default and such notice of default and election to sell, Trustee shall accept such election to sell as true and conclusive of all facts and statements in such affidavit or declaration of default and shall cause such notice of default and election to sell to be recorded as required by Governmental Requirements. On the expiration of such period as may then be required by Governmental Requirements following recordation of such notice of default, and after notice of sale has been given in the manner and for the period required by Governmental Requirement, Trustee, without demand on Borrower, shall sell the Mortgaged Property at the time and place fixed in such notice of sale, either in whole or in separate parcels, and in such order as Trustee may determine or Lender may direct (Borrower waives any right it may have under Governmental Requirements to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale; provided, however, that Lender may offset its bid at such sale to the extent of the full amount owed to Lender under the Loan Documents, including, without limitation, Trustee's fees, expenses of sale, and costs, expenses, and Attorney Fees incurred by or on behalf of Lender in connection with collecting, litigating, or otherwise enforcing any right under the Loan Documents. Trustee may postpone the sale of all or any portion of the Mortgaged Property by

public announcement made at the initial time and place of sale, and from time to time later by public announcement made at the time and place of sale fixed by the preceding postponement. Trustee shall deliver to the purchaser at such public auction its deed conveying the Mortgaged Property sold, but without any covenant or warranty, express or implied. The recital in such deed of any matter of fact shall be conclusive proof of its truthfulness. Any person, including Borrower, Trustee, or Lender, may purchase at such sale.

21.1 Application of Proceeds. The proceeds or avails of any sale made under or by virtue of this Deed of Trust, together with any other sums secured by this Deed of Trust, which then may be held by the Trustee or Lender or any other person, shall be applied as follows:

21.1.1 **FIRST:** To the payment of the costs and expenses of such sale, including Trustee's fees, costs of title evidence, Attorney Fees, and reasonable compensation to Lender and its agents and consultants, and of any judicial proceedings in which the same costs and expenses of sale may be made, and of all expenses, liabilities, and advances made or incurred by the Trustee or Lender under this Deed of Trust, together with interest at the rate of 10% per annum or the maximum rate allowed by Governmental Requirements, whichever is less, on all advances made by the Trustee or Lender and all taxes or assessments, except any taxes, assessments, or other charges subject to which the Mortgaged Property was sold.

21.1.2 **SECOND:** To the payment of the whole amount then due, owing, or unpaid on the Note for interest and principal, with interest on the unpaid principal at the Default Rate (as defined in the Note), from the due date of any such payment of principal until the same is paid.

21.1.3 **THIRD:** To the payment of any other Indebtedness required to be paid by Borrower under any provision of this Deed of Trust, the Note, or any of the other Loan Documents.

21.1.4 **FOURTH:** To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive it.

22. **OBLIGATION TO NOTIFY LENDER OF BANKRUPTCY, INSOLVENCY, TRANSFER, OR ENCUMBRANCE.** Borrower shall notify Lender in writing, at or before the time of the occurrence of any event described in Paragraphs 19 or 20 of this Deed of Trust, of such event and shall promptly furnish Lender with any and all information on such event that Lender may request.

23. **WAIVER OF MARSHALING.** Despite the existence of interests in the Mortgaged Property other than that created by this Deed of Trust, and despite any other provision of this Deed of Trust, if Borrower defaults in paying the Indebtedness or in performing any Obligations, Lender shall have the right, in Lender's sole and absolute discretion, to establish the order in which the Mortgaged Property will be subjected to the remedies provided in this Deed of Trust and to establish the order in which all or any part of the Indebtedness secured by this Deed of Trust is satisfied from the proceeds realized on the exercise of the remedies provided in this Deed of Trust. Borrower and any person who now has or later acquires any interest in the Mortgaged Property with actual or constructive notice of this Deed of Trust waives any and all

rights to require a marshaling of assets in connection with the exercise of any of the remedies provided in this Deed of Trust or otherwise provided by Governmental Requirements.

24. ENVIRONMENTAL MATTERS.

24.1 Borrower's Representations and Warranties. Borrower represents and warrants to Lender that:

24.1.1 The Mortgaged Property and Borrower are not in violation of any Environmental Laws or subject to any existing, pending, or threatened investigation by any Governmental Authority under any Environmental Laws.

24.1.2 Borrower has not obtained and is not required by any Environmental Laws to obtain any permits or licenses to construct or use the Mortgaged Property or the Improvements.

24.1.3 Borrower is not using and will not use any part of the Mortgaged Property for the disposal, storage, treatment, processing, transporting, or other handling of Hazardous Substances.

24.1.4 To the best of Borrower's knowledge and belief no part of the Mortgaged Property is affected by any Hazardous Substance contamination.

24.1.5 To the best of Borrower's knowledge and belief, no real property adjoining the Mortgaged Property is being used, or has ever been used at any previous time, for the disposal, storage, treatment, processing, or other handling of Hazardous Substances, nor is any other real property adjoining the Mortgaged Property affected by Hazardous Substances contamination.

24.1.6 No investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Substances or Hazardous Substances contamination is proposed, threatened, anticipated, or in existence regarding the Mortgaged Property. The Mortgaged Property is not currently on, and to Borrower's knowledge, after diligent investigation and inquiry, has never been on, any federal or state "Superfund" or "Superlien" list.

24.1.7 Neither Borrower nor, to the best of Borrower's knowledge and belief, any tenant of any portion of the Mortgaged Property has received any notice from any Governmental Authority regarding any violation of any Environmental Laws relating to the Mortgaged Property.

24.1.8 The use that Borrower makes and intends to make of the Mortgaged Property shall not result in the disposal or release of any Hazardous Substances on, in, or to the Mortgaged Property.

24.1.9 Borrower shall not cause any violation of any Environmental Laws, nor permit any tenant of any portion of the Mortgaged Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Mortgaged Property.

24.1.10 Neither Borrower nor any third party shall use, generate, manufacture, store, release, discharge, or dispose of any Hazardous Substance on, under, or about the Mortgaged Property, or transport any Hazardous Substance to or from the Mortgaged Property, other than household, cleaning, painting or similar products used and stored in compliance with all applicable Environmental Laws.

24.2 Survival of Representations and Warranties. The representations and warranties set forth in Paragraph 24.1 shall be continuing and shall be true and correct for the period from the date of this Deed of Trust until the release of this Deed of Trust (whether by payment of the Indebtedness secured by this Deed of Trust or foreclosure or action in lieu of foreclosure), and these representations and warranties shall survive such release.

24.3 Notice to Lender. Borrower shall give prompt written notice to Lender of:

24.3.1 Any proceeding or inquiry by any Governmental Authority (including, without limitation, the California State Department of Health Services) regarding the presence or threatened presence of any Hazardous Substance on the Mortgaged Property;

24.3.2 All claims made or threatened by any third party against Borrower or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance;

24.3.3 Any notice given to Borrower under California Civil Code § 851(b);
and

24.3.4 Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause it or any part of it to be subject to any restrictions on the ownership, occupancy, transferability, or use of the Mortgaged Property under any Environmental Laws.

24.4 Lender's Right to Join Legal Actions. Lender shall have the right, at its option, but at Borrower's sole cost and expense, to join and participate in, as a party, if it so elects, any legal proceedings or actions initiated by or against Borrower or the Mortgaged Property in connection with any Environmental Laws.

24.5 Borrower's Indemnity. Borrower shall indemnify, defend, and hold harmless Lender, its directors, officers, employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Mortgaged Property, or any order, consent decree, or settlement relating to the cleanup of a Hazardous Substance, or any claims of loss, damage, liability, expense, or injury relating to or arising from, directly or indirectly, any disclosure by Lender to anyone of information, whether true or not, relative to a Hazardous Substance or Environmental Law violation, including, without limitation, Attorney Fees. This indemnity shall survive the release of this Deed of Trust (whether by payment of the Indebtedness secured by this Deed of Trust or foreclosure or action in lieu of foreclosure).

25. **TRUSTEE.** The Trustee shall be deemed to have accepted the terms of this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

The Trustee shall not be obligated to notify any party to this Deed of Trust of any pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender, or Trustee is a party, unless such sale relates to or reasonably might affect the Mortgaged Property, this Deed of Trust, Lender's security for the payment of the Indebtedness and the performance of the Obligations, or the rights or powers of Lender or Trustee under the Loan Documents, or unless such action or proceeding has been instituted by Trustee against the Mortgaged Property, Borrower, or Lender.

26. **POWER OF TRUSTEE TO RECONVEY OR CONSENT.** At any time, without liability and without notice to Borrower, on Lender's written request and presentation of the Note and this Deed of Trust to Trustee for endorsement, and without altering or affecting (a) the personal liability of Borrower or any other person for the payment of the Indebtedness secured by this Deed of Trust, or (b) the lien of this Deed of Trust on the remainder of the Mortgaged Property as security for the repayment of the full amount of the Indebtedness then or later secured by this Deed of Trust, or (c) any right or power of Lender or Trustee with respect to the remainder of the Mortgaged Property, Trustee may: (i) reconvey or release any part of the Mortgaged Property from the lien of this Deed of Trust; (ii) approve the preparation or filing of any map or plat of the Mortgaged Property; (iii) join in the granting of any easement burdening the Mortgaged Property; or (iv) enter into any extension or subordination agreement affecting the Mortgaged Property or the lien of this Deed of Trust.

27. **DUTY TO RECONVEY.** On Lender's written request reciting that all sums secured by this Deed of Trust have been paid, surrender of the Note and this Deed of Trust to Trustee for cancellation and retention by Trustee, and payment by Borrower of any reconveyance fees customarily charged by Trustee, Trustee shall reconvey, without warranty, the Mortgaged Property then held by Trustee under this Deed of Trust. The recitals in such reconveyance of any matters of fact shall be conclusive proof of their truthfulness. The grantee in such reconveyance may be described as "the person or persons legally entitled to the Mortgaged Property." Such request and reconveyance shall operate as a reassignment of the Rents assigned to Lender in this Deed of Trust.

28. **SUBSTITUTION OF TRUSTEE.** Lender, at Lender's option, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties in which the Mortgaged Property is located, shall constitute conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers, and duties of such predecessor Trustee, including, without limitation, the power to reconvey the Mortgaged Property. To be effective, the instrument must contain the names of the original Borrower, Trustee, and Lender under this Deed of Trust, the book and page or instrument or document number at which, and the county or counties in which, this Deed of Trust is recorded, and the name and address of the substitute Trustee. If any notice of default has been recorded under this Deed of Trust, this power of substitution cannot be exercised until all costs, fees, and expenses of the then acting Trustee have been paid. On such payment, the then acting Trustee shall endorse receipt of the payment on the instrument of substitution. The procedure provided in this Paragraph 28 for substitution of Trustees is not exclusive of other provisions for substitution provided by Governmental Requirements.

29. **NO WAIVER BY LENDER.** No waiver by Lender of any right or remedy provided by the Loan Documents or Governmental Requirements shall be effective unless such waiver is in writing and signed by the Executive Director of Lender. Waiver by Lender of any right or remedy granted to Lender under the Loan Documents or Governmental Requirements as to any transaction or occurrence shall not be deemed a waiver of any future transaction or occurrence. The acceptance of payment of any sum secured by this Deed of Trust after its due date, or the payment by Lender of any Indebtedness or the performance by Lender of any Obligations of Borrower under the Loan Documents, on Borrower's failure to do so, or the addition of any payment so made by Lender to the Indebtedness secured by this Deed of Trust, or the exercise of Lender's right to enter the Mortgaged Property and receive and collect the Rents from it, or the assertion by Lender of any other right or remedy under the Loan Documents, shall not constitute a waiver of Lender's right to require prompt performance of all other Obligations of Borrower under the Loan Documents and payment of the Indebtedness, or to exercise any other right or remedy under the Loan Documents for any failure by Borrower to timely and fully pay the Indebtedness and perform its Obligations under the Loan Documents. Lender may waive any right or remedy under the Loan Documents or Governmental Requirements, without notice to or consent from Borrower, any guarantor of the Indebtedness or of Borrower's Obligations under the Loan Documents, or any holder or claimant of a lien or other interest in the Mortgaged Property that is junior to the lien of this Deed of Trust, and without incurring liability to Borrower or any other person by so doing.

30. **CONSENTS AND MODIFICATIONS; BORROWER AND LIEN NOT RELEASED.** Despite Borrower's default in the payment of any Indebtedness secured by this Deed of Trust or in the performance of any Obligations under or secured by this Deed of Trust or Borrower's breach of any obligation, covenant, or agreement in the Loan Documents, Lender, at Lender's option, without notice to or consent from Borrower, any guarantor of the Indebtedness or of Borrower's Obligations under the Loan Documents, or any holder or claimant of a lien or interest in the Mortgaged Property that is junior to the lien of this Deed of Trust, and without incurring liability to Borrower or any other person by so doing, may from time to time: (a) extend the time for payment of all or any portion of Borrower's Indebtedness under the Loan Documents; (b) accept a renewal note or notes, or release any person from liability, for all or any portion of such Indebtedness; (c) agree with Borrower to modify the terms and conditions of payment under the Loan Documents; (d) reduce the amount of the monthly installments due under Paragraph 9 of this Deed of Trust; (e) reconvey or release other or additional security for the repayment of Borrower's Indebtedness under the Loan Documents; (f) approve the preparation or filing of any map or plat with respect to the Mortgaged Property; (g) enter into any extension or subordination agreement affecting the Mortgaged Property or the lien of this Deed of Trust; and (h) agree with Borrower to modify the term, the rate of interest, or the period of amortization of the Note or alter the amount of the monthly installments payable under the Note. No action taken by Lender under this Paragraph 30 shall be effective, unless it is in writing, subscribed by Lender, and, except as expressly stated in such writing, no such action will impair or affect (i) Borrower's obligation to pay the Indebtedness secured by this Deed of Trust and to observe all Obligations of Borrower contained in the Loan Documents; (ii) the guaranty of any Person of the payment of the Indebtedness secured by this Deed of Trust; or (iii) the lien or priority of the lien of this Deed of Trust. At Lender's request, Borrower shall promptly pay Lender a reasonable service charge, together with all insurance premiums and

Attorney Fees as Lender may have advanced, for any action taken by Lender under this Paragraph 30.

30.1 Written Consent Required. Whenever Lender's consent or approval is specified as a condition of any provision of this Deed of Trust, such consent or approval shall not be effective, unless such consent or approval is in writing, signed by Lender.

31. **WAIVER OF RIGHT OF OFFSET.** No portion of the Indebtedness secured by this Deed of Trust shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Borrower may have or claim to have against Lender. Borrower hereby waives, to the fullest extent permitted by Governmental Requirements, the benefits of California Code of Civil Procedure § 431.70, which provides:

Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For the purposes of this section, a money judgment is a "demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9.

32. **FUTURE ADVANCES.** On request by Borrower, Lender, at Lender's option, may make future advances to Borrower. All such future advances, with interest, shall be added to and become a part of the Indebtedness secured by this Deed of Trust when evidenced by promissory note(s) reciting that such note(s) are secured by this Deed of Trust.

33. **PREPAYMENT.** If the Note secured by this Deed of Trust provides for a fee or charge as consideration for the acceptance of prepayment of principal, Borrower agrees to pay said fee or charge, if the Indebtedness or any part of it shall be paid, whether voluntarily or involuntarily, before the due date stated in the Note, even if Borrower has defaulted in payment or in the performance of any agreement under this Deed of Trust and Lender, for that reason or by reason of Paragraphs 20 and 21 of this Deed of Trust, shall have declared all sums secured by this Deed of Trust immediately due and payable.

34. **ADDITIONAL BORROWER REPRESENTATIONS.** To induce Lender to enter into this Deed of Trust, the Note, and the other Loan Documents and to make the Loan, Borrower makes the following representations and warranties, which are deemed made as of both the date and the recordation of this Deed of Trust:

34.1 Litigation. There are no actions, suits, investigations, or proceedings pending or, to Borrower's knowledge after due inquiry and investigation, threatened against or affecting Borrower at law or in equity, before or by any Person or Governmental Authority, that, if adversely determined, would have a material adverse effect on the business, properties, or condition (financial or otherwise) of Borrower or on the validity or enforceability of this Deed of Trust, any of the other Loan Documents, or the ability of Borrower to perform under any of the Loan Documents.

34.2 No Untrue Statements. All statements, representations, and warranties made by Borrower in this Deed of Trust or any other Loan Document and any other agreement, document, certificate, or instrument previously furnished or to be furnished by Borrower to Lender under the Loan Documents (a) are and shall be true, correct, and complete in all material respects at the time they were made and on and as of the recordation of this Deed of Trust, (b) do not and shall not contain any untrue statement of a material fact, and (c) do not and shall not omit to state a material fact necessary to make the information in them neither misleading nor incomplete. Borrower understands that all such statements, representations, and warranties shall be deemed to have been relied on by Lender as a material inducement to make the Loan.

34.3 Policies of Insurance. Each copy of the insurance policies relating to the Mortgaged Property delivered to Lender by Borrower (a) is a true, correct, and complete copy of the respective original policy in effect on the date of this Deed of Trust, and no amendments or modifications of said documents or instruments not included in such copies have been made, and (b) has not been terminated and is in full force and effect. Borrower is not in default in the observance or performance of its material obligations under said documents or instruments and Borrower has done all things required to be done as of the date of this Deed of Trust to keep its rights under said documents or instruments unimpaired.

34.4 Financial Statements. All financial statements furnished to Lender are true and correct in all material respects, are prepared in accordance with generally accepted accounting principles, and do not omit any material fact the omission of which makes such statement or statements misleading. There are no facts that have not been disclosed to Lender by Borrower in writing that materially or adversely affect or could potentially in the future affect the Mortgaged Property or the business prospects, profits, or condition (financial or otherwise) of Borrower or any guarantor or Borrower's abilities to perform the Obligations and pay the Indebtedness.

34.5 Taxes. Borrower has filed or caused to be filed all tax returns that are required to be filed by Borrower under the Governmental Requirements of each Governmental Authority with taxing power over Borrower, and Borrower has paid, or made provision for the payment of, all taxes, assessments, fees, and other governmental charges that have or may have become due under said returns, or otherwise, or under any assessment received by Borrower, except that such taxes, if any, as are being contested in good faith and as to which adequate reserves (determined in accordance with generally accepted accounting principles) have been provided.

34.6 Leases. If the Mortgaged Property includes a leasehold estate, Borrower has not and shall not surrender, terminate, cancel, waive, accept waiver, change, supplement, grant subleases of, alter, surrender, or amend, and shall comply with all terms, covenants, and conditions in the Leasehold.

34.7 Further Acts. Borrower shall, at its sole cost and expense, and without expense to Trustee or Lender, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Lender shall from time to time require, for the purpose of better assuring, conveying, assigning, transferring, pledging, mortgaging, warranting, and confirming to Trustee the Mortgaged Property and rights, and as to Lender the security interest as to the Personalty, conveyed or assigned by this Deed of Trust or intended now or later so to be, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust and, on demand, shall execute and deliver, and authorizes Lender to execute in the name of Borrower, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien of this Deed of Trust on the Mortgaged Property.

34.8 Filing Fees. Borrower shall pay all filing, registration, or recording fees, all Governmental Authority stamp taxes and other fees, taxes, duties, imposts, assessments, and all other charges incident to, arising from, or in connection with the preparation, execution, delivery, and enforcement of the Note, this Deed of Trust, the other Loan Documents, any supplemental deed of trust or mortgage, or any instrument of further assurance.

34.9 Entity Compliance. As long as it is the owner of the Mortgaged Property, if Borrower is a corporation, limited liability company or partnership, Borrower shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights, and privileges as such entity under the laws of its state of domicile and the laws of the State of California, and shall comply with all Governmental Requirements of any Governmental Authority applicable to Borrower or to the Mortgaged Property or any part of it.

34.10 No Purchase of Security. Borrower represents and warrants that this Deed of Trust and the Indebtedness secured by this Deed of Trust is for the sole purpose of the acquisition or management of real or personal property, and all proceeds of such Indebtedness shall be used for said purpose. Such proceeds shall not be used to purchase any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation issued under that Act, including, without limitation, Regulations G, T, and X of the Board of Governors of the Federal Reserve System.

35. **GOVERNING LAW**. This instrument shall be deemed to have been made in the State of California, and the validity of this Deed of Trust and the other Loan Documents, their construction, interpretation, and enforcement, and the parties' rights under such documents and concerning the Mortgaged Property, shall be decided under, governed by, and construed in accordance with the laws of the State of California, without application of conflicts or choice of laws principles. The Lender and Borrower agree that all actions or proceedings arising in connection with this Deed of Trust and the other Loan Documents shall be tried and litigated only in the state courts located in the County of Los Angeles, State of California, or the federal

courts located in the Central District of California. Borrower waives any right Borrower may have to assert the doctrine of forum non conveniens or to object to such venue.

36. **REQUEST FOR NOTICE OF DEFAULT.** The undersigned Borrower requests that a copy of any notice of default and any notice of sale under this Deed of Trust be mailed to Borrower at its address specified in Paragraph 42.

37. **TAXATION OF DEEDS OF TRUST.** In the event of the enactment of any law deducting from the value of the Mortgaged Property any mortgage lien on it, or imposing on Lender the payment of all or part of the taxes, charges, or assessments previously paid by Borrower under this Deed of Trust, or changing the law relating to the taxation of mortgages, debts secured by mortgages, or Lender's interest in the Mortgaged Property so as to impose new incidents of tax on Lender, then Borrower shall pay such taxes or assessments or shall reimburse Lender for them; provided, however, that if in the opinion of Lender's counsel such payment cannot lawfully be made by Borrower, then Lender may, at Lender's option, declare all sums secured by this Deed of Trust to be immediately due and payable, without notice to Borrower, and Lender may invoke any remedies permitted by this Deed of Trust.

38. **MECHANICS' LIENS.** Borrower shall pay from time to time when due, all lawful claims and demands of mechanics, materialmen, laborers, and others that, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part of it, or on the Rents arising therefrom, and in general shall do or cause to be done everything necessary so that the lien and security interest of this Deed of Trust shall be fully preserved, at Borrower's expense, without expense to Lender; provided, however, that if Governmental Requirements empower Borrower to discharge of record any mechanics', laborer's, materialman's, or other lien against the Mortgaged Property by the posting of a bond or other security, Borrower shall not have to make such payment, if Borrower posts such bond or other security on the earlier of (a) ten (10) days after the filing or recording of same or (b) within the time prescribed by law, so as not to place the Mortgaged Property in jeopardy of a lien or forfeiture.

39. **[RESERVED]**

40. **BROKERAGE.** Borrower represents and warrants to Lender that Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission, or other sum in connection with the execution of this Deed of Trust, the consummation of the transactions contemplated by this Deed of Trust, or the making of the Loan secured by this Deed of Trust by Lender to Borrower, and Borrower indemnifies and agrees to hold Lender harmless from and against any and all loss, liability, or expense, including court costs and Attorney Fees, that Lender may suffer or sustain if such warranty or representation proves inaccurate in whole or in part.

41. **LIABILITY FOR ACTS OR OMISSIONS.** Lender shall not be liable or responsible for its acts or omissions under this Deed of Trust, except for Lender's own gross negligence or willful misconduct, or be liable or responsible for any acts or omissions of any agent, attorney, or employee of Lender, if selected with reasonable care.

42. **NOTICES.** Except for any notice required by Governmental Requirements to be given in another manner, (a) all notices required or permitted by the Loan Documents shall be in writing; (b) each notice shall be sent (i) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (ii) by certified United States mail, postage prepaid, return receipt requested; or (iii) by nationally recognized overnight delivery service, marked for next-business-day delivery; and (c) all notices shall be addressed to the appropriate party at its address, as follows, or such other addresses as may be designated by notice given in compliance with this provision:

To Borrower:	National Community Renaissance of California, Inc. 9065 Haven Avenue, Suite 100 Rancho Cucamonga, CA 91730 Attn: Richard J. Whittingham, CFO
With a courtesy copy to:	Edward A. Hopson, Esq. 655A North Mountain Avenue Upland, CA 91786
To Lender:	Community Development Commission of the City of Downey 11111 Brookshire Avenue Downey, CA 92041 Attn: Executive Director
With a courtesy copy to:	Delmar Williams, Esq. Best Best & Krieger LLP 655 West Broadway, 15th Floor San Diego, CA 92101

42.1 Effective Date. Notices will be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

42.2 Notice to Multiple Borrowers. To the extent permitted by Governmental Requirements, if there is more than one Borrower, notice to any Borrower shall constitute notice to all Borrowers. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address(es).

43. **STATEMENT OF OBLIGATIONS.** Except as otherwise provided by Governmental Requirements, at Lender's request, Borrower shall promptly pay to Lender such fee as may then be provided by law as the maximum charge for each statement of obligations, Lender's

statement, Lender's demand, payoff statement, or other statement on the condition of, or balance owed, under the Note or secured by this Deed of Trust.

44. **APPLICATION OF PAYMENTS.** Except as otherwise expressly provided by Governmental Requirements or any other provision of this Deed of Trust, all payments received by Lender from Borrower under the Loan Documents shall be applied by Lender in the following order: (a) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender and interest under any provision of the Note or this Deed of Trust, in such order as Lender, in its sole and absolute discretion, elects, (b) interest payable under the Note, and (c) principal under the Note.

45. **REMEDIES ARE CUMULATIVE.** Each remedy provided in this Deed of Trust is separate and distinct and is cumulative to all other rights and remedies provided in this Deed of Trust or by Governmental Requirements, and each may be exercised concurrently, independently, or successively, in any order whatsoever.

46. **OBLIGATIONS OF BORROWER JOINT AND SEVERAL.** If more than one Person is named as Borrower, each obligation of Borrower under this Deed of Trust shall be the joint and several obligations of each such Person.

47. **SEVERABILITY.** If any provision of this Deed of Trust, or the application of this Deed of Trust to the circumstances, is held void, invalid, or unenforceable by a court of competent jurisdiction, this Deed of Trust, and the applications of such provision to other persons or circumstances, shall not be affected thereby, the provisions of this Deed of Trust being severable in any such instance.

48. **DELEGATION OF AUTHORITY.** Whenever this Deed of Trust provides that Borrower authorizes and appoints Lender as Borrower's attorney-in-fact to perform any act for or on behalf of Borrower or in the name, place, and stead of Borrower, Borrower expressly understands and agrees that this authority shall be deemed a power coupled with an interest and such power shall be irrevocable.

49. **GENERAL PROVISIONS.**

49.1 Successors and Assigns. Subject to Paragraphs 19 and 20 of this Deed of Trust, this Deed of Trust applies to, inures to the benefit of, and binds, the respective heirs, legatees, devisees, administrators, executors, successors, and assigns of Borrower or Lender.

49.2 Meaning of Certain Terms. As used in this Deed of Trust and unless the context otherwise provides, the words "herein," "hereunder" and "hereof" mean and include this Deed of Trust as a whole, rather than any particular provision of it.

49.3 Authorized Agents. In exercising any right or remedy, or taking any action provided in this Deed of Trust, Lender may act through its employees, agents, or independent contractors, as Lender expressly authorizes in writing.

49.4 Gender and Number. Wherever the context so requires in this Deed of Trust, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.

49.5 Captions. Captions and paragraph headings used in this Deed of Trust are for convenience of reference only, are not a part of this Deed of Trust, and shall not be used in construing it.

49.6 Time Is of the Essence. As a material inducement and consideration to the Lender and Borrower in entering into this Deed of Trust, and but for this provision the Lender and Borrower would not enter into this Deed of Trust, the Lender and Borrower agree that the performance in a timely manner of each deadline set forth in this Deed of Trust before its expiration is of crucial importance to the Lender and Borrower. Failure by Lender or Borrower to timely perform an obligation before the deadline set forth in this Deed of Trust (no matter for what reason, nor how soon thereafter it may have been performed, nor the lack of prejudice to the other as the result of such nonperformance) shall result in a default by the nonperforming party or the failure of a condition, as appropriate. The Lender and Borrower expressly waive any equitable relief with respect to a missed deadline.

49.7 Incorporation of Defined Terms. Any terms indicated to be defined terms in this Deed of Trust by initial capitalization and not defined in this Deed of Trust shall have the meaning ascribed to the same term in the Agreement, Regulatory Agreement, or the Note.

49.8 Note, Regulatory Agreement, and Agreement to Control. In the event of any conflict between the terms or conditions of this Deed of Trust and the Note, the Regulatory Agreement, or the Agreement, the terms and conditions of the Note, the Regulatory Agreement, or the Agreement, as applicable, shall control. Nothing contained in this Deed of Trust is intended to nor shall be deemed or construed to modify or terminate any condition, covenant, restriction or agreement set forth in the Note, the Regulatory Agreement, or the Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, Borrower has executed and delivered this Deed of Trust as of the date first written above.

BORROWER TO SIGN DOCUMENT
EXACTLY AS NAME APPEARS

[TO BE DETERMINED]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**EXHIBIT "A"
TO
DEED OF TRUST, ASSIGNMENT OF LEASES
AND RENTS, FIXTURE FILING, AND
SECURITY AGREEMENT; REQUEST FOR NOTICE
([TO BE DETERMINED])**

Land Legal Description

[To be inserted]

**CITY-OWNED PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-902**

THAT PORTION OF BLOCK 8 OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, AS PER MAP RECORDED IN BOOK 2, PAGE 434 MISCELLANEOUS RECORDS; IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID BLOCK 8, DISTANT THEREON 95 FEET EASTERLY ALONG SAID LINE FROM THE NORTHWEST CORNER OF SAID BLOCK 8; THENCE SOUTHERLY PARALLELL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET; THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINE OF SAID BLOCK, 40.15 FEET; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK 8, 140 FEET TO SAID NORTHERLY LINE; THENCE WESTERLY ALONG SAID NORTHERLY LINE, 40.15 FEET TO THE POINT OF BEGINNING.

**EXHIBIT G
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Notice of Affordability Restrictions

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Community Development Commission
of the City of Downey
11111 Brookshire Avenue
Downey, CA 90241
Attn: Executive Director

APN _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

(Verizon Building)

NOTICE: Restrictions have been recorded restricting the price and terms at which the real property described below in this Notice (“**Property**”) may be sold or rented. These affordability restrictions may limit the sales price or rents of the Property to an amount that is less than the fair market value of such amounts for the Property and limit the persons and households who are permitted to purchase or rent the Property to persons or households with certain income levels.

Recorded Document Containing Affordability Restrictions: _____
_____ (“**Affordability Restrictions**”) recorded (*check one*):

- as Document No. _____, official records of Los Angeles County, on _____ ; or
- concurrently with this Notice, official records of Los Angeles County.

Property Legal Description: _____

Property Street Address(es): _____

Property Assessor’s Parcel Number(s): _____

Affordability Restrictions Summary (*check as applicable*):

The Affordability Restrictions restrict the amount of rent that may be charged for rental housing units on the Property, as follows:

The Affordability Restrictions restrict the sales price that may be charged for the sale of one or more housing units on the Property, as follows:

The Affordability Restrictions restrict the income level of tenants or purchasers of the Property, as follows:

The Affordability Restrictions commence(d) on _____ and terminate on _____ (a time period of _____)

This Notice may not contain all of the terms and conditions of the Affordability Restrictions affecting the Property. Interested persons should obtain and read the Affordability Restrictions to determine the extent of the Affordability Restrictions applicable to the Property.

This Notice is recorded pursuant to and in compliance with Health and Safety Code Section 33334.3(f)(3) and (4).

Dated: _____	COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, a public body, corporate and politic By: _____ Gerald Caton Executive Director By: _____ Agency Secretary
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[SIGNATURE OF EXECUTIVE DIRECTOR MUST BE NOTARY ACKNOWLEDGED]

**EXHIBIT H
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Developer Official Action

[Attached Behind This Page]

FORM OF DEVELOPER OFFICIAL ACTION

CERTIFICATION OF LIMITED PARTNERSHIP AUTHORITY

The undersigned general partners of [TO BE DETERMINED], a California limited partnership (“Partnership”), do hereby certify that we are all of the general partners of the Partnership, there are no other general partners and no consent or approval of any other person is required for the undersigned to make the certifications set forth in this Certificate.

We further certify that the following named person(s):

1. [TO BE DETERMINED]; and
2. [TO BE DETERMINED];

are, without any additional or further consent of any person, authorized and empowered for and on behalf of and in the name of the Partnership to: (1) sign and deliver that certain Disposition and Development Agreement (Verizon Building), dated as of _____, 20__, for reference purposes only (“Agreement”), regarding the Partnership’s acquisition and development of certain property, generally, located at [TO BE DETERMINED], Downey, California, and performance of other Partnership obligations set forth in the Agreement; (2) sign and deliver all other documents to be executed in connection with the transactions contemplated in the Agreement; and (3) take all actions that may be considered necessary to conclude the transactions and complete the development contemplated in the Agreement.

The authority conferred and certified to in this Certificate shall be considered retroactive and any and all acts authorized in this Certificate that were performed before the execution of this Certificate are approved and ratified by the Partnership. The authority conferred and certified to in this Certificate shall continue in full force and effect until the Executive Director of the Community Development Commission of the City of Downey receives written notice from all of the general partners of the Partnership of the revocation of this Certificate.

We further certify that the activities covered by the authorities conferred and certified to in this Certificate and the foregoing certifications constitute duly authorized activities of the Partnership; that these authorities and certifications are now in full force and effect; and that there is no provision in any document under which the Partnership is organized and/or that governs the Partnership’s continued existence limiting the power of the undersigned to grant such authority or make the certifications set forth in this Certificate, and that the same are in conformity with the provisions of all such documents.

Partnership General Partners:

By: [TO BE DETERMINED], a
California limited liability company

By: [TO BE DETERMINED], a
California non-profit public benefit
corporation

By: _____
[TO BE DETERMINED]

By: _____
[TO BE DETERMINED]

**EXHIBIT I
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Property Deed

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE ONLY

APN _____

FORM OF PROPERTY QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, a public body, corporate and politic ("**Transferor**"),

does hereby remise, release and forever quitclaim to

[TO BE DETERMINED], a California limited partnership ("**Transferee**"),

all right, title and interest in that certain real property in the City of Downey, County of Los Angeles, State of California, specifically described in Exhibit "A" attached to this Quitclaim Deed ("**Property**") and made a part of this Quitclaim Deed by this reference,

SUBJECT TO the following retained and reserved rights, interests and conditions in the Property in favor of Transferor that shall run with the Property and bind Transferee and all successive owners of all or any portion of the Property:

1. **Transferee Covenant to Develop the Project.** Section 6.1 of that certain Disposition and Development Agreement (Verizon Building), dated as of **[TO BE DETERMINED]** ("**DDA**"), entered into between Transferor and Transferee (as "**Developer**"), which reads as follows:

6.1 Developer's Covenant to Develop the Project. Developer covenants to and for the exclusive benefit of Commission that Developer shall commence, pursue and complete the development of the Project in accordance with the deadlines and other requirements of this Agreement. Developer covenants and agrees for itself, its successors and assigns that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement and all applicable Laws and conditions of each Government. The covenants of this Section 6.1 shall run with the Property, until the earlier of: (1) the date of issuance of a Completion Certificate for the Project; or (2) the twentieth (20th) anniversary of the date of the Close of Escrow.

2. Transferor Power of Termination Regarding Property.

2.1 **Reservation.** Transferor hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by Transferor, in its sole and absolute discretion, upon thirty (30) calendar days Notice to Transferee referencing this Section 2, to terminate the fee interest of Transferee in the Property or any improvements to the Property and revest such fee title in Transferor and take possession of all or any portion of such real property and improvements, without compensation to Transferee, upon the occurrence of an Event of Default by Transferee following the Close of Escrow and prior to the issuance of a Completion Certificate for the Project, all pursuant to the DDA. Transferor shall not exercise such power of termination, if Transferee cures the Event of Default within the thirty (30) day Notice period set forth in this Section 2.1.

2.2 **Process.** The rights of Transferor under this Section 2 shall not defeat, render invalid or limit:

2.2.1 Any Permitted Security Instrument; or

2.2.2 Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Property and specifically authorized by this Agreement or consented to in writing by Transferor; or

2.2.3 Upon Transferor's exercise of its power of termination pursuant to this Section 2, Transferee shall convey fee title to the Property and all improvements on or to the Property to Transferor by grant deed, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by Transferee and a notary public in a manner suitable for recordation with County. Transferor may enforce its rights pursuant to this Section 2 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

2.2.4 Upon the revesting in Transferor of title to the Property, whether by grant deed or court decree, Transferor shall exercise its reasonable good faith efforts to resell the Property at the Property's then fair reuse value, as soon and in such manner as Transferor shall, in its sole discretion, find feasible and consistent with the objectives of the Redevelopment Plan, to a qualified and responsible Person or Persons (as reasonably determined by Transferor) who will assume Transferee's obligations to begin or complete or operate the Project, or such other replacement development acceptable to Transferor, in Transferor's sole and absolute discretion. Upon any such resale of all or a portion of the Property, the proceeds received by Transferor from such sale shall be applied, as follows:

(a) First, to pay all amounts required to release/reconvey all Permitted Security Instruments recorded against the Property; and

(b) Second, to reimburse Transferor on its own behalf or on behalf of the City for all actual internal and Third Person costs and expenses incurred by Transferor or the City related to the Property, the Project or this Agreement, including customary and reasonable fees or salaries to Third Person consultants (including Legal Costs) in connection with the recapture, management or resale of all or any portion of the Property; all taxes, assessments and utility charges paid by the City or Transferor with respect to all or any portion of the Property; any payment made or necessary to be made to discharge or prevent from attaching or being made

any subsequent encumbrances or liens due to obligations incurred by Transferee with respect to the Property or the construction of the Project; and amounts otherwise owing to Transferor by Transferee pursuant to the terms of this Agreement, the Regulatory Agreement, Developer Note or Commission Deed of Trust; and

(c) Third, to the extent that any proceeds from such resale are, thereafter, available, to reimburse Transferee, the amount of the Third Person costs actually incurred and paid by Transferee regarding the construction of the Project, including costs of carry, taxes, and other items as set forth in a cost certification to be made by Transferee to Transferor, prior to any such reimbursement and, which certification shall be subject to Transferor's reasonable approval; provided, however, that Transferee shall not be entitled to reimbursement for any expenses relating to any loans, liens or other encumbrances that are paid by Transferor pursuant to the provisions of sub-sections "(a)" or "(b)" of this Section 2.2.4; and

(d) Fourth, any portion of the proceeds from the resale of the Property remaining after the foregoing applications shall be retained by Transferor, as its sole and exclusive property.

2.3 RIGHT OF RE-ENTRY. IMMEDIATELY FOLLOWING THE THIRTY (30) DAY NOTICE PERIOD SPECIFIED IN SECTION 2.1, TRANSFEROR, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF ALL OR ANY PORTION OF THE PROPERTY AND ANY IMPROVEMENTS ON OR TO THE PROPERTY, WITHOUT FURTHER NOTICE OR COMPENSATION TO TRANSFEREE. BY INITIALING BELOW, TRANSFEREE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT TRANSFEREE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

Initials of Authorized
Transferee Representative

2.3.1 TRANSFEREE ACKNOWLEDGMENTS. TRANSFEREE ACKNOWLEDGES AND AGREES THAT TRANSFEROR'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 2 MAY WORK A FORFEITURE OF THE ESTATE IN THE PROPERTY CONVEYED TO TRANSFEREE THROUGH THE QUITCLAIM DEED. TRANSFEREE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT TRANSFEREE MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. TRANSFEREE FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT TRANSFEREE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. TRANSFEREE ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT

REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF TRANSFEROR'S POWER OF TERMINATION PROVIDED IN THIS SECTION 2. TRANSFEREE FURTHER ACKNOWLEDGES THAT TRANSFEREE HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR TRANSFEREE'S WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO THIS SECTION 2.

Initials of Authorized
Transferee Representative

3. No Discrimination or Segregation. Transferee covenants by and for itself and all Persons claiming under or through Transferee that this Quitclaim Deed is made and accepted upon and subject to the following conditions:

3.1 **Standards.** That there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property nor shall Transferee or any Person claiming under or through Transferee 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 Property.

3.2 **Interpretation.** Notwithstanding Section 3.1, with respect to familial status, Section 3.1 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 3.1 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 3.1.

Dated: _____, 20____

COMMUNITY DEVELOPMENT
COMMISSION OF THE CITY OF
DOWNEY, a public body, corporate and
politic

By: _____
Gerald Caton
Executive Director

EXHIBIT "A"

Property Legal Description

[To be attached]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the above Quitclaim Deed from the **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY**, a public body, corporate and politic, to **[TO BE DETERMINED]**, a California limited partnership, is hereby accepted by the undersigned officer on behalf of **[TO BE DETERMINED]**, and **[TO BE DETERMINED]** consents to recordation of such Quitclaim Deed in the official records of the Recorder of the County of Los Angeles, California.

[TO BE DETERMINED], a California limited partnership

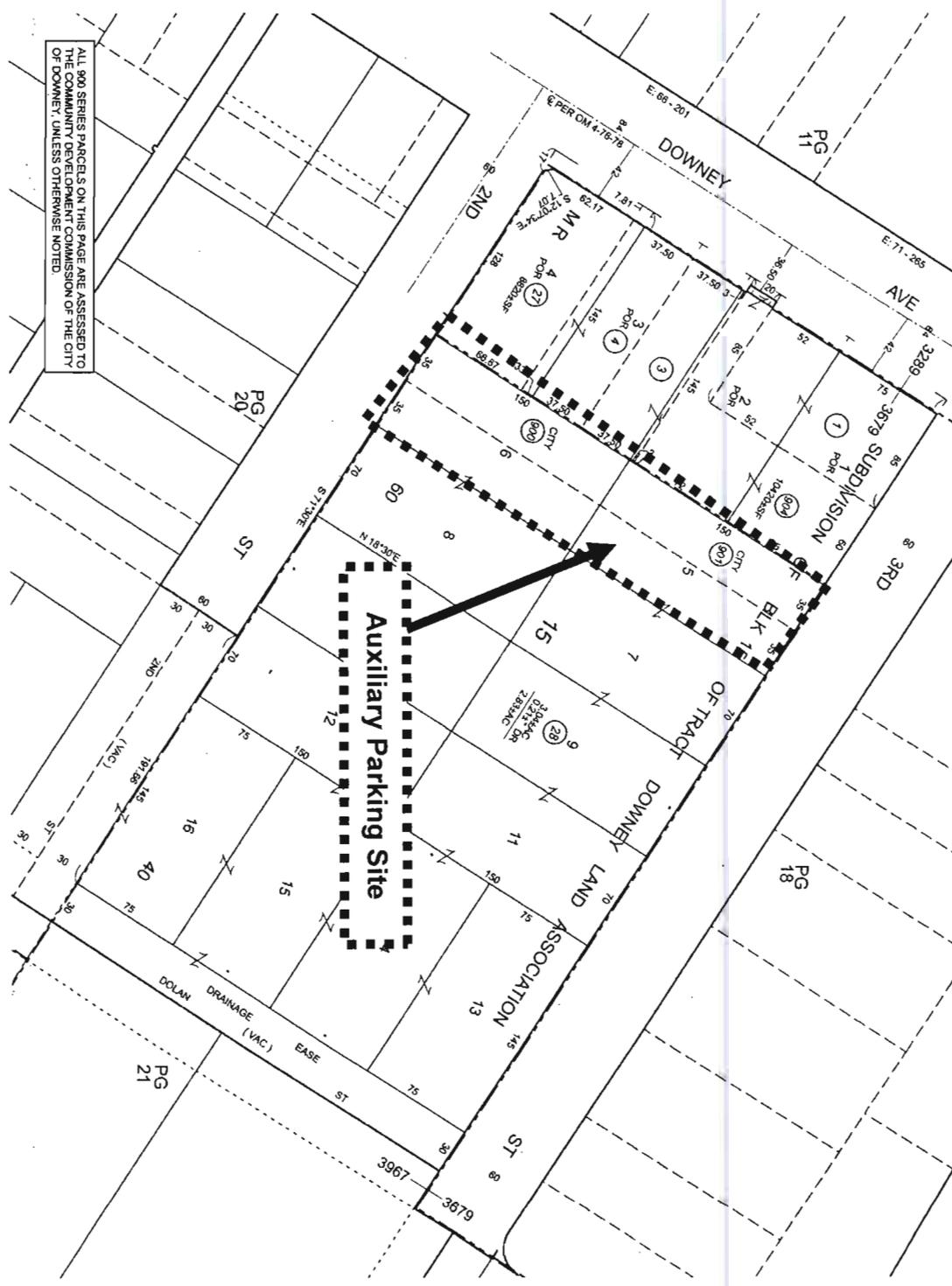
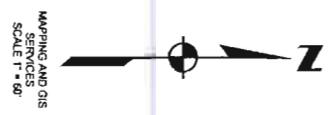
By: _____
Name: _____
Its: _____

**EXHIBIT J
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Map of Auxiliary Parking Site

[Attached Behind This Page]

2009



ALL 900 SERIES PARCELS ON THIS PAGE ARE ASSESSED TO THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, UNLESS OTHERWISE NOTED.

**EXHIBIT K
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Design Option 1

[Attached Behind This Page]

Downey Mixed Use Verizon Site (Option 1)

Downey, California

for
National Community Renaissance



Concept Design (Option 1)

Downey Mixed Use - Verizon Site

Downey, California

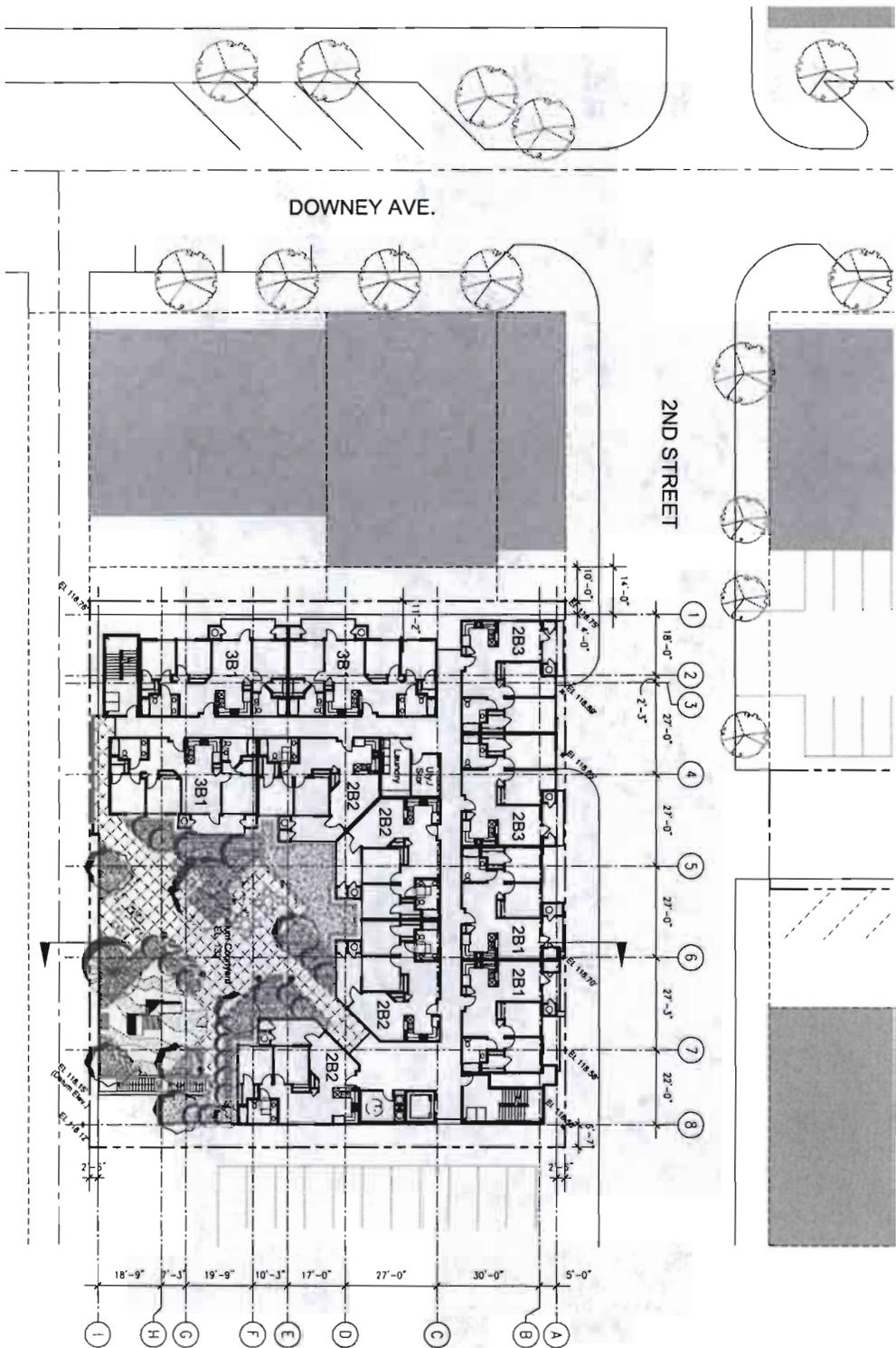
National Community Renaissance

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02	3rd - 4th Level Plan
03	5th - 6th Level Plan
04	Ground Level Plan
05	P-1 Level Plan
06	Section
07	Elevations
08	Elevations
09	Perspectives
10	Perspectives
11	Perspectives
12	Perspectives

October 15, 2010

ARCHITECTS
**TOGAWAN
SMITH
MARTIN**
RESIDENTIAL, INC.
444 S. Flower Street, Suite 1250
Los Angeles, CA 90071
213.514.6050
213.514.6051 fax
www.tsmi.com



Podium Level (2nd)

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance



Scale: 1/16" = 1'-0" (Full Size)
 Scale: 1/32" = 1'-0" (Half Size)

October 15, 2010

448 S Flower Street, Suite 1720
 Los Angeles, California 90017
 213.451.4050 fax
 213.451.4051 fax
 www.taminc.com

ARCHITECTS
TOGAFUR SMITH MARRIN
 RESIDENTIAL, INC.

Project Summary
 Lot Area - 22,540 sf (0.517 Acre)
 Density - 96.71 DU x 0.517 = 50 Units

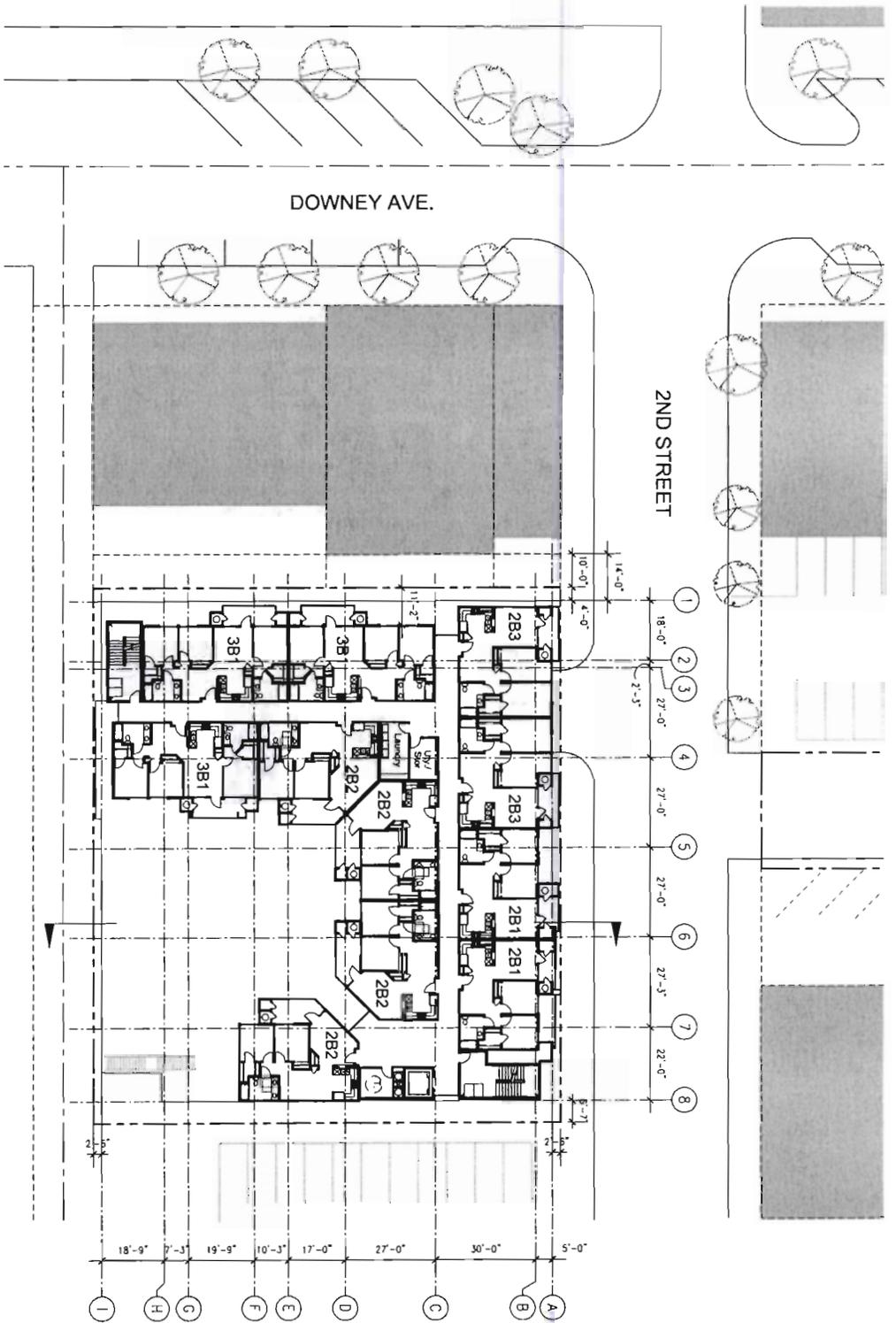
Maximum FAR - 3.5 : 1 (78,890 sf)
 Proposed FAR - 3.5 : 1 (78,890 sf) *
 Residential - 50 Multi-Family Rental
 Units Provided

Unit Summary:

Unit Type	Qty. (%)	Area(sqsf)	Total(sqsf)
2B1	20%	795	7,950
2B2	39%	845	16,055
2B3	12%	863	5,178
3B1	30%	1,002	15,030
TOTAL			884 (avg) 44,213

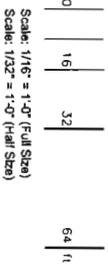
Gross Area - 99,561 sf
 Open Space
 Open Space Required = 10,000 sf
 50 Units x 200 sf = 10,000 sf
 Open Space Provided = 11,370 sf
 Podium Garden - 5,230 sf
 Roof Garden - 1,820 sf
 Private Patios - 4,320 sf

* Excludes P-1 (lower level) parking floor area per City of Downey Municipal Code Section 9132. Floor Area Ratio (FAR) definition: "The floor area of building(s) on a lot (including garages) divided by the lot area. A basement (where more than fifty (50) percent of the volume of the room is below grade) is exempted from the requirements limiting the floor area ratio."



3rd - 4th Level

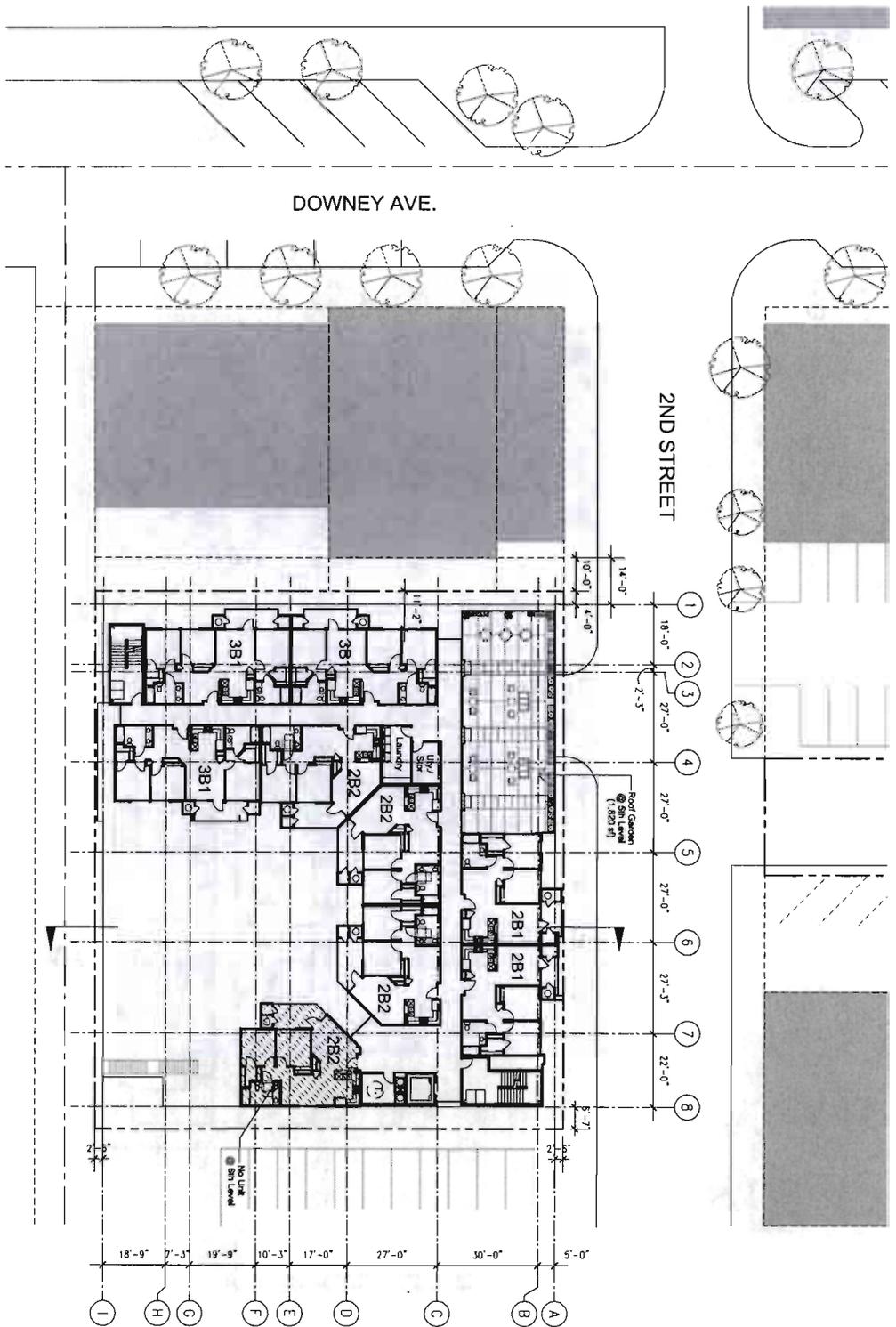
Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance



Scale: 1/16" = 1'-0" (Full Size)
 Scale: 1/32" = 1'-0" (Half Size)

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5th - 6th Level

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance



0 16 32 64 ft

Scale: 1/16" = 1'-0" (Full Size)
 Scale: 1/32" = 1'-0" (Half Size)

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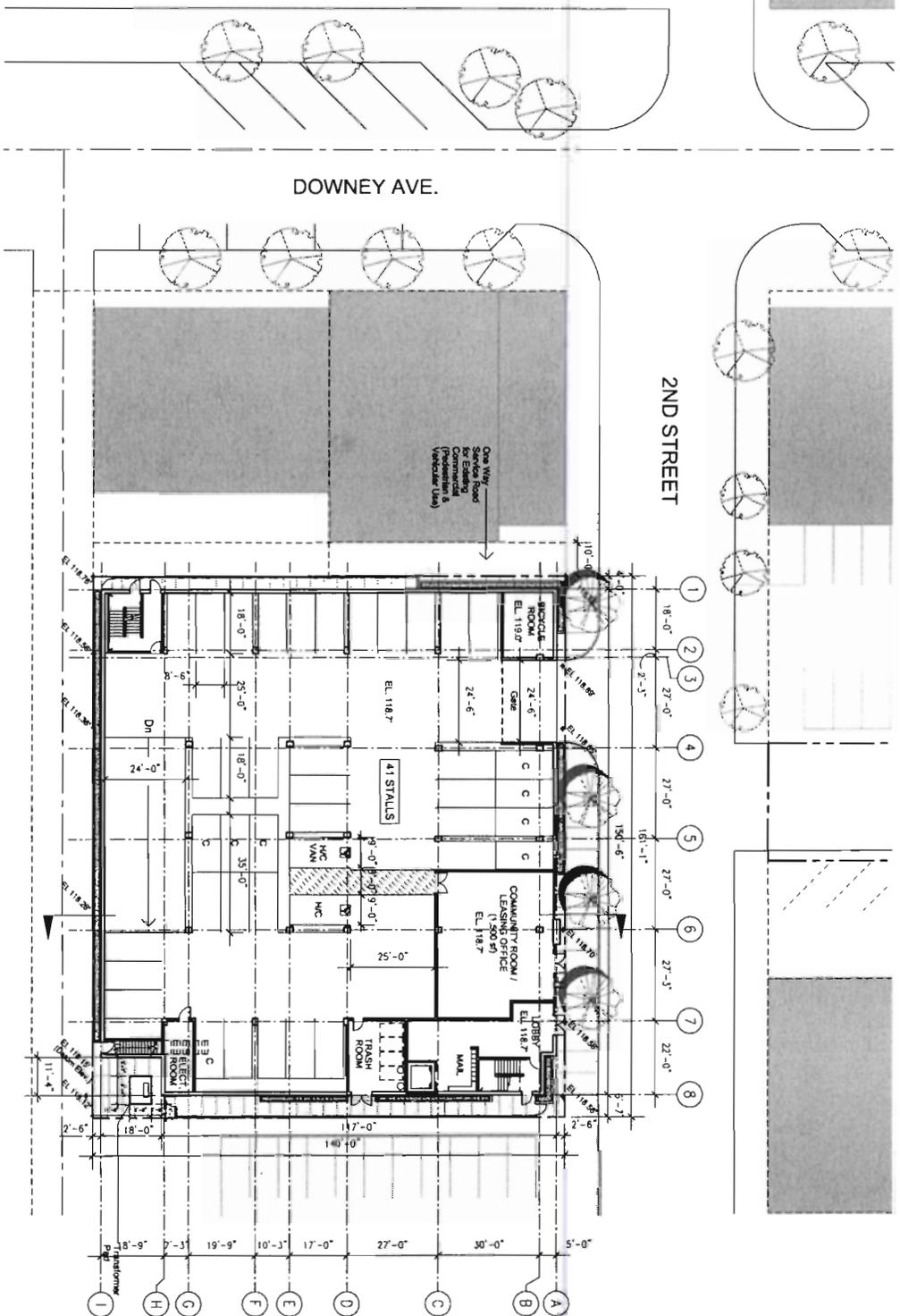
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TOGALUVA
SMITH
MARTIN
 RESIDENTIAL, INC

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 213.514.8051 Fax
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Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance

Ground Level



Parking Summary
 75 Spaces Required
 100 Spaces Provided
 (25 Compact Stalls)

Lot Coverage
 Lot Area - 22,540 sf
 80% Maximum (18,032 sf)
 89% Proposed (20,120 sf)

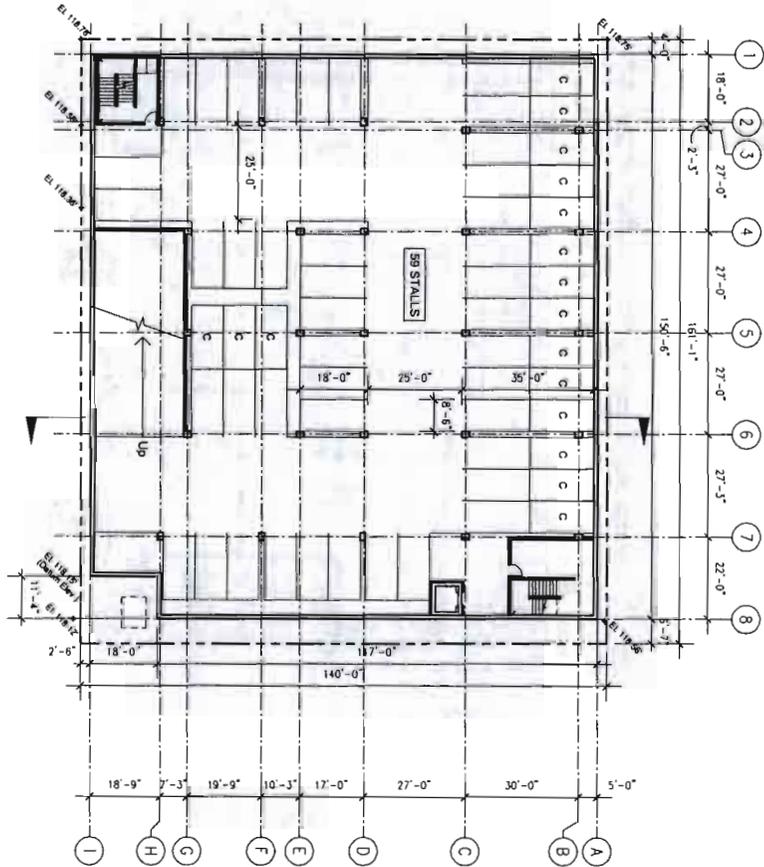


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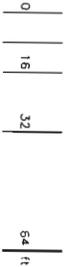
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IOGRAU
SMITH
MARTIN
 RESIDENTIAL, INC.

444 B. Foye Street, Suite 1220
 Downey, CA 90241
 213.814.4050 FAX
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 www.ioarch.com

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance



P -1 Level

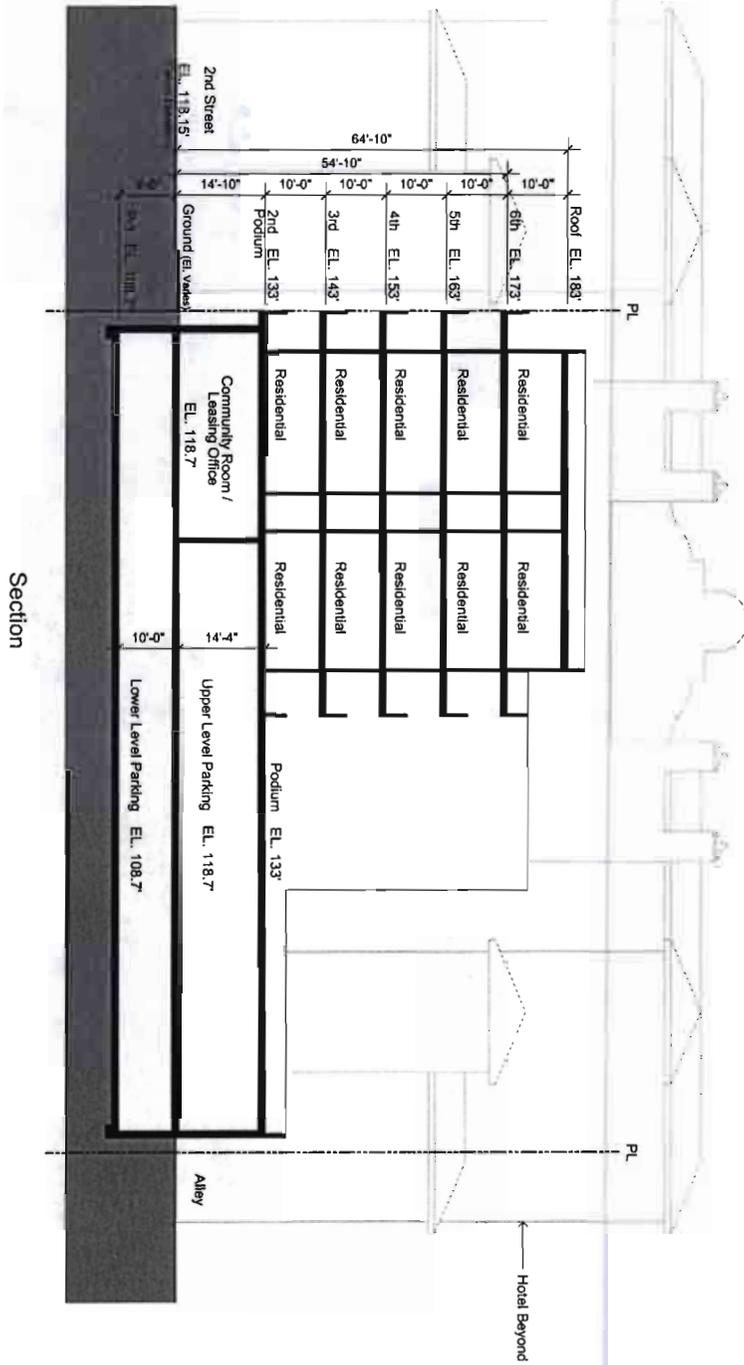


Scale: 1/16" = 1'-0" (Full Size)
 Scale: 1/32" = 1'-0" (Half Size)

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MARTIN
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 Los Angeles, California 90071
 213.244.6051 fax
 www.tsmrinc.com

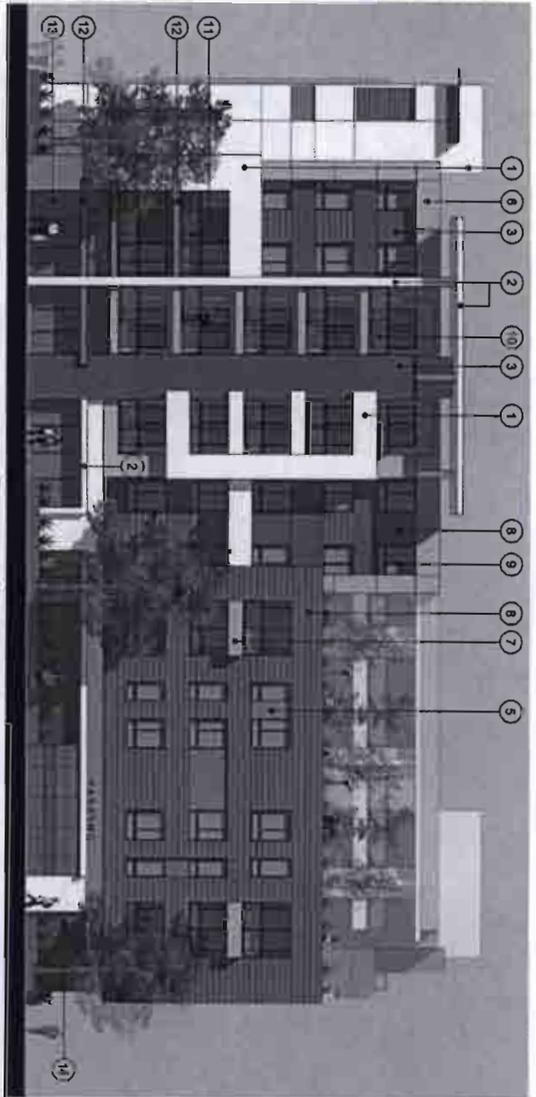
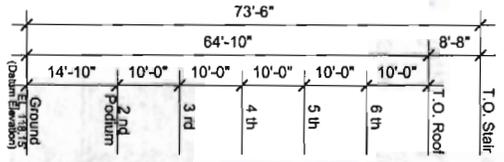
Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance



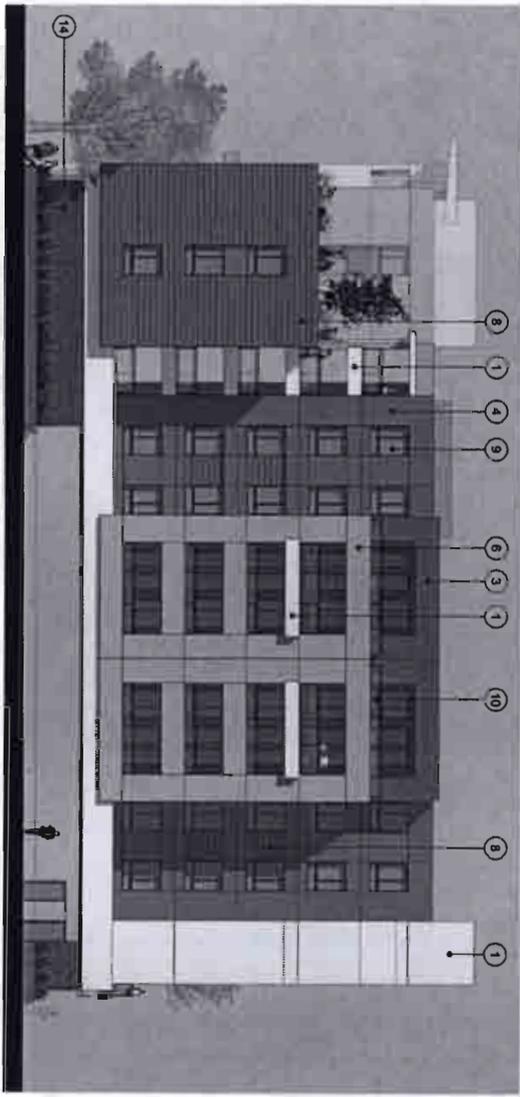
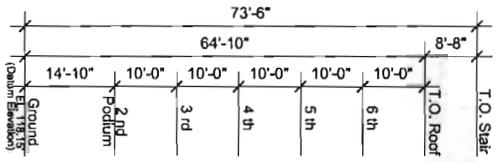
0 10 20 40
 1"
 Scale: 1" = 10' (Full Size)
 Scale: 1" = 20' (Half Size)

October 15, 2010

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TOGRUM SMITH MARTIN
 RESIDENTIAL, INC.
 444 S. Downey Street, Suite 1200
 Downey, CA 90241
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 213.814.4051 fax
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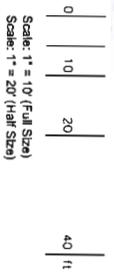
North Elevation (2nd Street)



West Elevation

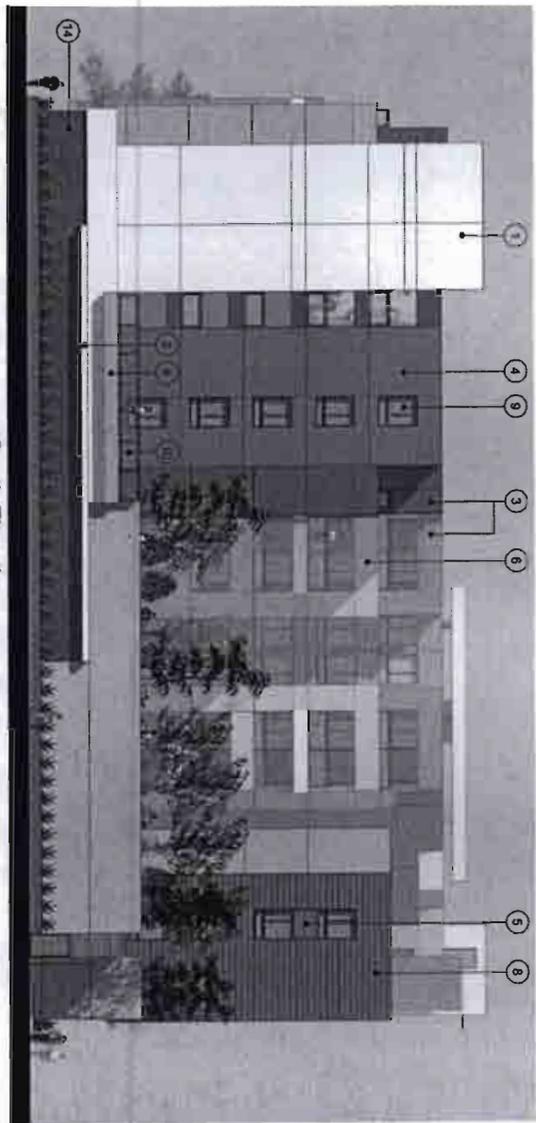
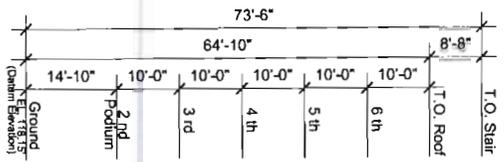
- MATERIALS LEGEND**
- ① White light sand stucco to match DE1940
 - ② Smooth stucco eyebrow and fins to match DE1940
 - ③ Blue light sand stucco to match-DE1788 Talsman Blue
 - ④ Green light sand stucco to match-DE5599-Organic Matter
 - ⑤ Green smooth Stucco to match-DE5599-Organic Matter
 - ⑥ Grey hard Panel to match-DE5880 F&I
 - ⑦ Grey light sand stucco to match-DE5390
 - ⑧ Salmon color metal lap siding to match-DE1682 Hickory Branch
 - ⑨ Metal railing, inset wire accents to match Ardc silver windows
 - ⑩ Metal Woven Wire 1" Squares
 - ⑪ Metal Awning
 - ⑫ Aluminum Slat
 - ⑬ Aluminum Slab
 - ⑭ Painted Wall

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance

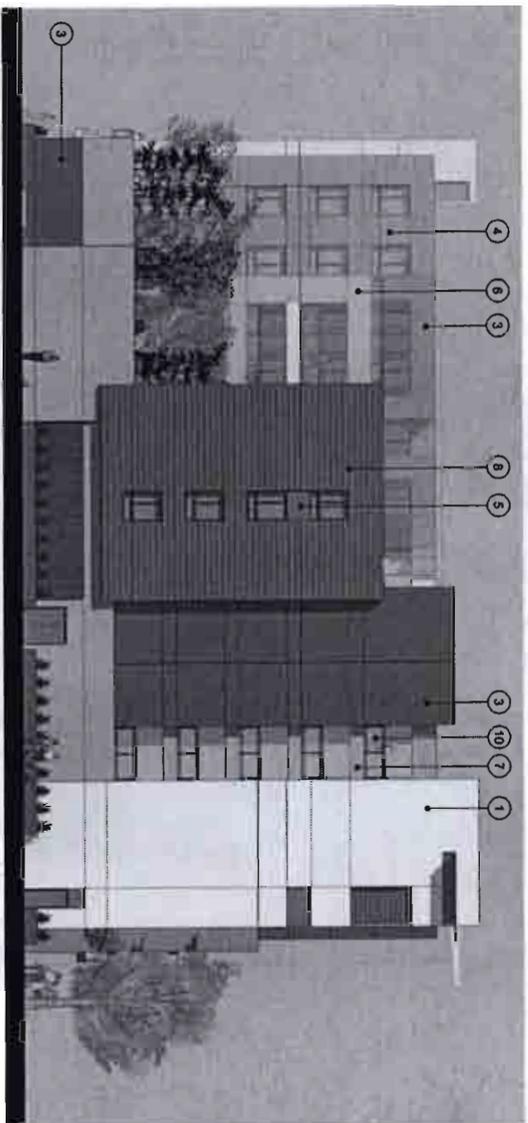
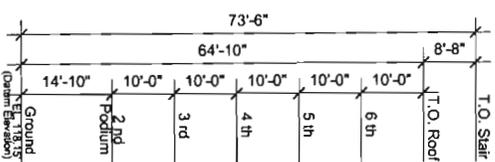


Scale: 1" = 10' (Full Size)
 Scale: 1" = 20' (Half Size)
 October 15, 2010

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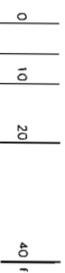
South Elevation



East Elevation

- MATERIALS LEGEND**
- ① White light sand stucco to match DEM340
 - ② Smooth stucco system and fins to match DEM340
 - ③ Blue light sand stucco to match-DEC198 Tulean Blue
 - ④ Green light sand stucco to match-DES509-Organic Matter
 - ⑤ Green smooth Stucco to match-DES509-Organic Matter
 - ⑥ Grey Hard Panel to match-DEB560 Fall
 - ⑦ Grey light sand stucco to match-DEC360
 - ⑧ Salmon color hand slip stiling to match-DEB082 Hickory Branch
 - ⑨ Windows - Jeld War Artic Silver-Virt
 - ⑩ Metal railing, meet and accept to match Artic Silver windows
 - ⑪ Mesh Window wire 1" squares
 - ⑫ Metal Awning
 - ⑬ Aluminum Scaffolding
 - ⑭ Painted Wall

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance



Scale: 1" = 10' (Full Size)
 Scale: 1" = 20' (Half Size)

October 15, 2010

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 144 S Howe Street, Suite 1208
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 213.614.6690
 213.614.6691 fax
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Front Perspective from 2nd Street

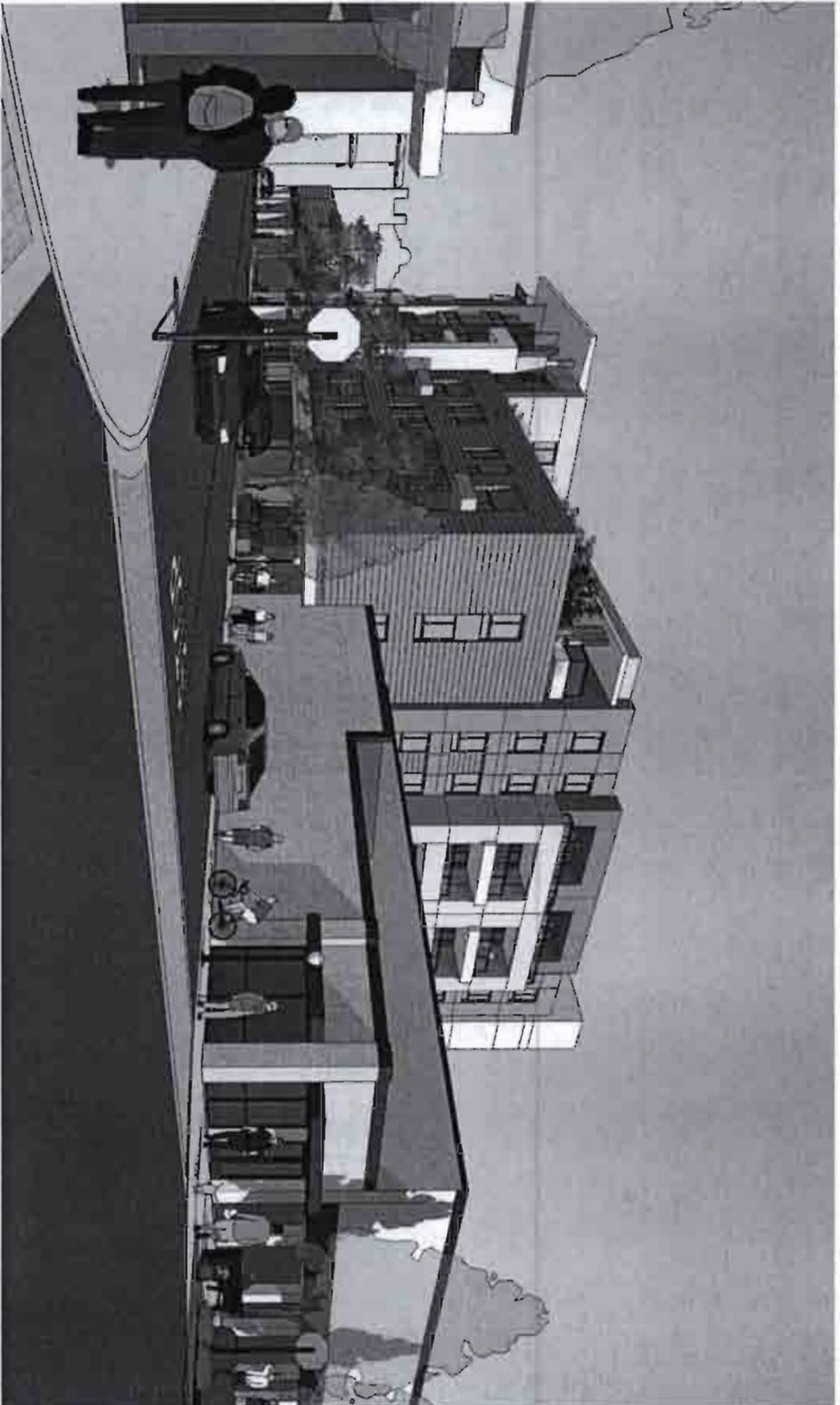


Corner Perspective from 2nd Street

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
Downey, California
National Community Renaissance

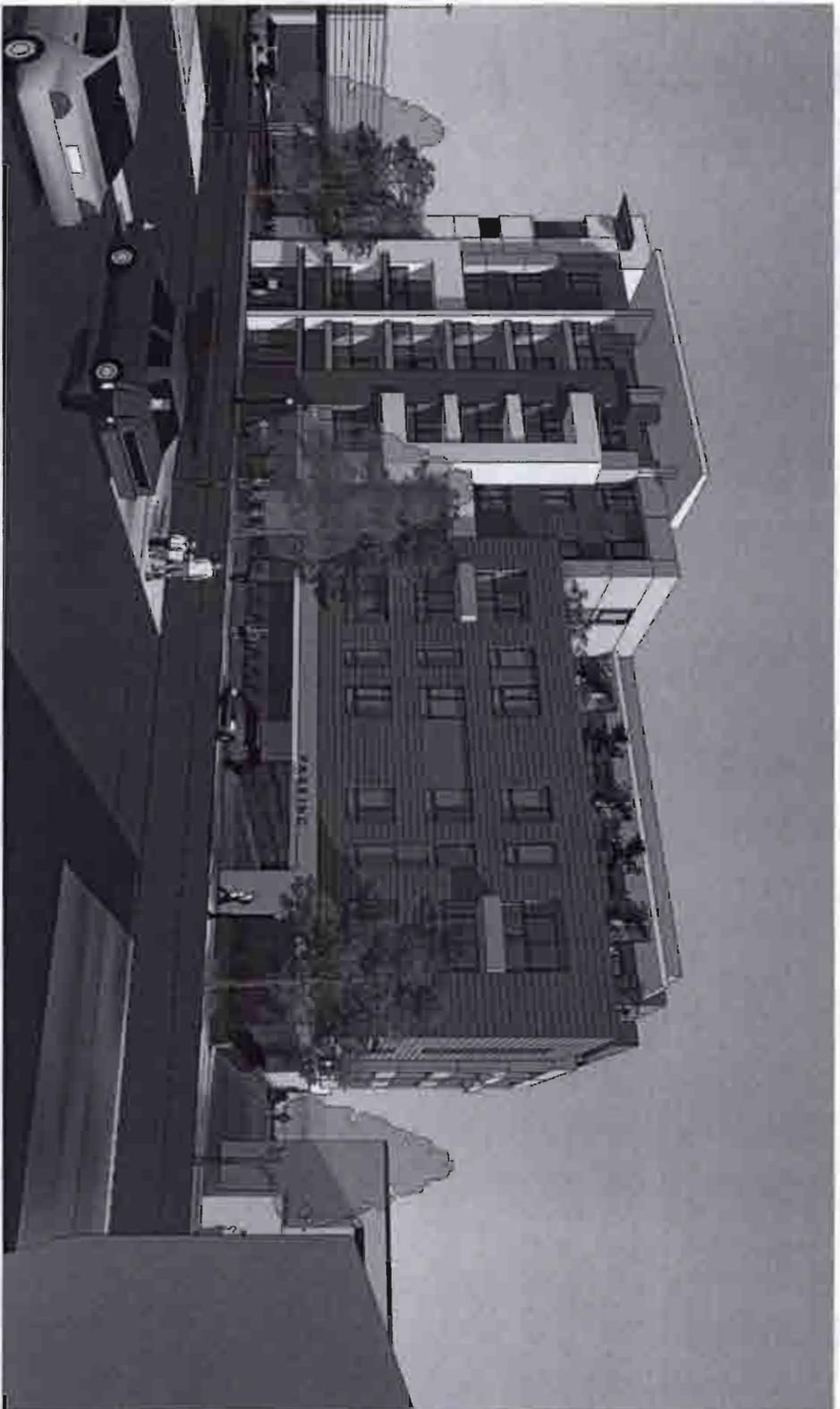
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Perspective View from Downey Avenue & 2nd Street

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance

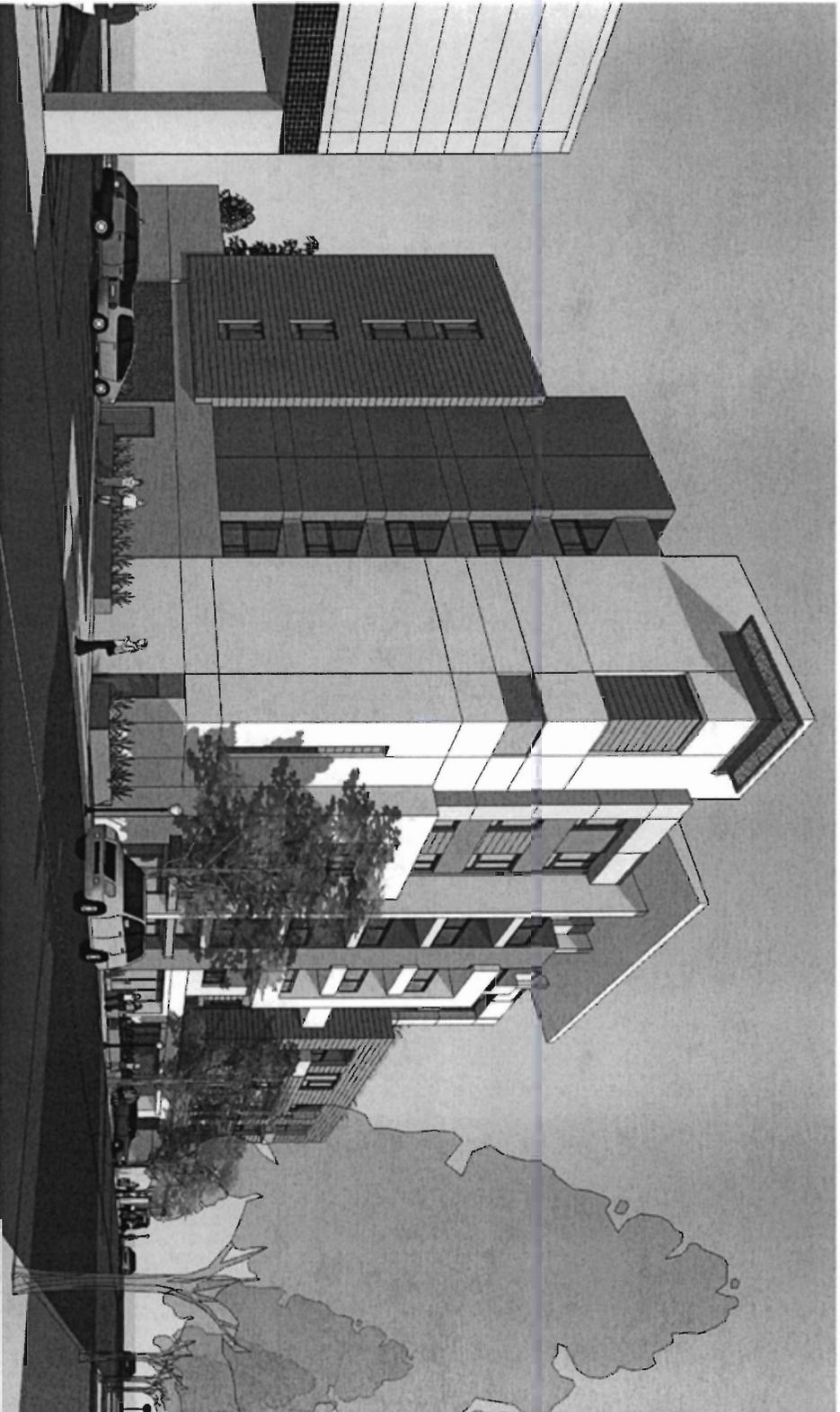


Perspective View from 2nd Street

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
Downey, California
National Community Renaissance

October 15, 2010

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Perspective View from 2nd Street

Concept Design (Option 1)
Downey Mixed Use - Verizon Site
Downey, California
National Community Renaissance

**EXHIBIT L
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Design Option 2

[Attached Behind This Page]

Downey Mixed Use Verizon Site (Option 2)

Downey, California

for

National Community Renaissance



Concept Design (Option 2)

Downey Mixed Use - Verizon Site

Downey, California

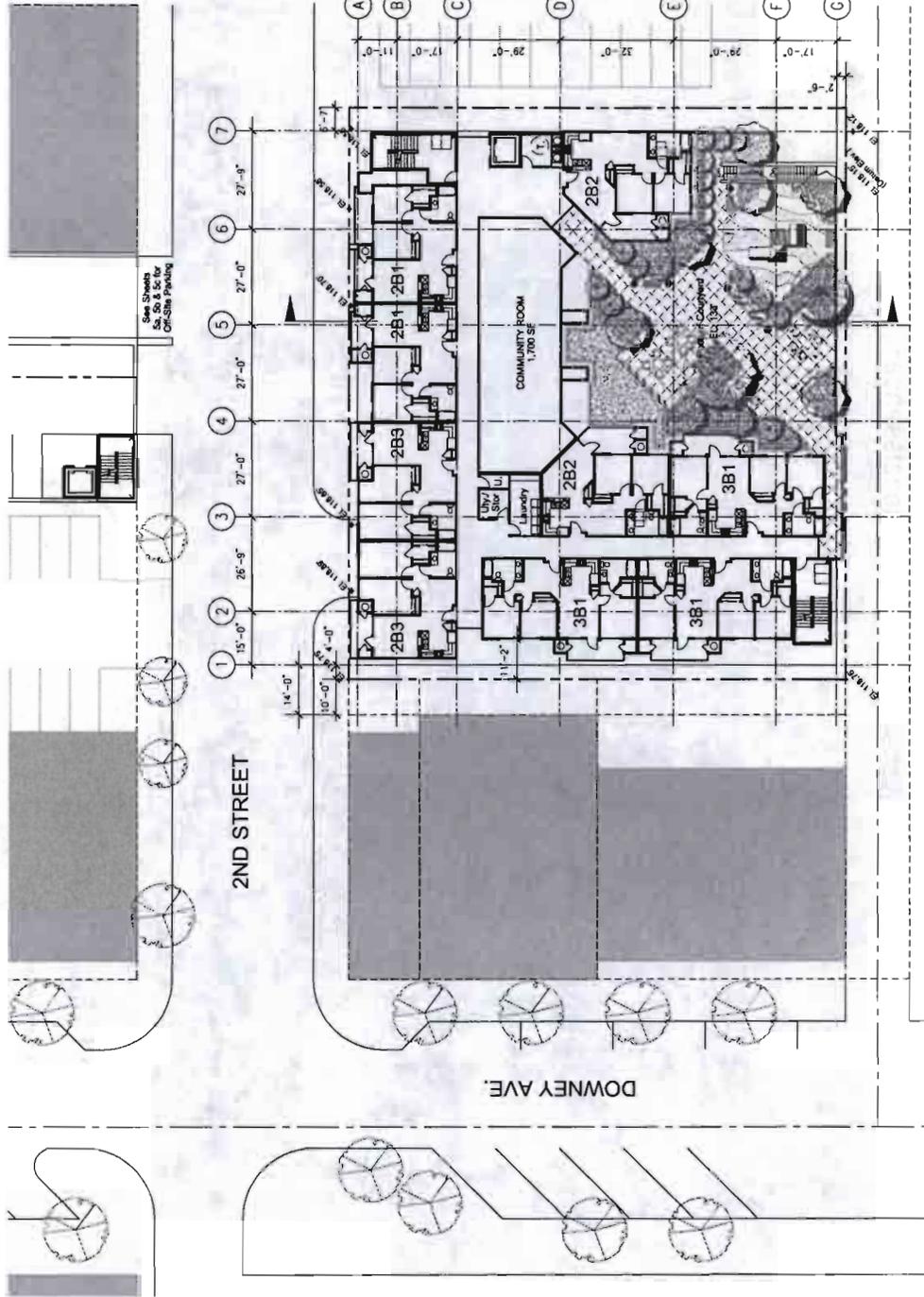
National Community Renaissance

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03	6th Level Plan
04	Ground Level Plan
05a	Off Site Parking Plan - Ground Level
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05c	Off Site Parking Elevations
06	Section
07	Elevations
08	Elevations
09	Perspectives
10	Perspectives
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13	Perspectives



October 21, 2010



Podium Level (2nd)

Project Summary

Lot Area - 22,540 sf (0.517 Acre)
 Density - 96.71 DU x 0.517 = 50 Units
 Main Site
 Maximum FAR - 3.5 : 1 (78,890 sf)
 Proposed FAR - 3.5 : 1 (78,890 sf) *

Off Site Parking

Maximum FAR - 3.5 : 1 (73,500 sf)
 Proposed FAR - 1.81 : 1 (38,040 sf) *

Residential - 50 Multi-Family Rental Units Provided

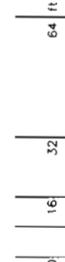
Unit Type	Qty.	(%)	Area(nsF)	Total(nsF)
2B1	20	20%	7,950	7,950
2B2	17	34%	845	14,365
2B3	8	16%	863	6,904
3B1	15	30%	1,002	15,030
TOTAL	50		885 (avg)	44,249

Gross Area - 126,795 sf
 87,699 sf (Main Site) + 39,096 sf (Off Site Parking)

Open Space

Open Space Required = 10,000 sf
 50 Units x 200 sf = 10,000 sf
 Open Space Provided = 11,370 sf
 Podium Garden - 5,230 sf
 Roof Garden - 1,820 sf
 Private Patios - 4,320 sf

* City of Downey Municipal Code Section 9.132, Floor Area Ratio (FAR) definition: "The floor area of building(s) on a lot (including garages) divided by the lot area."

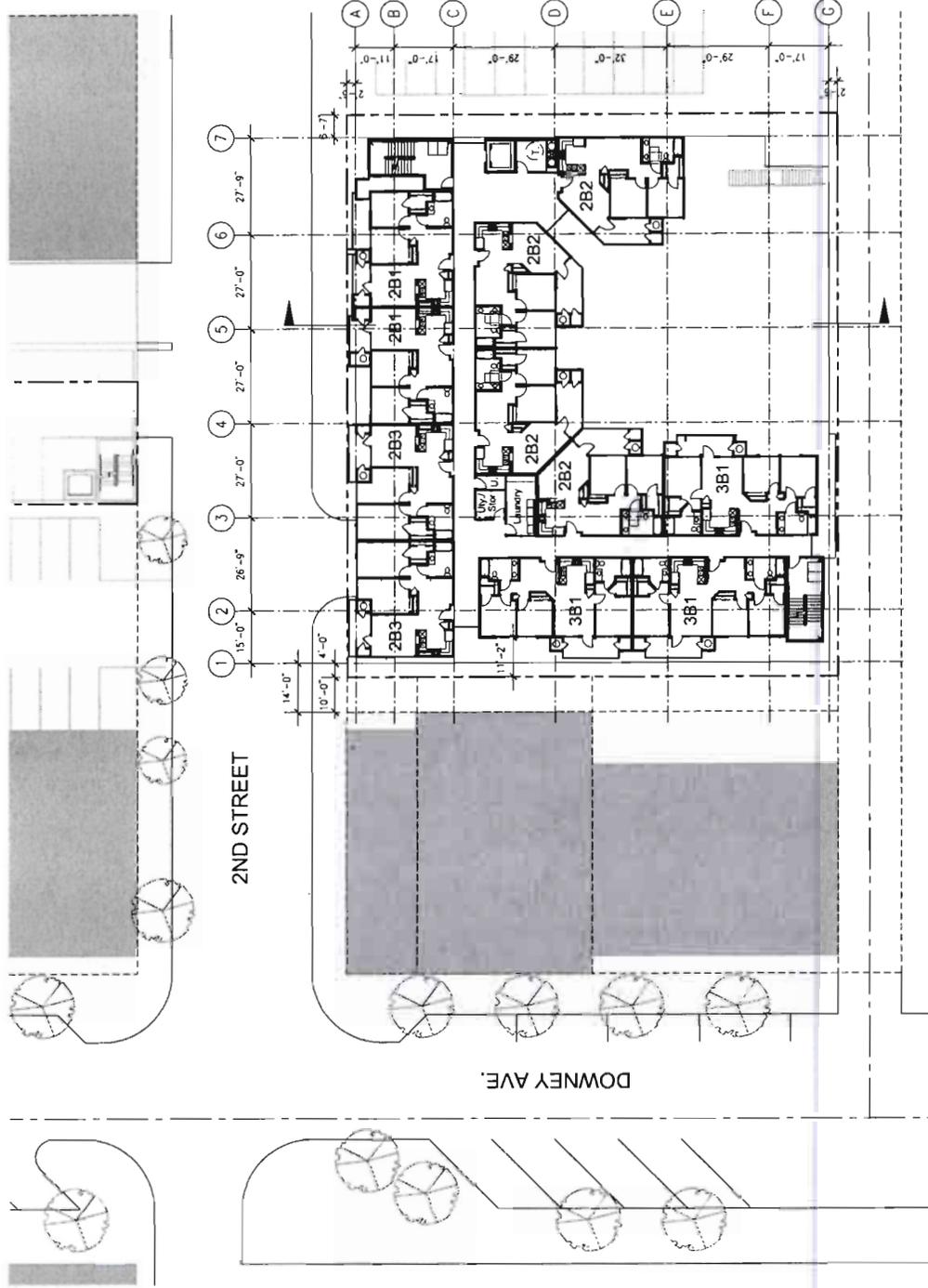


Scale: 1/16" = 1'-0" (Full Size)
 Scale: 1/32" = 1'-0" (Half Size)

October 21, 2010

ARCHITECTS
TOGAWA SMITH MARTIN
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 444 S Flower Street - Suite 1220
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Concept Design (Option 2)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance



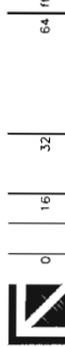
3rd - 5th Level

Concept Design (Option 2)

Downey Mixed Use - Verizon Site

Downey, California

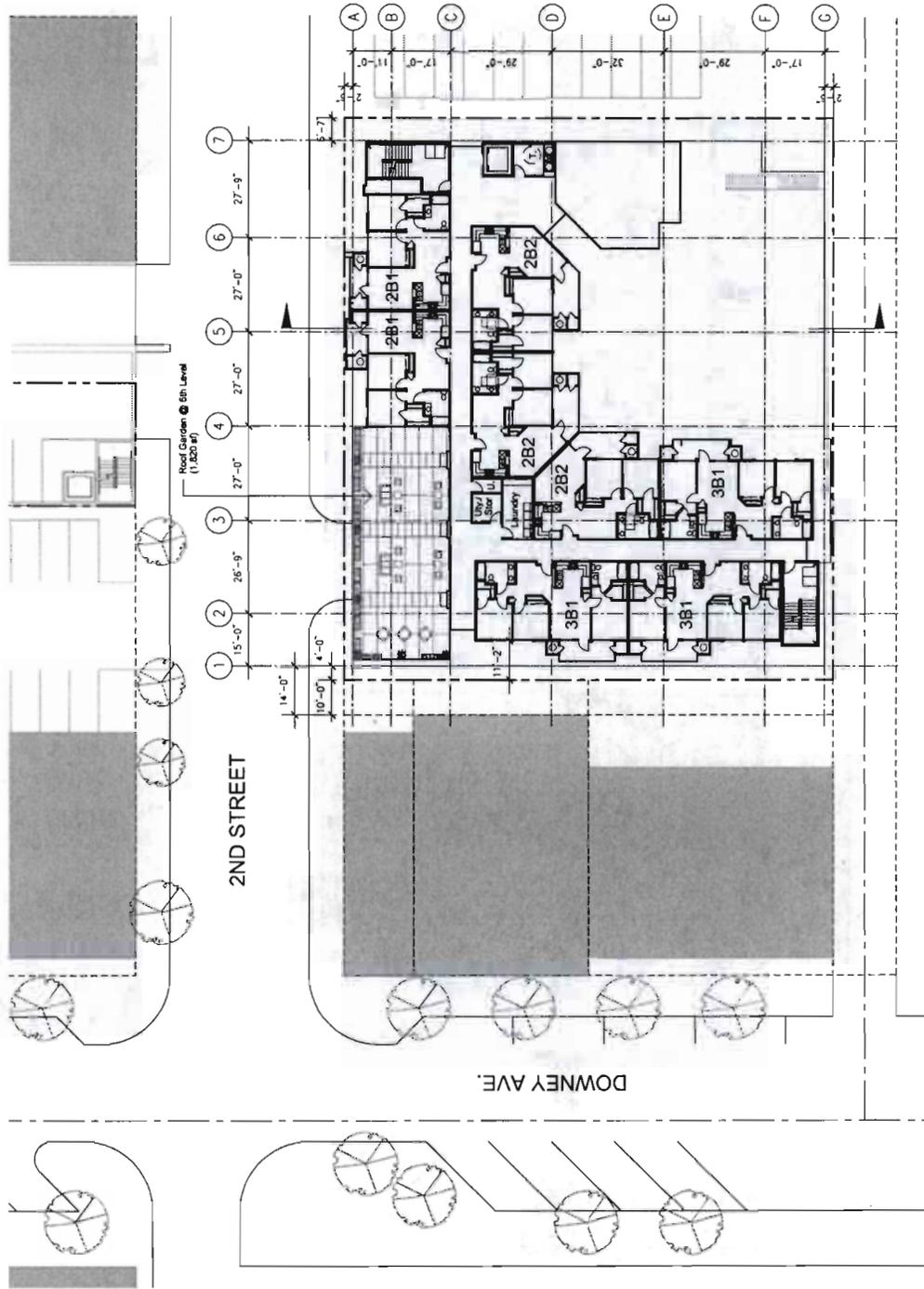
National Community Renaissance



Scale: 1/16" = 1'-0" (Full Size)
Scale: 1/32" = 1'-0" (Half Size)

October 21, 2010

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 444 B Flower Street - Suite 1220
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6th Level

Concept Design (Option 2)

Downey Mixed Use - Verizon Site

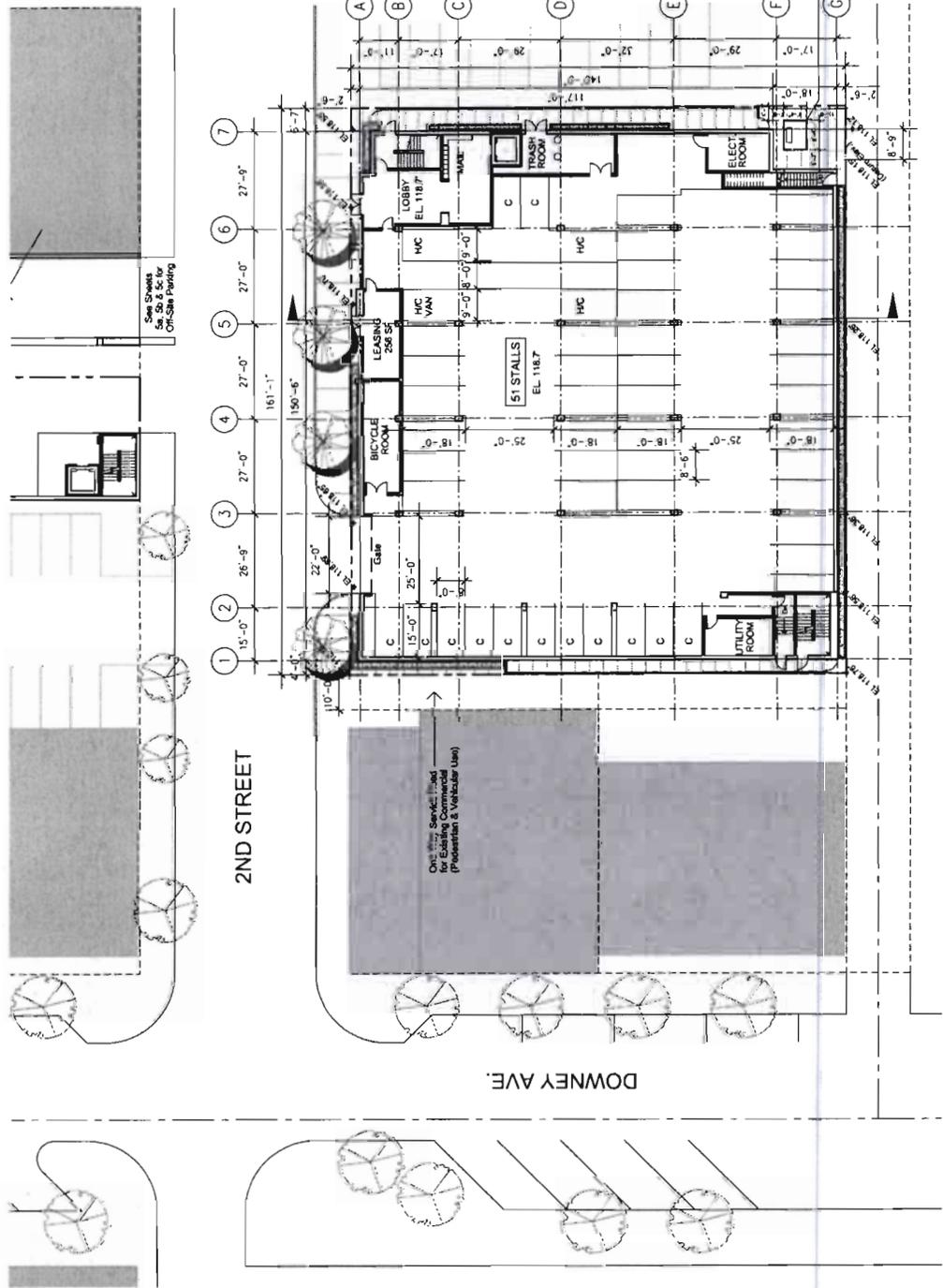
Downey, California

National Community Renaissance



Scale: 1/16" = 1'-0" (Full Size)
Scale: 1/32" = 1'-0" (Half Size)

October 21, 2010



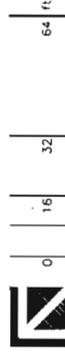
Parking Summary

75 Spaces Required
 130 Spaces Provided
 (13 Compact Stalls)

On site - 51 Spaces
 Off Site - 103 Spaces - 24 Replacement Spaces
 = 79 Spaces

Lot Coverage
 Lot Area 22,540 sf
 80% Maximum (18,032 sf)
 89% Proposed (20,073 sf)

Ground Level



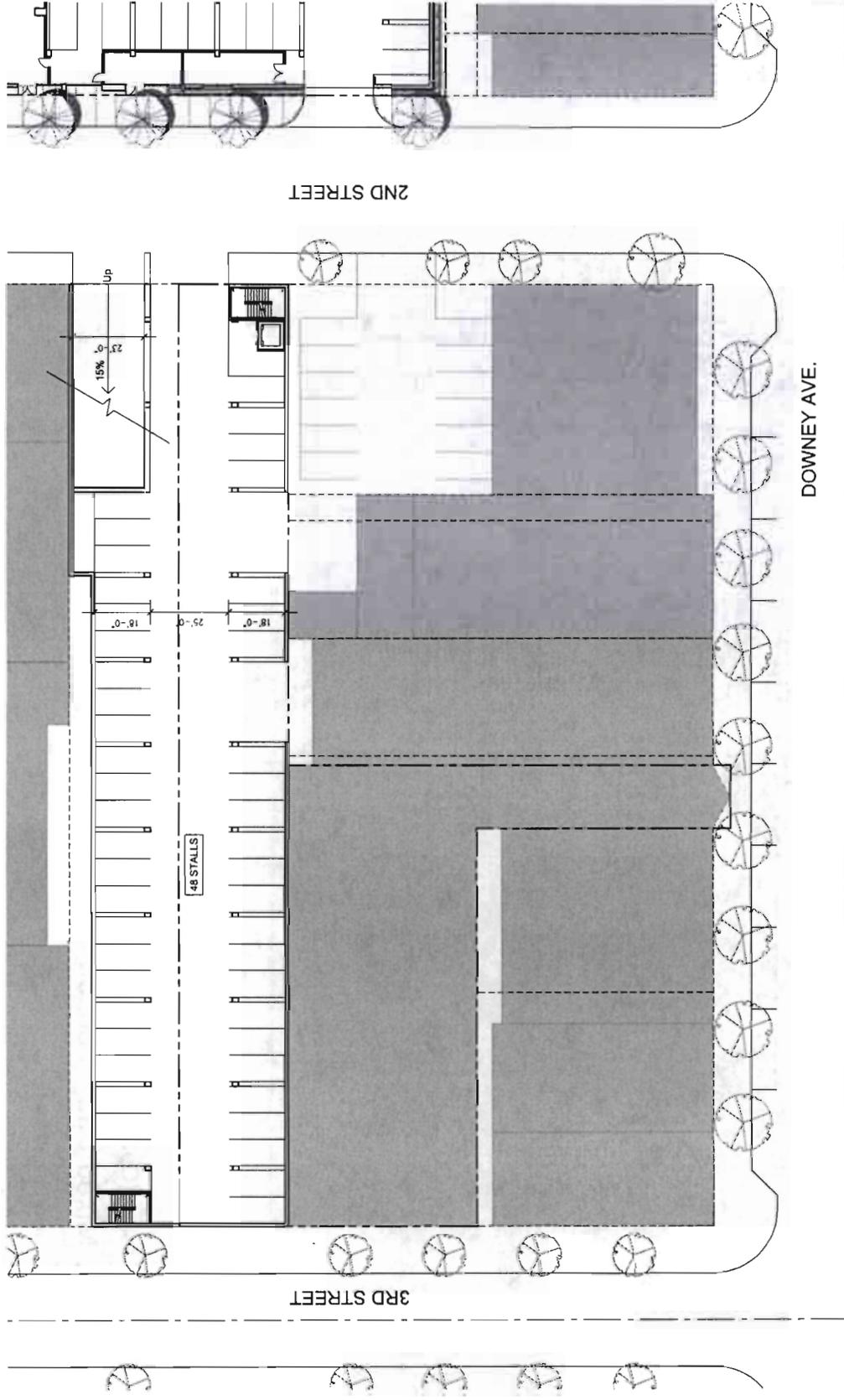
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 Scale: 1/32" = 1'-0" (Half Size)

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Concept Design (Option 2)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance

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 RESIDENTIAL, INC

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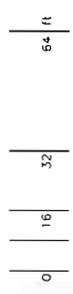
5a

Concept Design (Option 2)

Downey Mixed Use - Verizon Site

Downey, California
National Community Renaissance

Off Site Parking - Ground Level



Scale: 1/16" = 1'-0" (Full Size)
Scale: 1/32" = 1'-0" (Half Size)

October 21, 2010

DOWNEY AVE.

2ND STREET

3RD STREET

48 STALLS

Up

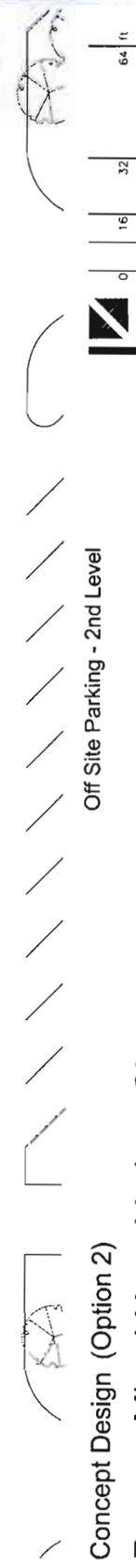
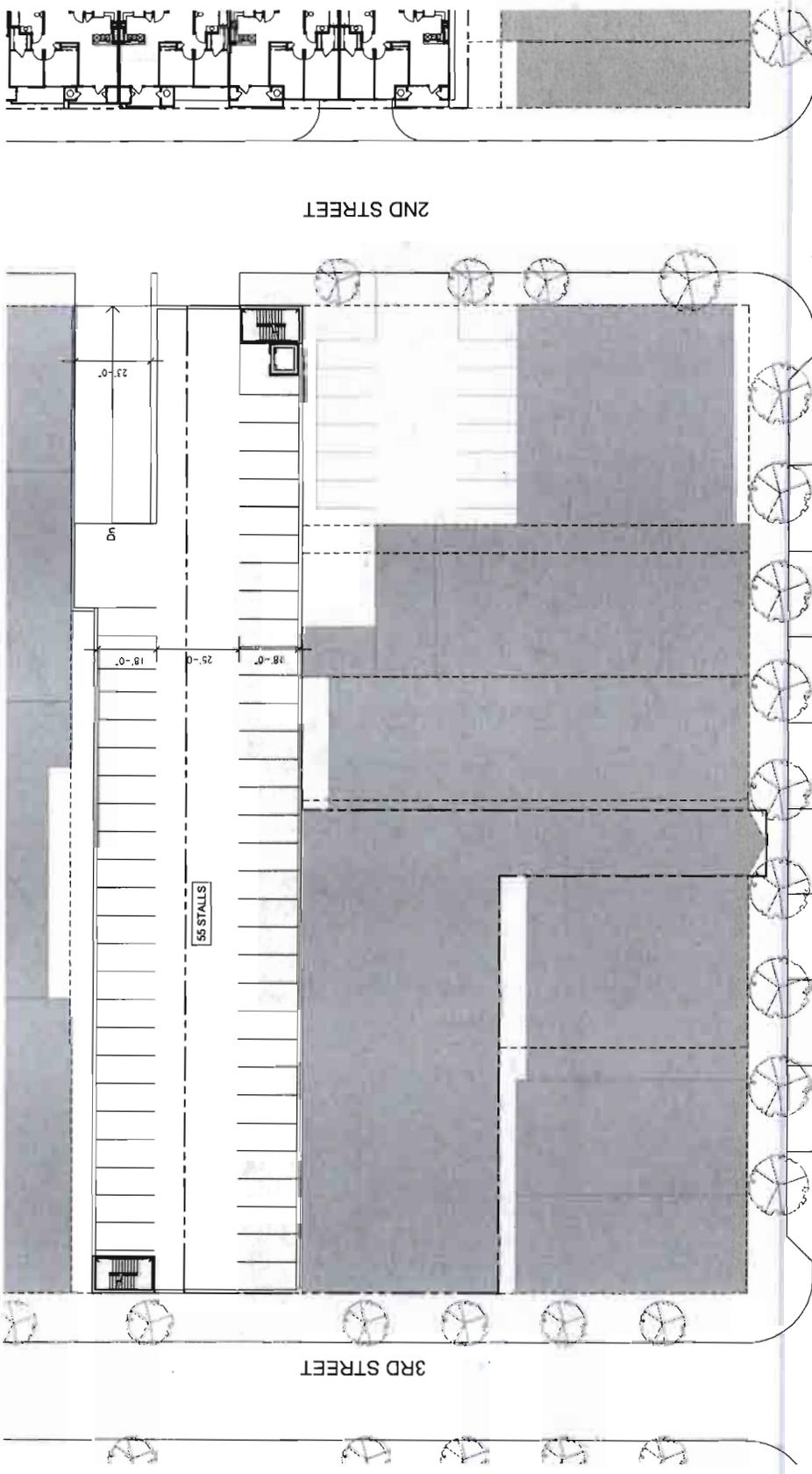
15%

18'-0"

25'-0"

18'-0"

ARCHITECTS
TOGAWA SMITH MARIN
RESIDENTIAL, INC
444 S Flower Street, Suite 1320
Los Angeles, California 90071
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213.614.8051 fax
www.tsmarin.com



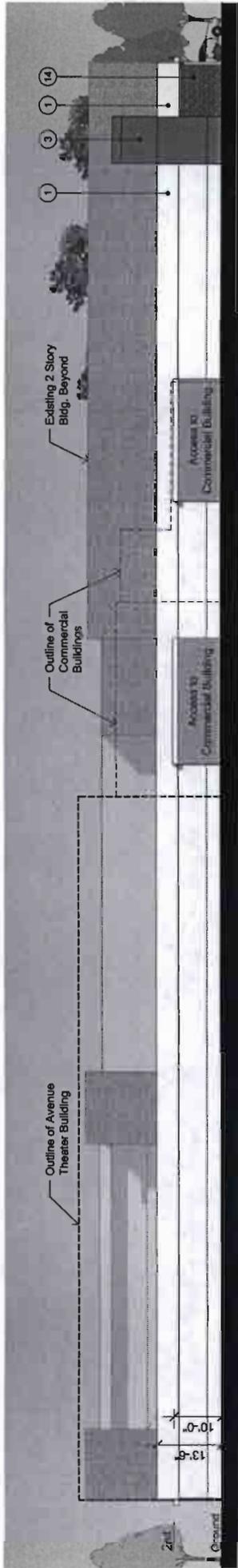
Concept Design (Option 2)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance

Scale: 1/16" = 1'-0" (Full Size)
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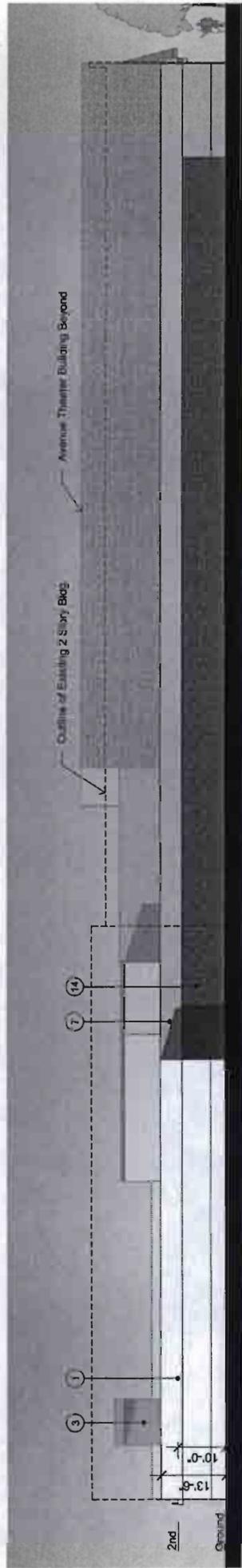
October 21, 2010

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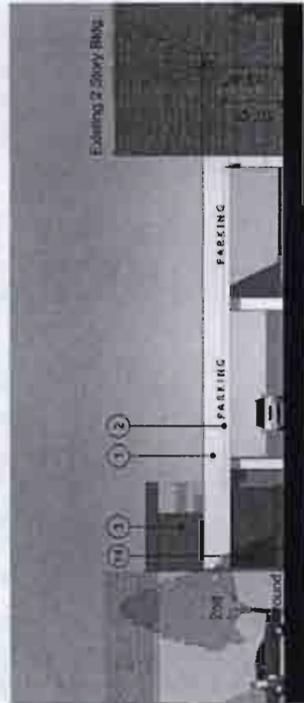
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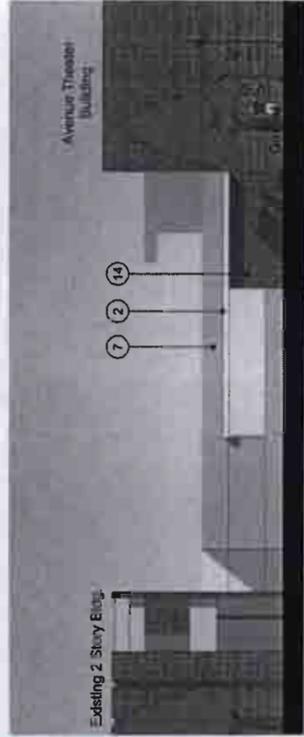
West Elevation



East Elevation



South Elevation (2nd Street)

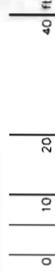


North Elevation (3rd Street)

MATERIALS LEGEND

- 1 White light sand stucco to match DEW340
- 2 Smooth stucco eyebrow and fins to match DEW340
- 3 Blue light sand stucco to match-DECT98 Telexin Blue
- 4 Green light sand stucco to match-DE5509-Organic Matter
- 5 Green smooth Stucco to match-DE5509-Organic Matter
- 6 Grey Hardi Panel to match-DE6360 Fall
- 7 Grey light sand stucco to match-DE6360
- 8 Salmon color Hardi lap siding to match-DE6802 History Branch
- 9 Windows - Jeld Wen Artic Silver-Vinyl
- 10 Metal railing, mesh and accents to match Artic silver windows
- 11 Mesh Woven wire 1" squares
- 12 Metal Awning
- 13 Aluminum Storefront
- 14 Painted Wall

5c



Scale: 1" = 10' (Full Size)
Scale: 1" = 20' (Half Size)

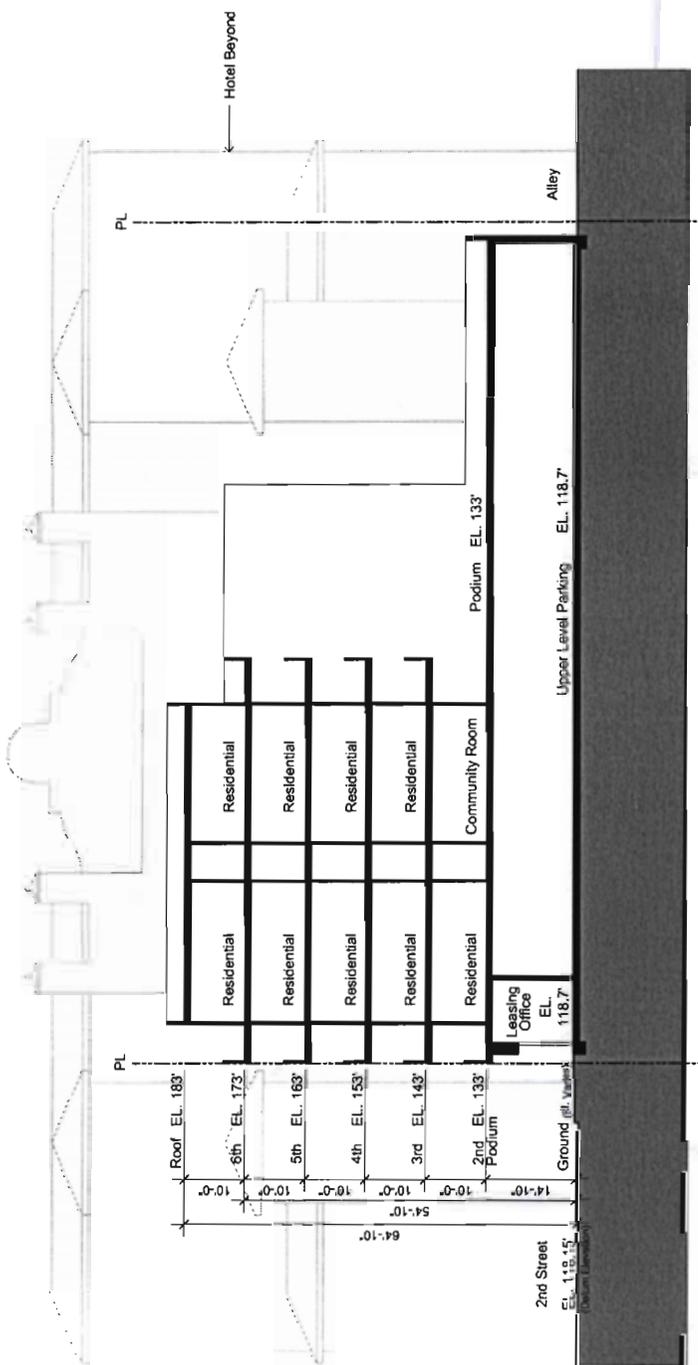
October 21, 2010

Concept Design (Option 2) - Off Site Parking Structure Elevations

Downey Mixed Use - Verizon Site

Downey, California

National Community Renaissance



Section

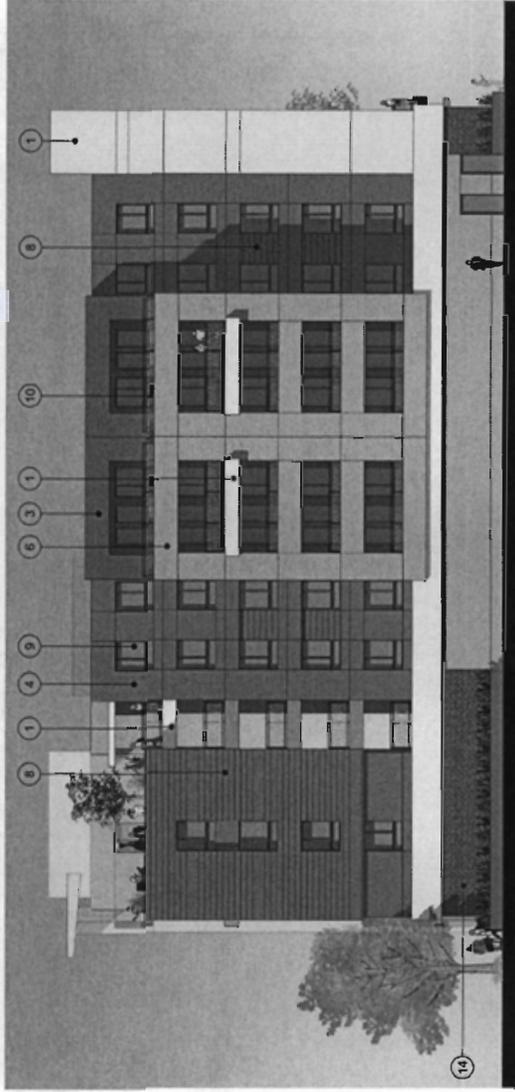
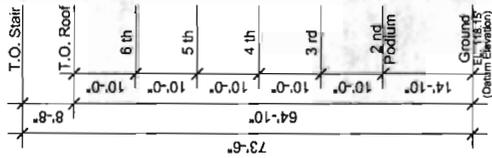
Concept Design (Option 2)
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance

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MARTIN**
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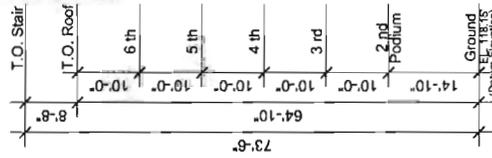
October 21, 2010



North Elevation (2nd Street)



West Elevation



Concept Design (Option 2)

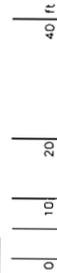
Downey Mixed Use - Verizon Site

Downey, California

National Community Renaissance

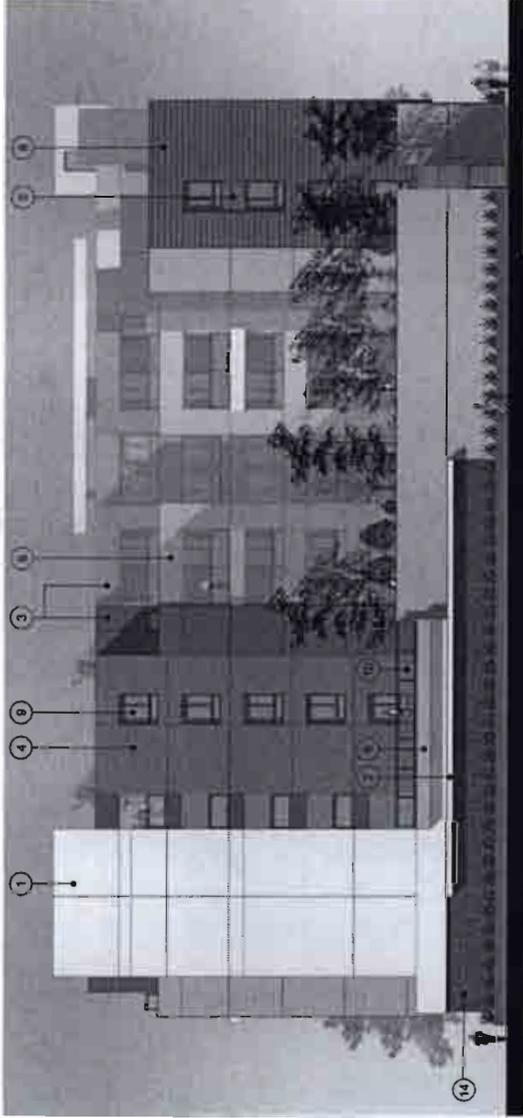
MATERIALS LEGEND

- ① White light sand stucco to match DEV940
- ② Smooth stucco eyebrow and fins to match DEV940
- ③ Blue light sand stucco to match-DEC788 Tallessen Blue
- ④ Green light sand stucco to match-DES509-Organic Matter
- ⑤ Green smooth Stucco to match-DES509-Organic Matter
- ⑥ Grey Hardi Panel to match-DEB960 Fall
- ⑦ Grey light sand stucco to match-DEC940
- ⑧ Salmon color Hardi lap siding to match-DE6082 Hickory Branch
- ⑨ Windows - solid Ven Artic Silver-Vinyl
- ⑩ Metal railing, mesh and accents to match Artic silver windows
- ⑪ Mesh Woven wire 1" squares
- ⑫ Metal Awning
- ⑬ Aluminum Storefront
- ⑭ Painted Wall

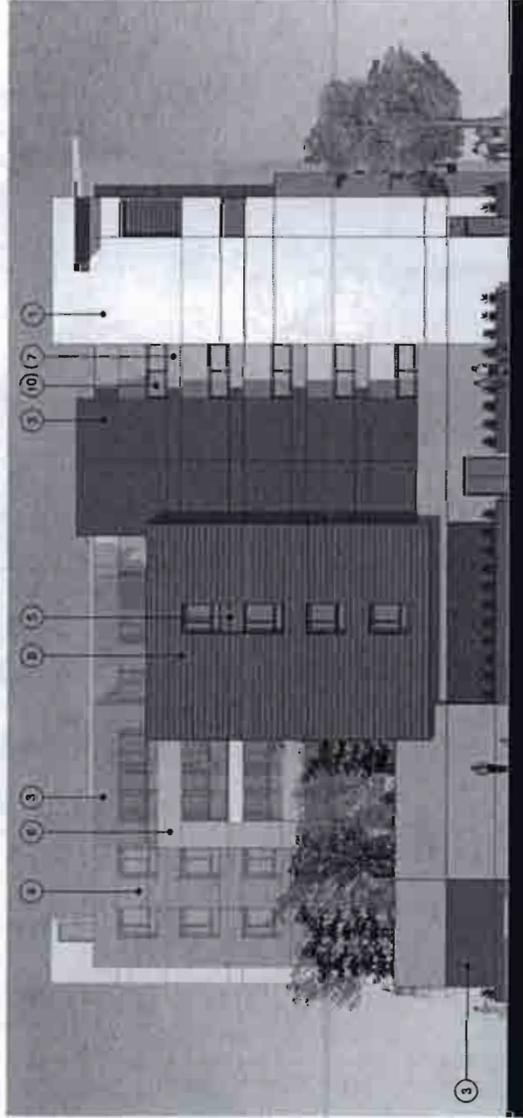
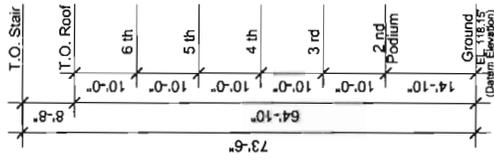


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Scale: 1" = 20' (Half Size)

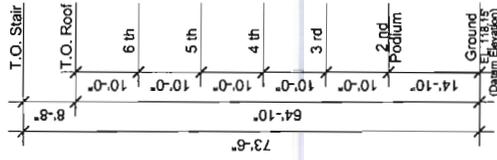
October 21, 2010



South Elevation



East Elevation



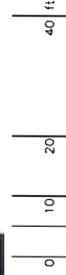
Concept Design (Option 2)

Downey Mixed Use - Verizon Site
Downey, California
National Community Renaissance

MATERIALS LEGEND

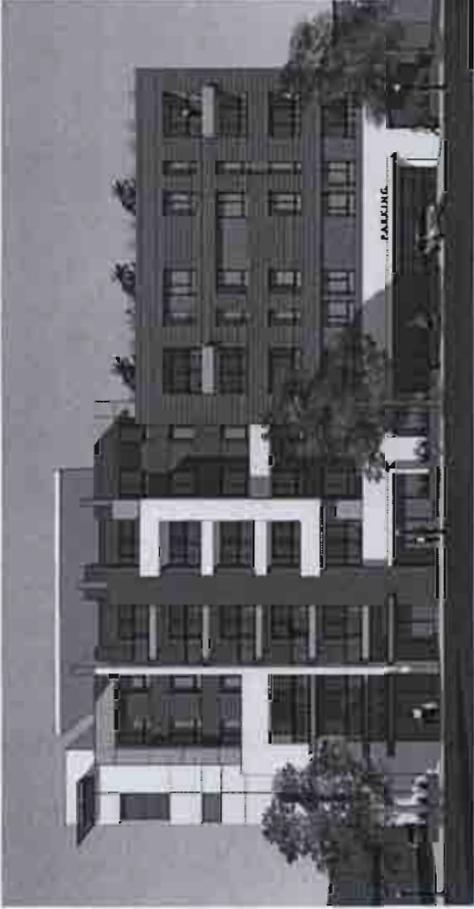
- 1 White light sand stucco to match DEW340
- 2 Smooth stucco eyebrow and flue to match DEW340
- 3 Blue light sand stucco to match-DEC788 Tallness Blue
- 4 Green light sand Stucco to match-DES506-Organic Matter
- 5 Green smooth Stucco to match-DES506-Organic Matter
- 6 Grey Hardi Panel to match-DES360 Full
- 7 Grey light sand stucco to match-DES360
- 8 Salmon color Hardi lap siding to match-DES682 Hickory Branch
- 9 Windows - Jeld Wen Artic Silver-Vinyl
- 10 Metal railing, mesh and accents to match Artic Silver windows
- 11 Mesh Woven wire 1" square
- 12 Metal Awning
- 13 Aluminum Storefront
- 14 Painted Wall

ARCHITECTS
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Scale: 1" = 10' (Full Size)
Scale: 1" = 20' (Half Size)

October 21, 2010

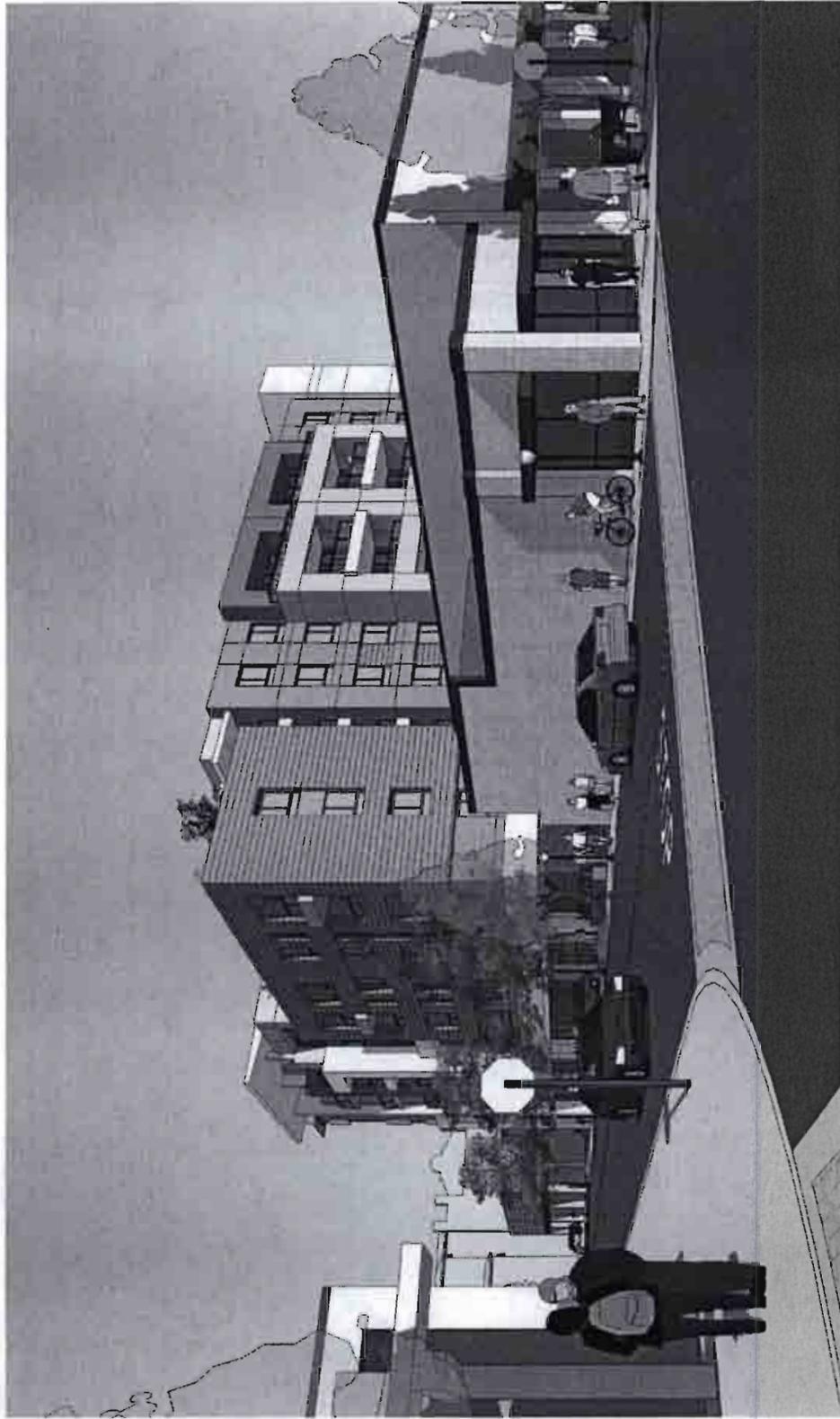


Front Perspective from 2nd Street



Corner Perspective from 2nd Street

Concept Design (Option 2)
Downey Mixed Use - Verizon Site
Downey, California
National Community Renaissance



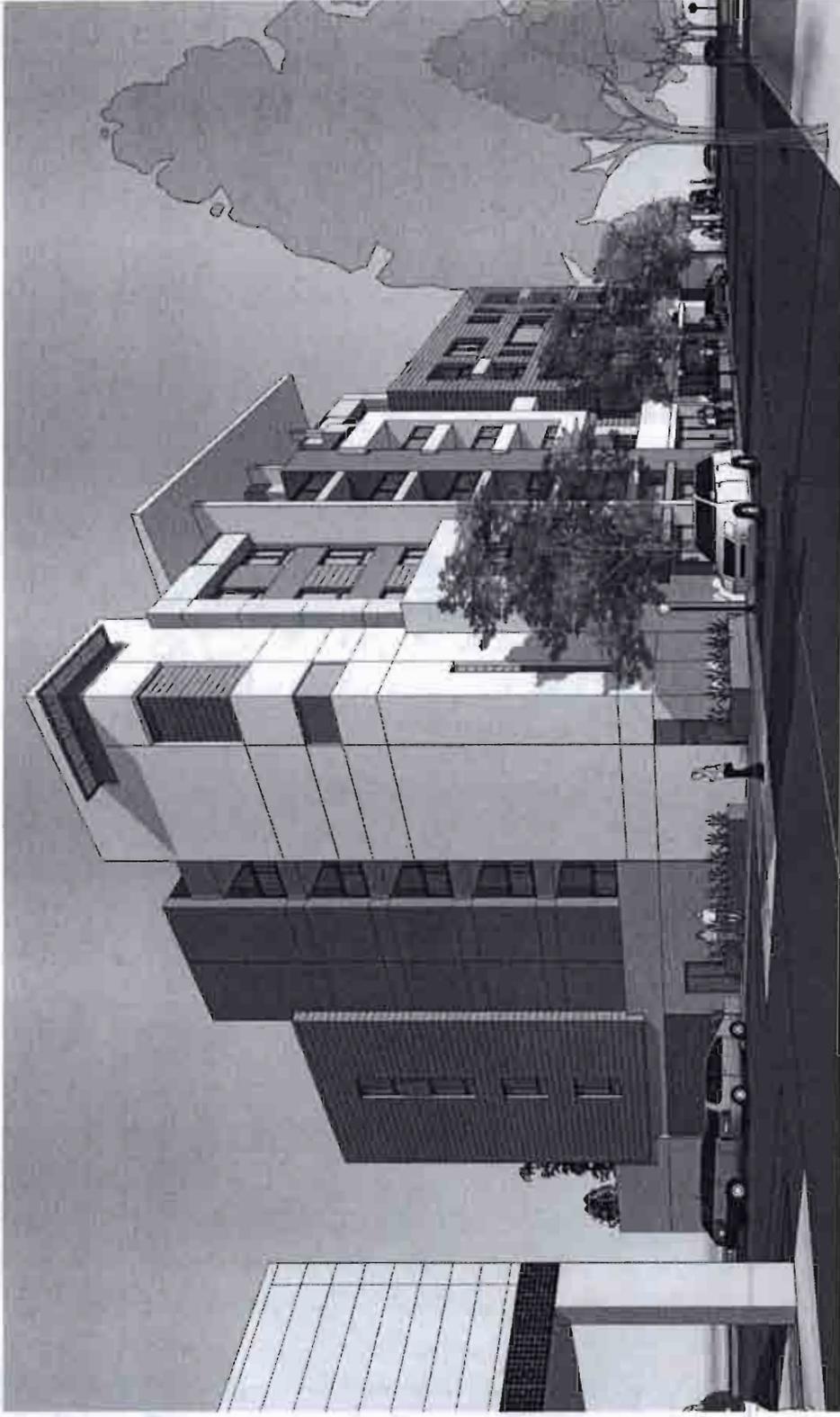
Perspective View from Downey Avenue & 2nd Street

Concept Design (Option 2)
Downey Mixed Use - Verizon Site
Downey, California
National Community Renaissance



Perspective View from 2nd Street

Concept Design (Option 2)
Downey Mixed Use - Verizon Site
Downey, California
National Community Renaissance



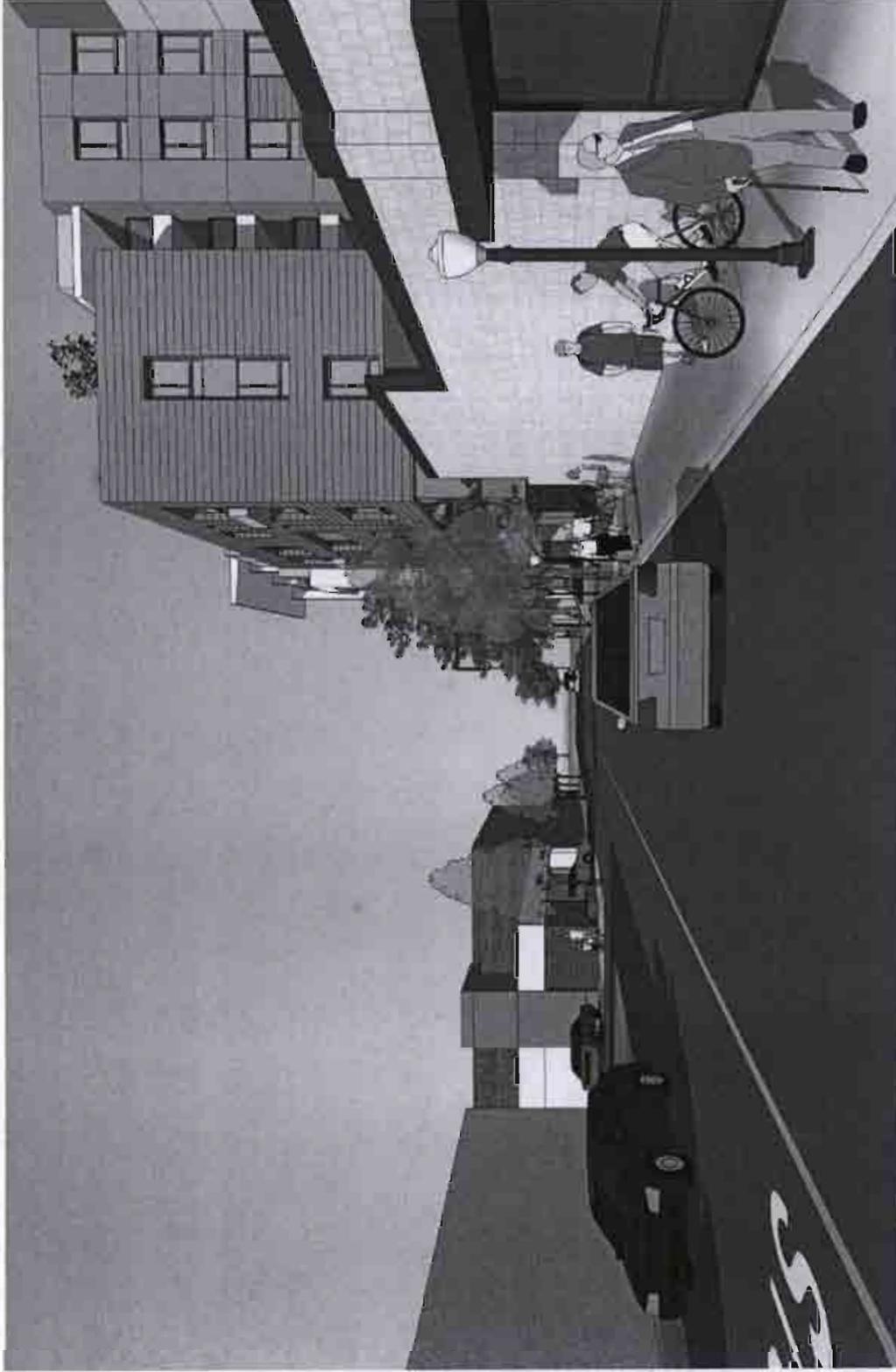
Perspective View from 2nd Street

Concept Design (Option 2)

Downey Mixed Use - Verizon Site

Downey, California

National Community Renaissance



Perspective View from 2nd Street

Concept Design (Option 2)

Downey Mixed Use - Verizon Site

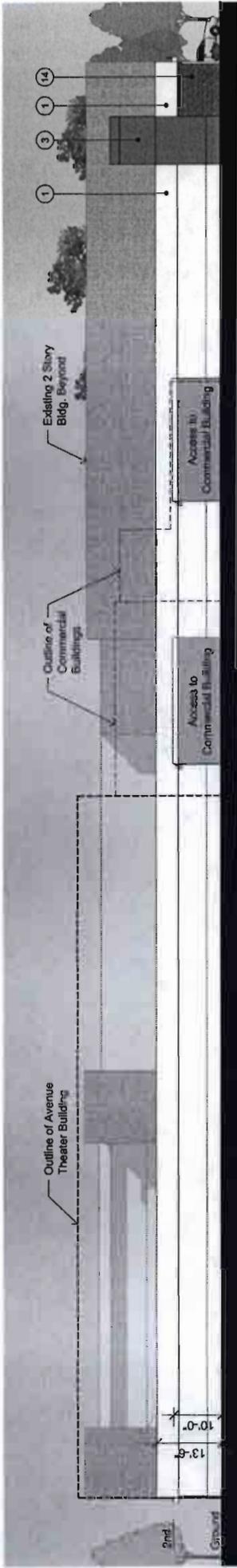
Downey, California

National Community Renaissance

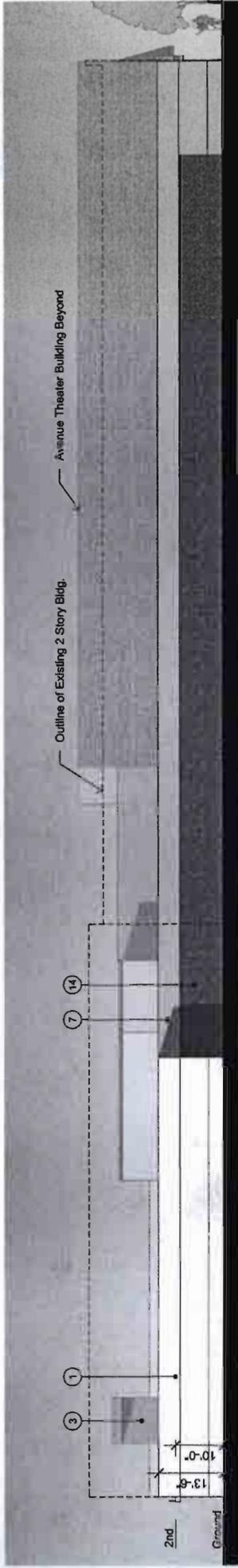
13

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MARIN**
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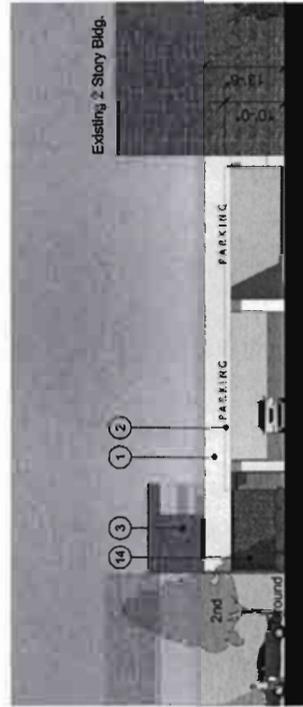
October 21, 2010



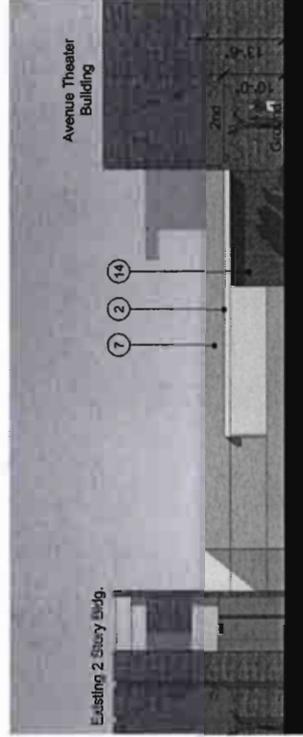
West Elevation



East Elevation



South Elevation (2nd Street)

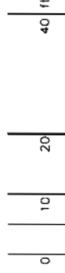


North Elevation (3rd Street)

MATERIALS LEGEND

- ① White light sand stucco to match DEW340
- ② Smooth stucco eyebrow and lint to match DEW240
- ③ Blue light sand stucco to match DEC788 Telesium Blue
- ④ Green light sand stucco to match DE5506-Organic Matter
- ⑤ Green smooth stucco to match DE5509-Organic Matter
- ⑥ Grey Hard Panel to match DE6360 Fall
- ⑦ Grey light sand stucco to match DE6360
- ⑧ Salmon color Hard lap siding to match DE6682 Hickory Branch
- ⑨ Windows - Jeld Wen Artic Shers-Vtyl
- ⑩ Metal railing, mesh and accents to match Artic street windows
- ⑪ Mesh Woven wire 1" squares
- ⑫ Metal Awning
- ⑬ Aluminum Storefront
- ⑭ Planted Wall

ARCHITECTS
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Scale: 1" = 10' (Full Size)
 Scale: 1" = 20' (Half Size)

September 3, 2010

Concept Design (Option 2) - Off Site Parking Structure Elevations
Downey Mixed Use - Verizon Site
 Downey, California
 National Community Renaissance

**EXHIBIT M
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Design Option 1 Budget

[Attached Behind This Page]

OPTION # 1: ON-SITE PARKING SCENARIO

SOURCES & USES OF FUNDS

Revised: 10/20/2010

Project Name: 9% Verizon Site - Prevailing Wage / On-Site Pkg 50 units
 Project Address: 8314 2nd Street, Downey, CA 90241
 Developer: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

SOURCES: CONSTRUCTION		Per Unit	USES:		Per Unit
Private Const Loan -	\$8,556,251	171,125	Acquisition Costs/Closing	\$1,481,775	29,636
LIHTC Equity - 9%	\$3,832,500	76,650	Architecture/Fees & Permits	\$1,515,000	30,300
LA County Industry	\$676,278	13,526	Construction Cost	\$16,171,694	323,434
State IIG	\$2,877,700	57,554	Indirect Construction/Legal	\$286,759	5,735
City of Downey - HOME Funds	\$350,000	7,000	Developer's Fee	\$700,000	14,000
City of Downey - RDA (formerly \$3,197,)	\$3,100,000	62,000	Rent-Up Costs/Reserves	\$82,500	1,650
City of Downey - Land	\$1,550,000	31,000	Financing Costs	\$705,000	14,100
			Other	\$0	0
TOTAL	\$20,942,729	418,855		\$20,942,729	418,855

SOURCES: PERMANENT		Per Unit	USES:		Per Unit
Perm Loan A- 30yr TCAC Loan	\$1,990,000	39,800	Acquisition Costs/Closing	\$1,481,775	24,696
Perm Loan B- 15yr Sec. 8	\$0	0	Architecture/Fees & Permits	\$1,515,000	25,250
LIHTC Equity - 9%	\$10,950,000	219,000	Construction Cost	\$16,171,694	269,528
Deferred Dev Fee	\$397,799	7,956	Indirect Construction/Legal	\$286,759	4,779
LA County Industry	\$676,278	13,526	Developer's Fee	\$1,400,000	23,333
State IIG	\$2,877,700	57,554	Rent-Up Costs/Reserves	\$189,185	3,153
City of Downey - HOME Funds	\$350,000	7,000	Financing Costs	\$847,363	14,123
City of Downey - RDA (formerly \$3,197,)	\$3,100,000	62,000	Other	\$0	0
City of Downey - Land	\$1,550,000	31,000			
GAP	\$0				
TOTAL	\$21,891,777	437,836		\$21,891,777	437,836

DEVELOPMENT COSTS

Revised: 10/20/2010

Project Name: 9% Verizon Site - Prevailing Wage / On-Site Pkg 50 units
 Project Address: 8314 2nd Street, Downey, CA 90241
 Developer: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

Number of Dwelling Units:	50	Gross Building Area (sf)		56,650	
		TOTAL COST	\$ PER UNIT	\$ PER SF BUILDING	% OF TOTAL
1. ACQUISITION COSTS:					
Purchase Price		\$1,481,775	\$29,635.50	\$26.16	6.77%
Closing Costs		\$0	\$0.00	\$0.00	0.00%
Appraisal		\$0	\$0.00	\$0.00	0.00%
Holding Costs		\$0	\$0.00	\$0.00	0.00%
TOTAL ACQUISITION COSTS		\$1,481,775	\$29,635.50	\$26.16	6.77%
2. FEES/PERMITS & STUDIES					
Building Fees & Permits		\$100,000	\$2,000.00	\$1.77	0.46%
Development Impact Fees		\$500,000	\$10,000.00	\$8.83	2.28%
Surveys/Soils/Traffic/Acoustic/Inspections		\$100,000	\$2,000.00	\$1.77	0.46%
Environmental Doc/Remediation/Mitigation		\$50,000	\$1,000.00	\$0.88	0.23%
Arch. & Civil Engineering Fees					
Design	4.73%	\$750,000	\$15,000.00	\$13.24	3.43%
Reimbursables		\$15,000	\$300.00	\$0.26	0.07%
Subtotal:		\$765,000	\$15,300.00	\$13.50	3.49%
TOTAL FEES/PERMITS & STUDIES		\$1,515,000	\$30,300.00	\$26.74	6.92%
3. DIRECT CONSTRUCTION COSTS					
Demolition & Rehabilitation		\$0	\$0.00	\$0.00	0.00%
Residential Building		\$6,880,903	\$137,618.06	\$121.46	31.43%
On-site Work		\$775,292	\$15,505.84	\$13.69	3.54%
Off-site Work		\$234,048	\$4,680.96	\$4.13	1.07%
Parking Structure		\$4,893,705	\$97,874.10	\$86.38	22.35%
Other (Off-site parking)			\$0.00	\$0.00	0.00%
Subtotal:		\$12,783,948	\$255,678.96	\$225.67	58.40%
Contractor's Overhead & Profit	8.00%	\$1,022,716	\$20,454.32	\$18.05	4.67%
Subtotal:		\$13,806,664	\$276,133.28	\$243.72	63.07%
General Conditions	8.00%	\$767,037	\$15,340.74	\$13.54	3.50%
Performance Bond / GL Insurance		\$319,599	\$6,391.97	\$5.64	1.46%
Subtotal:		\$14,893,300	\$297,865.99	\$262.90	68.03%
Construction Contingency	10.00%	\$1,278,395	\$25,567.90	\$22.57	5.84%
TOTAL DIRECT CONSTRUCTION COSTS		\$16,171,694	\$323,433.89	\$285.47	73.87%
4. INDIRECT CONSTRUCTION COSTS					
Developer's Fee		\$1,002,201	\$20,044.02	\$17.69	4.58%
Deferred Developer Fee		\$397,799	\$7,955.98	\$7.02	1.82%
Subtotal:		\$1,400,000	\$28,000.00	\$24.71	6.40%
Development Consultant		\$0	\$0.00	\$0.00	0.00%
Construction Manager		\$0	\$0.00	\$0.00	0.00%
Builders Risk/Liability Insurance		\$191,759	\$3,835.18	\$3.38	0.88%
Real Estate Taxes		\$0	\$0.00	\$0.00	0.00%
Legal - Organizational		\$30,000	\$600.00	\$0.53	0.14%
Legal - Syndication		\$15,000	\$300.00	\$0.26	0.07%
Accounting/Inspection		\$20,000	\$400.00	\$0.35	0.09%
Relocation		\$0	\$0.00	\$0.00	0.00%
Indirect Construction Costs Contingency		\$30,000	\$600.00	\$0.53	0.14%
TOTAL INDIRECT CONSTRUCTION COSTS		\$1,686,759	\$33,735.18	\$29.78	7.70%
5. RENT-UP COSTS					
Marketing/Advertising Expense		\$12,000	\$240.00	\$0.21	0.05%
Lease-up Reserve (4 month lease-up)		\$0	\$0.00	\$0.00	0.00%
Capitalized Replacement Reserve		\$0	\$0.00	\$0.00	0.00%
Capitalized Operating Reserve		\$106,685	\$2,133.69	\$1.88	0.49%
Transition Reserve		\$0	\$0.00	\$0.00	0.00%
Common Area Furnishings		\$70,500	\$1,410.00	\$1.24	0.32%
TOTAL RENT-UP/MARKETING COSTS		\$189,185	\$3,783.69	\$3.34	0.86%
6. FINANCING COSTS					
Construction Loan Interest		\$504,000	\$10,080.00	\$8.90	2.30%
Construction Loan Fees/Costs		\$70,000	\$1,400.00	\$1.24	0.32%
Lender Appraisal		\$10,000	\$200.00	\$0.18	0.05%
Lender Legal		\$50,000	\$1,000.00	\$0.88	0.23%
LACDC/Housing Authority Fees		\$25,500	\$510.00	\$0.45	0.12%
Permanent Loan Fees/Closing Costs		\$26,550	\$531.00	\$0.47	0.12%
Tax Credit Allocation Fee		\$141,313	\$2,826.27	\$2.49	0.65%
Syndication Costs		\$0	\$0.00	\$0.00	0.00%
Bond Issuance Costs		\$0	\$0.00	\$0.00	0.00%
Title and Recording (Constr./Perm.)		\$20,000	\$400.00	\$0.35	0.09%
TOTAL FINANCING COSTS		\$847,363	\$16,947.27	\$14.96	3.87%
7. SUBTOTAL DEVELOPMENT COSTS		\$20,410,002	\$408,200.03	\$360.28	93.23%
TOTAL LAND COSTS		\$1,481,775	\$29,635.50	\$26.16	6.77%
TOTAL DEVELOPMENT COSTS		\$21,891,777	\$437,835.53	\$386.44	100.00%
COMMERCIAL SPECIFIC COSTS		\$0			
ADJ. TOTAL DEVELOPMENT COSTS		\$21,891,777			

Construction estimates are subject to change and may be revised due to entitlement issues, changes in construction standards, architectural and engineering requirements, and other unforeseen circumstances.

OPERATING EXPENSES

Revised: 10/20/2010

Project Name: 9% Verizon Site - Prevailing Wage / On-Site Pkg 50 units

Project Address: 8314 2nd Street, Downey, CA 90241

Developer: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

	ANNUAL 50	MONTHLY	PER UNIT	UNIT/MO.	% TOTAL
1. MANAGEMENT					
Contract Management Fee	\$24,000	\$2,000.00	\$480.00	\$40.00	8.73%
TOTAL MANAGEMENT	\$24,000	\$2,000.00	\$480.00	\$40.00	8.73%
2. ADMINISTRATION					
Marketing	\$1,500	\$125.00	\$30.00	\$2.50	0.55%
Audit	\$13,500	\$1,125.00	\$270.00	\$22.50	4.91%
Legal	\$2,000	\$166.67	\$40.00	\$3.33	0.73%
Office Expenses	\$8,000	\$666.67	\$160.00	\$13.33	2.91%
TOTAL ADMINISTRATION	\$25,000	\$2,083.33	\$500.00	\$41.67	9.10%
3. SALARIES AND BENEFITS					
On-Site Manager/Asst. Manager	\$25,000	\$2,083.33	\$500.00	\$41.67	9.10%
Maintenance Personnel	\$25,000	\$2,083.33	\$500.00	\$41.67	9.10%
Janitorial Personnel	\$0	\$0.00	\$0.00	\$0.00	0.00%
Case Manager	\$0	\$0.00	\$0.00	\$0.00	0.00%
Housekeepers	\$0	\$0.00	\$0.00	\$0.00	0.00%
Payroll Txns, Ins & Wkr. Comp.	\$17,500	\$1,458.33	\$350.00	\$29.17	6.37%
TOTAL SALARIES	\$67,500	\$5,625.00	\$1,350.00	\$112.50	24.56%
4. MAINTENANCE					
Supplies	\$5,000	\$416.67	\$100.00	\$8.33	1.82%
Repairs Contract	\$6,000	\$500.00	\$120.00	\$10.00	2.18%
Pest Control	\$2,000	\$166.67	\$40.00	\$3.33	0.73%
Grounds Contract	\$6,000	\$500.00	\$120.00	\$10.00	2.18%
Turnover Costs	\$7,500	\$625.00	\$150.00	\$12.50	2.73%
Pool	\$0	\$0.00	\$0.00	\$0.00	0.00%
Elevator	\$4,000	\$333.33	\$80.00	\$6.67	1.46%
TOTAL MAINTENANCE	\$30,500	\$2,542	\$610	\$51	11.10%
5. UTILITIES NOT PAID BY TENANTS					
Trash Removal	\$8,333	\$694.44	\$166.67	\$13.89	3.03%
Electricity	\$16,667	\$1,388.89	\$333.33	\$27.78	6.06%
Water/Sewer	\$24,733	\$2,061.11	\$494.67	\$41.22	9.00%
Gas	\$10,000	\$833.33	\$200.00	\$16.67	3.64%
TOTAL UTILITIES	\$59,733	\$4,977.78	\$1,194.67	\$99.56	21.73%
6. INSURANCE					
Property & Liability Insurance	\$30,000	\$2,500.00	\$600.00	\$50.00	10.92%
TOTAL INSURANCE	\$30,000	\$2,500.00	\$600.00	\$50.00	10.92%
7. TAXES/RESERVES					
Real Estate Taxes	\$5,000	\$416.67	\$100.00	\$8.33	1.82%
Replacement Reserves	\$17,500	\$1,458.33	\$350.00	\$29.17	6.37%
TOTAL TAXES	\$22,500	\$1,875.00	\$450.00	\$37.50	8.19%
8. OTHER					
Social Service Coordination	\$15,600	\$1,300.00	\$312.00	\$26.00	5.68%
Resident Activities/Van	\$0	\$0.00	\$0.00	\$0.00	0.00%
TOTAL OTHER	\$15,600	\$1,300	\$312	\$26	5.68%
TOTAL OPERATING EXPENSES	\$274,833	\$22,903	\$5,496.67	\$458.06	100.00%
Less Taxes/Reserves/Other			\$4,734.67		

CASH FLOW PROJECTIONS

Project Name: 9% Verizon Site - Prevailing Wage / On-Site Pkg 50 units
 Project Address 8314 2nd Street, Downey, CA 90241
 Developer Name: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

Revised: 10/20/2010

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10	YEAR 11	YEAR 12	YEAR 13	YEAR 14	YEAR 15
ASSUMPTIONS:															
Residential Income Inft. Rate:	2.50%								7.65%						
Laundry & Misc. Inft. Factor:	2.50%								30						
Operating Expense Inft. Factor:	3.50%								AMORTIZED						
Vacancy Rate:	5.00%								1,200						
Number of Units:	50								\$169,405						
Unit Operating Exp:	\$5,147														
Replacement Resrv:	0														
Laundry Inft/Year:	\$6,000														
2nd Perm Loan (B)	\$0.00														
DCR	15														
Interest Rate	1,200														
Cash Available for Debt Serv:	7.65%														
Residential Income	\$497,283	\$509,715	\$522,458	\$535,520	\$548,908	\$562,630	\$576,696	\$591,114	\$605,891	\$621,039	\$636,565	\$652,479	\$668,791	\$685,511	\$702,648
Additional HAP Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Laundry & Miscellaneous	6,000	6,150	6,304	6,461	6,623	6,788	6,958	7,132	7,310	7,493	7,681	7,873	8,069	8,271	8,478
GROSS INCOME	503,283	515,865	528,762	541,981	555,531	569,419	583,654	598,246	613,202	628,532	644,245	660,351	676,860	693,782	711,126
Vacancy	25,164	25,793	26,438	27,099	27,777	28,471	29,183	29,912	30,660	31,427	32,212	33,018	33,843	34,689	35,556
EFFECTIVE GROSS INCOME	478,119	490,072	502,324	514,882	527,754	540,948	554,472	568,333	582,542	597,105	612,033	627,334	643,017	659,093	675,570
Operating Expenses	257,333	266,340	275,662	285,310	295,296	305,631	316,328	327,400	338,859	350,719	362,994	375,699	388,848	402,458	416,544
Operating Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Replacement Reserve	17,500	18,113	18,746	19,403	20,082	20,785	21,512	22,265	23,044	23,851	24,685	25,549	26,444	27,369	28,327
NOI BEFORE DEBT SERVICE	203,286	205,620	207,916	210,169	212,377	214,532	216,631	218,669	220,639	222,536	224,353	226,085	227,725	229,265	230,699
DEBT SERVICE (A)	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405
Debt Service Coverage	1.20	1.21	1.23	1.24	1.25	1.27	1.29	1.30	1.30	1.31	1.32	1.33	1.34	1.35	1.36
Cash Available After Debt Service	33,881	36,215	38,511	40,765	42,972	45,127	47,226	49,264	51,234	53,131	54,949	56,681	58,320	59,860	61,294
Partnership Mgt Fee	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Addl Social Service Coordination	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash Available for Def Fees	23,881	26,215	28,511	30,765	32,972	35,127	37,226	39,264	41,234	43,131	44,949	46,681	48,320	49,860	51,294
Deferred Dev Fee Payment	-23,881	-26,215	-28,511	-30,765	-32,972	-35,127	-37,226	-39,264	-41,234	-43,131	-44,949	-46,681	-48,320	-49,860	-51,294
Deferred Dev Fee Balance Due	373,918	347,703	319,192	288,428	255,456	220,329	183,102	143,838	102,604	59,474	14,525	0	0	0	0
CASH AVAILABLE FOR DISTRIBUTION	0	0	0	0	0	0	0	0	0	0	0	32,156	48,320	49,860	51,294

TOTAL DEV. COSTS: Per Unit Percent
 Perm Loan A- 30yr TCAC Loan \$437,836 100.00%
 Perm Loan B- 15yr Sec. 8 \$39,800 9.09%
 LHFC Equity - 9% \$219,000 50.02%
 City of Downey - HOME \$7,000 1.60%
 Deferred Dev Fee \$397,799 1.82%
 City of Downey- RDA (formerly \$3,100,000 \$62,000 14.16%
 HACOIA INDUSTRY \$676,278 \$13,526 3.09%
 City of Downey - Land \$1,550,000 \$31,000 7.08%
 State IIG \$2,877,700 \$57,554 13.15%

	YEAR 16	YEAR 17	YEAR 18	YEAR 19	YEAR 20	YEAR 21	YEAR 22	YEAR 23	YEAR 24	YEAR 25	YEAR 26	YEAR 27	YEAR 28	YEAR 29	YEAR 30
\$720,215	\$739,220	\$756,675	\$775,592	\$794,982	\$814,857	\$835,228	\$856,109	\$877,512	\$899,449	\$921,936	\$944,984	\$968,609	\$992,824	\$1,017,644	
8,690	8,907	9,130	9,358	9,592	9,832	10,077	10,329	10,588	10,852	11,124	11,402	11,687	11,979	12,278	
728,904	747,127	765,805	784,950	804,574	824,688	845,306	866,438	888,059	910,302	933,059	956,366	980,295	1,004,803	1,029,923	
36,445	37,356	38,290	39,248	40,229	41,234	42,265	43,322	44,405	45,515	46,653	47,819	49,015	50,240	51,496	
692,459	709,771	727,515	745,703	764,345	783,454	803,040	823,116	843,694	864,787	886,406	908,566	931,281	954,563	978,427	
431,123	446,212	461,830	477,994	494,724	512,039	529,960	548,509	567,707	587,577	608,142	629,427	651,457	674,258	697,857	
29,319	30,345	31,407	32,506	33,644	34,821	36,040	37,301	38,607	39,958	41,357	42,804	44,302	45,853	47,458	
232,017	233,213	234,278	235,203	235,976	236,594	237,040	237,306	237,380	237,252	236,908	236,335	235,522	234,452	233,112	
169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	
1.37	1.38	1.38	1.39	1.39	1.40	1.40	1.40	1.40	1.40	1.40	1.40	1.39	1.38	1.38	
62,613	63,809	64,873	65,798	66,573	67,189	67,635	67,901	67,976	67,847	67,503	66,931	66,117	65,047	63,707	
10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
52,613	53,809	54,873	55,798	56,573	57,189	57,635	57,901	57,976	57,847	57,503	56,931	56,117	55,047	53,707	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
52,613	53,809	54,873	55,798	56,573	57,189	57,635	57,901	57,976	57,847	57,503	56,931	56,117	55,047	53,707	

TAX CREDIT ANALYSIS

Revised: 10/20/2010

Project Name: 94 Verizon Site - Prevsilling Wdge
 Project Address: 8314 2nd Street, Downey, CA 90241
 Developer Name: Downey Housing Partners, L.P. (SC)

	Project Costs	94 Basis
LAND COSTS		
Land Cost	\$0	XXXXXXXXXXXXXX
Legal/Broker Fees	\$0	XXXXXXXXXXXXXX
Demolition	\$0	XXXXXXXXXXXXXX
TOTAL LAND COSTS	\$0	XXXXXXXXXXXXXX
TOTAL ACQUISITION COSTS	\$1,461,775	\$0
CONSTRUCTION		
Demolition	\$0	XXXXXXXXXXXXXX
Structures	\$12,783,948	\$12,783,948
General Requirements	\$767,037	\$767,037
Performance Bond Premium	\$319,599	\$319,599
Contractor Overhead	\$1,022,716	\$1,022,716
CONSTRUCTION CONTINGENCY	\$1,278,395	\$1,278,395
TOTAL CONSTRUCTION COSTS	\$16,171,694	\$16,171,694
PERMITS/FEES/ARCHITECTURE		
Bldg Fees/Permits/Local Dev Impact Fees	\$600,000	\$600,000
Surveys/Environmental	\$150,000	\$150,000
Design and Reimbursables	\$765,000	\$765,000
TOTAL ARCHITECTURAL COSTS	\$1,515,000	\$1,515,000
CONSTRUCTION INTEREST AND FEES		
Construction Loan Interest	\$504,000	\$504,000
Origination Fee	\$70,000	\$70,000
As-built Appraisal	\$10,000	\$10,000
Title & Recording	\$10,000	\$10,000
Bond Issuance Costs	\$0	XXXXXXXXXXXXXX
TOTAL CONSTRUCTION INTEREST & FEES COSTS	\$594,000	\$594,000
PERMANENT FINANCING		
Perm. Loan Origination Fee	\$26,550	XXXXXXXXXXXXXX
Credit Enhancement and Application Fee	\$0	XXXXXXXXXXXXXX
Title and Recording	\$10,000	XXXXXXXXXXXXXX
Other	\$0	XXXXXXXXXXXXXX
TOTAL PERMANENT FINANCING COSTS	\$36,550	\$0
LEGAL FEES		
Lender Legal Costs Paid by Applicant	\$50,000	\$50,000
Legal Syndication	\$15,000	XXXXXXXXXXXXXX
Legal Organizational	\$30,000	\$22,500
TOTAL ATTORNEY COSTS	\$95,000	\$72,500
RESERVES		
Marketing	\$12,000	XXXXXXXXXXXXXX
Lease-Up Reserves	\$0	XXXXXXXXXXXXXX
Capitalized Replacement Reserve	\$0	XXXXXXXXXXXXXX
Capitalized Operating Reserve	\$106,685	XXXXXXXXXXXXXX
Transition Reserve	\$0	XXXXXXXXXXXXXX
Furnishings	\$70,500	\$70,500
TOTAL RENT RESERVE COSTS	\$189,185	\$70,500
OTHER		
TCAC Appl/Reserv./Monitoring Fees	\$141,313	XXXXXXXXXXXXXX
Relocation Expenses	\$0	\$0
Soft Costs Contingency	\$30,000	\$30,000
Construction Manager	\$0	\$0
Accounting/Audit	\$20,000	\$20,000
Taxes	\$0	\$0
Insurance	\$191,759	\$191,759
LACDC/Housing Authority Fees	\$25,500	\$25,500
TOTAL OTHER COSTS	\$488,573	\$267,289
DEVELOPER COSTS		
Developer Overhead/Fee	\$1,400,000	\$1,400,000
Development Consultant	\$0	\$0
Other	\$0	\$0
TOTAL DEVELOPER COSTS	\$1,400,000	\$1,400,000
TOTAL RESIDENTIAL COSTS	\$21,891,777	\$20,090,954
TOTAL COMMERCIAL COSTS	\$0	\$0
TOTAL PROJECT COSTS	\$21,891,777	\$20,090,954
TOTAL ELIGIBLE BASIS		
TOTAL ELIGIBLE BASIS		\$20,090,954
TOTAL REQUESTED BASIS		\$12,734,762
High Cost Area Adjustment		130,000
SUBTOTAL ADJUSTED ELIGIBLE BASIS		\$16,555,190
ACQUISITION BASIS		
TOTAL ADJUSTED ELIGIBLE BASIS		\$16,224,086
Ratio of low income units to all units		100.00%
TOTAL QUALIFIED BASIS		\$16,224,086
TOTAL CREDIT REDUCTION (NA)		
TOTAL ADJUSTED QUALIFIED BASIS		\$16,224,086
Applicable Federal Tax Credit Factor		9.00%
Equals		\$1,460,168
TOTAL ANNUAL FEDERAL CREDIT		\$1,460,168
x 10 yrs		10
MAXIMUM FEDERAL CREDIT		\$14,601,678
x Tax Credit Factor (cents on the \$)		\$0.7360
Estimated Syndication Net Proceeds		\$10,951,258

**EXHIBIT N
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Design Option 2 Budget

[Attached Behind This Page]

OPTION # 2: OFF SITE PARKING SCENARIO

SOURCES & USES OF FUNDS

Revised: 10/20/2010

Project Name: 9% Verizon Site - Offsite Pkg / Non-Prevailing Wage 50 units
 Project Address: 8314 2nd Street, Downey, CA 90241
 Developer: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

SOURCES: CONSTRUCTION		Per Unit	USES:		Per Unit
Private Const Loan -	\$7,595,318	151,906	Acquisition Costs/Closing	\$1,644,275	32,886
LIHTC Equity - 9%	\$3,193,400	63,868	Architecture/Fees & Permits	\$1,515,000	30,300
LA County Industry	\$2,000,000	40,000	Construction Cost	\$12,894,049	257,881
City of Downey - HOME Funds	\$350,000	7,000	Indirect Construction/Legal	\$247,894	4,958
City of Downey - RDA (formerly \$3,197,000)	\$3,100,000	62,000	Developer's Fee	\$700,000	14,000
City of Downey - Land	\$1,550,000	31,000	Rent-Up Costs/Reserves	\$82,500	1,650
			Financing Costs	\$705,000	14,100
			Other	\$0	0
TOTAL	\$17,788,718	355,774		\$17,788,718	355,774

SOURCES: PERMANENT		Per Unit	USES:		Per Unit
Perm Loan A- 30yr TCAC Loan	\$1,990,000	39,800	Acquisition Costs/Closing	\$1,644,275	27,405
Perm Loan B- 15yr Sec. 8	\$0	0	Architecture/Fees & Permits	\$1,515,000	25,250
LIHTC Equity - 9%	\$9,124,000	182,480	Construction Cost	\$12,894,049	214,901
Deferred Dev Fee	\$604,286	12,086	Indirect Construction/Legal	\$247,894	4,132
LA County Industry	\$2,000,000	40,000	Developer's Fee	\$1,400,000	23,333
City of Downey - HOME Funds	\$350,000	7,000	Rent-Up Costs/Reserves	\$189,185	3,153
City of Downey - RDA (formerly \$3,197,000)	\$3,100,000	62,000	Financing Costs	\$827,883	13,798
City of Downey - Land	\$1,550,000	31,000	Other	\$0	0
GAP	\$0				
TOTAL	\$18,718,286	374,366		\$18,718,286	374,366

DEVELOPMENT COSTS

Revised: 10/20/2010

Project Name: 9% Verizon Site - Offsite Pkg / Non-Prevailing Wage 50 units
 Project Address: 8314 2nd Street, Downey, CA 90241
 Developer: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

Number of Dwelling Units:	50	Gross Building Area (sf)		56,650	
		TOTAL COST	\$ PER UNIT	\$ PER SF BUILDING	% OF TOTAL
1. ACQUISITION COSTS:					
Purchase Price		\$1,644,275	\$32,885.50	\$29.03	8.78%
Closing Costs		\$0	\$0.00	\$0.00	0.00%
Appraisal		\$0	\$0.00	\$0.00	0.00%
Holding Costs		\$0	\$0.00	\$0.00	0.00%
TOTAL ACQUISITION COSTS		\$1,644,275	\$32,885.50	\$29.03	8.78%
2. FEES/PERMITS & STUDIES					
Building Fees & Permits		\$100,000	\$2,000.00	\$1.77	0.53%
Development Impact Fees		\$500,000	\$10,000.00	\$8.83	2.67%
Surveys/Soils/Traffic/Acoustic/Inspections		\$100,000	\$2,000.00	\$1.77	0.53%
Environmental Doc/Remediation/Mitigation		\$50,000	\$1,000.00	\$0.88	0.27%
Arch. & Civil Engineering Fees					
Design	5.93%	\$750,000	\$15,000.00	\$13.24	4.01%
Reimbursables		\$15,000	\$300.00	\$0.26	0.08%
Subtotal:		\$765,000	\$15,300.00	\$13.50	4.09%
TOTAL FEES/PERMITS & STUDIES		\$1,515,000	\$30,300.00	\$26.74	8.09%
3. DIRECT CONSTRUCTION COSTS:					
Demolition & Rehabilitation		\$0	\$0.00	\$0.00	0.00%
Residential Building		\$5,734,086	\$114,681.72	\$101.22	30.63%
On-site Work		\$775,292	\$15,505.84	\$13.69	4.14%
Off-site Work		\$234,048	\$4,680.96	\$4.13	1.25%
Parking Structure		\$2,816,998	\$56,339.96	\$49.73	15.05%
Other (Off-site parking)		\$632,500	\$12,650.00	\$11.17	3.38%
Subtotal:		\$10,192,924	\$203,858.48	\$179.93	54.45%
Contractor's Overhead & Profit	8.00%	\$815,434	\$16,308.68	\$14.39	4.36%
Subtotal:		\$11,008,358	\$220,167.16	\$194.32	58.81%
General Conditions	6.00%	\$611,575	\$12,231.51	\$10.80	3.27%
Performance Bond / GL Insurance		\$254,823	\$5,096.46	\$4.50	1.36%
Subtotal:		\$11,874,756	\$237,495.13	\$209.62	63.44%
Construction Contingency	10.00%	\$1,019,292	\$20,385.85	\$17.99	5.45%
TOTAL DIRECT CONSTRUCTION COSTS		\$12,894,049	\$257,880.98	\$227.61	68.88%
4. INDIRECT CONSTRUCTION COSTS					
Developer's Fee		\$795,714	\$15,914.29	\$14.05	4.25%
Deferred Developer Fee		\$604,286	\$12,085.71	\$10.67	3.23%
Subtotal:		\$1,400,000	\$28,000.00	\$24.71	7.48%
Development Consultant		\$0	\$0.00	\$0.00	0.00%
Construction Manager		\$0	\$0.00	\$0.00	0.00%
Builders Risk/Liability Insurance		\$152,894	\$3,057.88	\$2.70	0.82%
Real Estate Taxes		\$0	\$0.00	\$0.00	0.00%
Legal - Organizational		\$30,000	\$600.00	\$0.53	0.16%
Legal - Syndication		\$15,000	\$300.00	\$0.26	0.08%
Accounting/Inspection		\$20,000	\$400.00	\$0.35	0.11%
Relocation		\$0	\$0.00	\$0.00	0.00%
Indirect Construction Costs Contingency		\$30,000	\$600.00	\$0.53	0.16%
TOTAL INDIRECT CONSTRUCTION COSTS		\$1,647,894	\$32,957.88	\$29.09	8.80%
5. RENT-UP COSTS					
Marketing/Advertising Expense		\$12,000	\$240.00	\$0.21	0.06%
Lease-up Reserve (4 month lease-up)		\$0	\$0.00	\$0.00	0.00%
Capitalized Replacement Reserve		\$0	\$0.00	\$0.00	0.00%
Capitalized Operating Reserve		\$106,685	\$2,133.69	\$1.88	0.57%
Transition Reserve		\$0	\$0.00	\$0.00	0.00%
Common Area Furnishings		\$70,500	\$1,410.00	\$1.24	0.38%
TOTAL RENT-UP/MARKETING COSTS		\$189,185	\$3,783.69	\$3.34	1.01%
6. FINANCING COSTS					
Construction Loan Interest		\$504,000	\$10,080.00	\$8.90	2.69%
Construction Loan Fees/Costs		\$70,000	\$1,400.00	\$1.24	0.37%
Lender Appraisal		\$10,000	\$200.00	\$0.18	0.05%
Lender Legal		\$50,000	\$1,000.00	\$0.88	0.27%
LACDC/Housing Authority Fees		\$25,500	\$510.00	\$0.45	0.14%
Permanent Loan Fees/Closing Costs		\$26,550	\$531.00	\$0.47	0.14%
Tax Credit Allocation Fee		\$121,833	\$2,436.67	\$2.15	0.65%
Syndication Costs		\$0	\$0.00	\$0.00	0.00%
Bond Issuance Costs		\$0	\$0.00	\$0.00	0.00%
Title and Recording (Constr./Perm.)		\$20,000	\$400.00	\$0.35	0.11%
TOTAL FINANCING COSTS		\$827,883	\$16,557.67	\$14.61	4.42%
7. SUBTOTAL DEVELOPMENT COSTS		\$17,074,011	\$341,480.21	\$301.39	91.22%
TOTAL LAND COSTS		\$1,644,275	\$32,885.50	\$29.03	8.78%
TOTAL DEVELOPMENT COSTS		\$18,718,286	\$374,365.71	\$330.42	100.00%
COMMERCIAL SPECIFIC COSTS		\$0			
ADJ. TOTAL DEVELOPMENT COSTS		\$18,718,286			

Construction estimates are subject to change and may be revised due to entitlement issues, changes in construction standards, architectural and engineering requirements, and other unforeseen circumstances.

RENT SCHEDULE

Revised: 10/20/2010

Project Name: 9% Verizon Site - Offsite Pkg / Non-Prevailing Wage 50 units
 Project Address: 8314 2nd Street, Downey, CA 90241
 Developer Name: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

2010 AREA MEDIAN INCOME								
\$82,800								
Unit Type	Percent Median	2010 Monthly Gross Rent	2010 Monthly Utility Allow.	Monthly Net Rent	Number of Units	Total Monthly Rent	Total Annual Rent (\$)	Total # of Bdrms.
TWO BEDROOM	30%	\$559	\$71	\$488	2	\$976	\$11,710	4
	45%	\$839	\$71	\$768	8	\$6,147	\$73,762	16
	50%	\$932	\$71	\$861	24	\$20,652	\$247,824	48
	60%	\$1,119	\$71	\$1,048	1	\$1,048	\$12,574	2
					35			
THREE BEDROOM	30%	\$646	\$87	\$559	3	\$1,677	\$20,118	9
	45%	\$969	\$87	\$882	0	\$0	\$0	0
TCAC	50%	\$1,076	\$87	\$989	0	\$0	\$0	0
Industry	50%	\$1,035	\$87	\$948	9	\$8,532	\$102,384	27
	60%	\$1,292	\$87	\$1,205	2	\$2,409	\$28,912	6
					14			
MANAGER'S	Exempt	\$0	\$0	\$0	1	\$0	\$0	1
TOTAL					50	\$41,440	\$497,283	113

Including Mgr. Unit			Excluding Mgr. Unit		
30%	5	10.00%	30%	5	10.20%
45%	8	16.00%	45%	8	16.33%
50%	33	66.00%	50%	33	67.35%
60%	3	6.00%	60%	3	6.12%
80%	0	0.00%	80%	0	0.00%
Mgr	1	2.00%	Mgr	0	0.00%
	50	100%		49	100%

OPERATING EXPENSES

Revised: 10/20/2010

Project Name: 9% Verizon Site - Offsite Pkg / Non-Prevailing Wage 50 units
 Project Address: 8314 2nd Street, Downey, CA 90241
 Developer: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

	ANNUAL 50	MONTHLY	PER UNIT	UNIT/MO.	% TOTAL
1. MANAGEMENT					
Contract Management Fee	\$24,000	\$2,000.00	\$480.00	\$40.00	8.73%
TOTAL MANAGEMENT	\$24,000	\$2,000.00	\$480.00	\$40.00	8.73%
2. ADMINISTRATION					
Marketing	\$1,500	\$125.00	\$30.00	\$2.50	0.55%
Audit	\$13,500	\$1,125.00	\$270.00	\$22.50	4.91%
Legal	\$2,000	\$166.67	\$40.00	\$3.33	0.73%
Office Expenses	\$8,000	\$666.67	\$160.00	\$13.33	2.91%
TOTAL ADMINISTRATION	\$25,000	\$2,083.33	\$500.00	\$41.67	9.10%
3. SALARIES AND BENEFITS					
On-Site Manager/Asst. Manager	\$25,000	\$2,083.33	\$500.00	\$41.67	9.10%
Maintenance Personnel	\$25,000	\$2,083.33	\$500.00	\$41.67	9.10%
Janitorial Personnel	\$0	\$0.00	\$0.00	\$0.00	0.00%
Case Manager	\$0	\$0.00	\$0.00	\$0.00	0.00%
Housekeepers	\$0	\$0.00	\$0.00	\$0.00	0.00%
Payroll Txs, Ins & Wkr. Comp.	\$17,500	\$1,458.33	\$350.00	\$29.17	6.37%
TOTAL SALARIES	\$67,500	\$5,625.00	\$1,350.00	\$112.50	24.56%
4. MAINTENANCE					
Supplies	\$5,000	\$416.67	\$100.00	\$8.33	1.82%
Repairs Contract	\$6,000	\$500.00	\$120.00	\$10.00	2.18%
Pest Control	\$2,000	\$166.67	\$40.00	\$3.33	0.73%
Grounds Contract	\$6,000	\$500.00	\$120.00	\$10.00	2.18%
Turnover Costs	\$7,500	\$625.00	\$150.00	\$12.50	2.73%
Pool	\$0	\$0.00	\$0.00	\$0.00	0.00%
Elevator	\$4,000	\$333.33	\$80.00	\$6.67	1.46%
TOTAL MAINTENANCE	\$30,500	\$2,542	\$610	\$51	11.10%
5. UTILITIES NOT PAID BY TENANTS					
Trash Removal	\$8,333	\$694.44	\$166.67	\$13.89	3.03%
Electricity	\$16,667	\$1,388.89	\$333.33	\$27.78	6.06%
Water/Sewer	\$24,733	\$2,061.11	\$494.67	\$41.22	9.00%
Gas	\$10,000	\$833.33	\$200.00	\$16.67	3.64%
TOTAL UTILITIES	\$59,733	\$4,977.78	\$1,194.67	\$99.56	21.73%
6. INSURANCE					
Property & Liability Insurance	\$30,000	\$2,500.00	\$600.00	\$50.00	10.92%
TOTAL INSURANCE	\$30,000	\$2,500.00	\$600.00	\$50.00	10.92%
7. TAXES/RESERVES					
Real Estate Taxes	\$5,000	\$416.67	\$100.00	\$8.33	1.82%
Replacement Reserves	\$17,500	\$1,458.33	\$350.00	\$29.17	6.37%
TOTAL TAXES	\$22,500	\$1,875.00	\$450.00	\$37.50	8.19%
8. OTHER					
Social Service Coordination	\$15,600	\$1,300.00	\$312.00	\$26.00	5.68%
Resident Activities/Van	\$0	\$0.00	\$0.00	\$0.00	0.00%
TOTAL OTHER	\$15,600	\$1,300	\$312	\$26	5.68%
TOTAL OPERATING EXPENSES	\$274,833	\$22,903	\$5,496.67	\$458.06	100.00%
Less Taxes/Reserves/Other			\$4,734.67		

CASH FLOW PROJECTIONS

Project Name: 9% Verizon Site - Offsite Pkg / Non-Prevailing Wage 50 units
 Project Address 8314 2nd Street, Downey, CA 90241
 Developer Name: Downey Housing Partners, L.P. (SCHDCLA & NATIONAL CORE)

Revised: 10/20/2010

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10	YEAR 11	YEAR 12	YEAR 13	YEAR 14	YEAR 15
ASSUMPTIONS:															
Residential Income Inft. Rate:	2.50%								7.65%						
Laundry & Misc. Inft. Factor:	2.50%								30						
Operating Expense Inft. Factor:	3.50%								AMORTIZED						
Vacancy Rate:	5.00%								1,200						
Number of Units:	50								\$169,405						
Unit Operating Exp:	\$5,147														
Replacement Resv:	\$350														
Laundry Inft/Year:	\$6,000														
2nd Perm Loan (\$)	\$0.00														
Term	15														
DCR	1,200														
Interest Rate	7.65%														
Cash Available for Debt Serv	0														
Residential Income	\$497,283	\$509,715	\$522,458	\$535,520	\$548,908	\$562,630	\$576,696	\$591,114	\$605,891	\$621,039	\$636,565	\$652,479	\$668,791	\$685,511	\$702,648
Additional HAP Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Laundry & Miscellaneous	6,000	6,150	6,304	6,461	6,623	6,788	6,958	7,132	7,310	7,493	7,681	7,873	8,069	8,271	8,478
GROSS INCOME	503,283	515,865	528,762	541,981	555,531	569,419	583,654	598,246	613,202	628,532	644,245	660,351	676,860	693,782	711,126
Vacancy	25,164	25,793	26,438	27,099	27,777	28,471	29,183	29,912	30,660	31,427	32,212	33,018	33,843	34,689	35,556
EFFECTIVE GROSS INCOME	478,119	490,072	502,324	514,882	527,754	540,948	554,472	568,333	582,542	597,105	612,033	627,334	643,017	659,093	675,570
Operating Expenses	257,333	266,340	275,662	285,310	295,296	305,631	316,328	327,400	338,859	350,719	362,994	375,698	388,848	402,458	416,544
Operating Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Replacement Reserve	17,500	18,113	18,746	19,403	20,082	20,785	21,512	22,265	23,044	23,851	24,685	25,549	26,444	27,369	28,327
NOI BEFORE DEBT SERVICE	203,286	205,620	207,916	210,169	212,377	214,532	216,631	218,669	220,639	222,536	224,353	226,065	227,725	229,265	230,699
DEBT SERVICE (A)	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405
Debt Service Coverage	1.20	1.21	1.23	1.24	1.25	1.27	1.28	1.29	1.30	1.31	1.32	1.33	1.34	1.35	1.36
Cash Available After Debt Service	33,881	36,215	38,511	40,765	42,972	45,127	47,226	49,264	51,234	53,131	54,949	56,681	58,320	59,850	61,294
Partnership Mgt Fee	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Add'l Social Service Coordination	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash Available for Del Fees	23,881	26,215	28,511	30,765	32,972	35,127	37,226	39,264	41,234	43,131	44,949	46,681	48,320	49,850	51,294
Deferred Dev Fee Payment	-23,881	-26,215	-28,511	-30,765	-32,972	-35,127	-37,226	-39,264	-41,234	-43,131	-44,949	-46,681	-48,320	-49,850	-51,294
Deferred Dev Fee Balance Due	580,405	554,190	525,679	494,915	461,943	426,816	389,589	350,325	309,091	265,961	221,012	174,331	126,011	76,151	24,857
CASH AVAILABLE FOR DISTRIBUTION	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

TOTAL DEV. COSTS:
 Perm Loan A- 30yr TCAC Loan
 Perm Loan B- 15yr Sec. 8
 LHTC Equity - 9%
 City of Downey - HOME
 Deferred Dev Fee
 City of Downey - RDA (formerly
 H&COLLA INDUSTRY
 City of Downey - Land

Conventional Loan Rate:
 Conventional Loan Yrs:
 Conventional Loan Type:
 Debt Coverage Ratio:
 Cash Available for Debt Service:

7.65%
 30
 AMORTIZED
 1,200
 \$169,405

	YEAR 16	YEAR 17	YEAR 18	YEAR 19	YEAR 20	YEAR 21	YEAR 22	YEAR 23	YEAR 24	YEAR 25	YEAR 26	YEAR 27	YEAR 28	YEAR 29	YEAR 30
\$720,215	\$738,220	\$756,675	\$775,592	\$794,982	\$814,857	\$835,228	\$855,109	\$877,512	\$899,449	\$921,936	\$944,984	\$968,609	\$992,824	\$1,017,644	
8,690	8,907	9,130	9,358	9,592	9,832	10,077	10,329	10,588	10,852	11,124	11,402	11,687	11,979	12,278	
728,904	747,127	765,805	784,950	804,574	824,688	845,306	866,438	888,099	910,302	933,059	956,386	980,295	1,004,803	1,029,923	
36,445	37,356	38,290	39,248	40,229	41,234	42,265	43,322	44,405	45,515	46,653	47,819	49,015	50,240	51,496	
682,459	709,771	727,515	745,703	764,345	783,454	803,040	823,116	843,694	864,787	886,406	908,566	931,281	954,563	978,427	
431,123	446,212	461,830	477,994	494,724	512,039	529,960	548,509	567,707	587,577	608,142	629,427	651,457	674,258	697,857	
29,319	30,345	31,407	32,506	33,644	34,821	36,040	37,301	38,607	39,958	41,357	42,804	44,302	45,853	47,458	
232,017	233,213	234,278	235,203	235,978	236,594	237,040	237,306	237,380	237,252	236,908	236,335	235,522	234,452	233,112	
169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	169,405	
1,37	1,38	1,38	1,39	1,39	1,40	1,40	1,40	1,40	1,40	1,40	1,40	1,39	1,38	1,38	
62,613	63,809	64,873	65,798	66,573	67,189	67,635	67,901	67,976	67,847	67,503	66,931	66,117	65,047	63,707	
10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
52,613	53,809	54,873	55,798	56,573	57,189	57,635	57,901	57,976	57,847	57,503	56,931	56,117	55,047	53,707	
-24,857	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
27,756	53,809	54,873	55,798	56,573	57,189	57,635	57,901	57,976	57,847	57,503	56,931	56,117	55,047	53,707	

TAX CREDIT ANALYSIS

Revised 10/20/2010

Project Name: #1 Verizon Site - Offsite Pkg / N
 Project Address: 8114 2nd Street, Downey, CA 90241
 Developer Name: Downey Housing Partners, L.P. (SC)

	Project Costs	9% Basis
LAND COSTS		
Land Cost	\$0	XXXXXXXXXXXXXX
Legal/Broker Fees	\$0	XXXXXXXXXXXXXX
Demolition	\$0	XXXXXXXXXXXXXX
TOTAL LAND COSTS	\$0	XXXXXXXXXXXXXX
TOTAL ACQUISITION COSTS	\$1,644,275	\$0
CONSTRUCTION		
Demolition	\$0	XXXXXXXXXXXXXX
Structures	\$10,192,924	\$10,192,924
General Requirements	\$611,575	\$611,575
Performance Bond Premium	\$254,923	\$254,923
Contractor Overhead	\$815,434	\$815,434
CONSTRUCTION CONTINGENCY	\$1,019,292	\$1,019,292
TOTAL CONSTRUCTION COSTS	\$12,894,049	\$12,894,049
PERMITS/FEES/ARCHITECTURE		
Bldg Fees/permits/Local Dev Impact Fees	\$600,000	\$600,000
Surveys/Environmental	\$150,000	\$150,000
Design and Reimbursables	\$765,000	\$765,000
TOTAL ARCHITECTURAL COSTS	\$1,515,000	\$1,515,000
CONSTRUCTION INTEREST AND FEES		
Construction Loan Interest	\$504,000	\$504,000
Origination Fee	\$70,000	\$70,000
As-Built Appraisal	\$10,000	\$10,000
Title & Recording	\$10,000	\$10,000
Bond Issuance Costs	\$0	XXXXXXXXXXXXXX
TOTAL CONSTRUCTION INTEREST & FEES COSTS	\$594,000	\$594,000
PERMANENT FINANCING		
Perm. Loan Origination Fee	\$26,550	XXXXXXXXXXXXXX
Credit Enhancement and Application Fee	\$0	XXXXXXXXXXXXXX
Title and Recording	\$10,000	XXXXXXXXXXXXXX
Other	\$0	XXXXXXXXXXXXXX
TOTAL PERMANENT FINANCING COSTS	\$36,550	\$0
LEGAL FEES		
Lender Legal Costs Paid by Applicant	\$50,000	\$50,000
Legal Syndication	\$15,000	XXXXXXXXXXXXXX
Legal Organizational	\$30,000	\$22,500
TOTAL ATTORNEY COSTS	\$95,000	\$72,500
RESERVES		
Marketing	\$12,000	XXXXXXXXXXXXXX
Lease-Up Reserves	\$0	XXXXXXXXXXXXXX
Capitalized Replacement Reserve	\$0	XXXXXXXXXXXXXX
Capitalized Operating Reserve	\$106,685	XXXXXXXXXXXXXX
Transition Reserve	\$0	XXXXXXXXXXXXXX
Furnishings	\$70,900	\$70,500
TOTAL RESERVE RESERVE COSTS	\$189,185	\$70,500
OTHER		
TCAC Appi/Reserv./Monitoring Fees	\$121,833	XXXXXXXXXXXXXX
Relocation Expenses	\$0	\$0
Soft Costs Contingency	\$30,000	\$30,000
Construction Manager	\$0	\$0
Accounting/Audit	\$20,000	\$20,000
Taxes	\$0	\$0
Insurance	\$152,894	\$152,894
LACDC/Housing Authority Fees	\$25,500	\$25,500
TOTAL OTHER COSTS	\$350,227	\$228,394
DEVELOPER COSTS		
Developer Overhead/Pee	\$1,400,000	\$1,400,000
Development Consultant	\$0	\$0
Other	\$0	\$0
TOTAL DEVELOPER COSTS	\$1,400,000	\$1,400,000
TOTAL RESIDENTIAL COSTS	\$18,718,286	\$16,774,443
TOTAL COMMERCIAL COSTS	\$0	\$0
TOTAL PROJECT COSTS	\$18,718,286	\$16,774,443
TOTAL ELIGIBLE BASIS		
TOTAL REQUESTED BASIS		\$16,774,443
High Cost Area Adjustment		\$10,611,089
@@@TOTAL ADJUSTED ELIGIBLE BASIS		\$13,794,416
ACQUISITION BASIS		\$0
TOTAL ADJUSTED ELIGIBLE BASIS		\$13,518,527
RATIO of low income units to all units		100.00%
TOTAL QUALIFIED BASIS		\$13,518,527
TOTAL CREDIT REDUCTION (NA)		
TOTAL ADJUSTED QUALIFIED BASIS		
Applicable Federal Tax Credit Factor		9.00%
Equals		\$1,216,667
TOTAL ANNUAL FEDERAL CREDIT		\$1,216,667
x 10 yrs		10
MAXIMUM FEDERAL CREDIT		\$12,166,675
x Tax Credit Factor (cents on the \$)		50.7500%
Estimated Syndication Net Proceeds		\$9,125,006

**EXHIBIT O
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Auxiliary Parking Parcel Deed

[Attached Behind This Page]

RECORDING REQUESTED BY WHEN RECORDED
MAIL TO AND MAIL TAX STATEMENTS TO:

Community Development Commission
of the City of Downey
11111 Brookshire Avenue
Downey, CA 90241
Attention: Executive Director

SPACE ABOVE FOR RECORDER'S USE ONLY

APN _____

EXEMPT FROM RECORDING FEES – GOVERNMENT CODE § 27383
NO DOCUMENTARY TRANSFER TAX – REVENUE AND TAXATION CODE § 11922

FORM OF GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF DOWNEY, a California municipal corporation (“Grantor”), hereby grants and conveys to the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, a California public body, corporate and politic (“Grantee”), the following described real property in the City of Downey, County of Los Angeles, State of California:

SEE ATTACHED EXHIBIT “1”

SUBJECT TO:

1. Real property taxes and assessments, not delinquent.
2. Covenants, conditions, restrictions, easements, exceptions, reservations, rights, rights-of-way and other matters of record.

Grantor has caused this Grant Deed to be signed by Grantor’s authorized representative on _____, 2010.

GRANTOR:

CITY OF DOWNEY, a California municipal
corporation

By: _____
Gerald Caton
City Manager

Vertical text or markings, possibly bleed-through from the reverse side of the page.

**EXHIBIT 1
TO
GRANT DEED
(APN _____)**

Legal Description

[Attached behind this cover page]

**VERIZON PARCEL LEGAL DESCRIPTION
ASSESSORS PARCEL NUMBER: 6254-020-914**

THAT PORTION OF BLOCK 8 OF THE TRACT OF THE DOWNEY LAND ASSOCIATION, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2, PAGE 434 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 8, SAID POINT BEING SOUTH 71°30'00" EAST 135.15 FEET FROM THE NORTHWESTERLY CORNER OF SAID BLOCK 8;

THENCE CONTINUING SOUTH 71°30'00" EAST 149.85 FEET;

THENCE SOUTH 18°30'00" WEST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF A 20 FOOT WIDE ALLEY;

THENCE NORTH 71°30'00" WEST 149.85 FEET ALONG THE NORTHERLY LINE OF SAID ALLEY;

THENCE NORTH 18°30'00" EAST 140.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID BLOCK 8, SAID POINT BEING THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 29.00 FEET.

SAID PARCEL IS BEING MORE PARTICULARLY DESCRIBED AS PARCEL 1 AS DEPICTED IN EXHIBIT "A" OF CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT NO. 08-38 RECORDED JUNE 02, 2008, INSTRUMENT NO. 20080966138, OF OFFICIAL RECORDS.

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the above Quitclaim Deed from the **CITY OF DOWNEY**, a California municipal corporation, to the **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY**, a California public body, corporate and politic, is hereby accepted by the undersigned officer on behalf of the Community Development Commission of the City of Downey, and the Community Development Commission of the City of Downey consents to recordation of such Quitclaim Deed in the official records of the Recorder of the County of Los Angeles, California.

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY,
a California public body, corporate and politic

By: _____
Gerald Caton
Executive Director

**EXHIBIT P
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Verizon Building)**

Form of Parking Deck Easement

[Attached Behind This Page]

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

Community Development Commission of
the City of Downey
11111 Brookshire Avenue
Downey, CA 90241
Attention: Executive Director

Space above line for Recorder's use only
Exempt from recording fees per Govt. Code § 27383
Exempt from Documentary Transfer Tax per Govt. Code §
11922

FORM OF PARKING DECK EASEMENT AGREEMENT

(Verizon Building)

This PARKING DECK EASEMENT AGREEMENT (Verizon Building) ("**Easement Agreement**") is made and entered into as of **[TO BE DETERMINED]** (the "**Effective Date**"), by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF DOWNEY, a public body, corporate and politic ("**Grantor**") and **[TO BE DETERMINED]** ("**Grantee**"). This Easement Agreement is entered into with reference to the following recited facts:

RECITALS

A. Grantor and Grantee have entered into that certain Disposition and Development Agreement (Verizon Building), dated **[TO BE DETERMINED]** ("**DDA**"), pursuant to which this Easement Agreement is entered into;

B. Grantor owns that certain real property located in Downey, California, and more particularly described on Exhibit "1" attached to this Easement Agreement and incorporated into this Easement Agreement by this reference ("**Surface Parcel**");

C. Grantee owns that certain real property located in Downey, California, and more particularly described on Exhibit "2" attached to this Easement Agreement and incorporated into this Easement Agreement by this reference ("**Parking Deck Parcel**");

D. Grantee is redeveloping property across the street from the Surface Parcel and the Parking Deck Parcel as a fifty (50) unit multi-family affordable rental housing project, all as further described and defined as the "**Project**" in the DDA;

E. Grantor desires to convey to Grantee and Grantee desires to obtain from Grantor an easement over the Surface Parcel to construct, maintain, operate, repair and restore any

above-ground parking deck structure, as described in the approved land use entitlements for the Project, to provide required parking spaces for residents and guests of the completed Project (more specifically defined in Section 1 of this Easement Agreement as the “**Work**”).

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND AGREEMENTS SET FORTH IN THIS EASEMENT AGREEMENT, GRANTOR AND GRANTEE AGREE AS FOLLOWS:

1. DEFINITIONS. All words, terms or phrases indicated to be defined words, terms or phrases by initial capitalization in this Easement Agreement that are not specifically defined in this Easement Agreement shall have the meaning given to the word, term or phrase, respectively, in the DDA. As used in this Easement Agreement, the following words, phrases and terms shall have the meaning provided in this Section 1, unless the specific context of usage of a particular word, phrase or term, respectively, requires a different meaning:

1.1 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. “**Affiliated**” shall have the correlative meaning.

1.2 Automobile Liability Insurance. Insurance coverage against claims of personal injury (including bodily injury and death) and property damage at least as broad as Insurance Services Office Form Number CA0001 covering Automobile Liability, Code 1 (any auto), or its equivalent successor form, covering all owned, leased, hired and non-owned vehicles used by Grantor, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall be provided by a business or commercial vehicle policy or a combination of such policy and one or more excess liability policies.

1.3 Auxiliary Parking Site. That certain real property comprised of, collectively, the Surface Parcel and the Parking Deck Parcel.

1.4 Bankruptcy Law. Title 11, United States Code, and any other or successor state or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.5 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.6 Builder. National Community Renaissance of California, a non-profit public benefit corporation.

1.7 Builder’s Risk Insurance. Builder’s risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject Construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) state that “permission is granted to complete and occupy”; and (b) cover, for replacement value, all materials and equipment on or about any offsite storage location intended for use in, or in connection with, the Auxiliary Parking Site.

1.8 Building Equipment. All fixtures incorporated in the Auxiliary Parking Site by either Grantee or Grantor, and used, useful, or necessary to operate the Parking Deck as such, including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; or pipes.

1.9 Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any portion of the Parking Deck or the Parking Deck Parcel, whether or not insured or insurable.

1.10 City. City of Downey, California, a municipal corporation.

1.11 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of counsel retained by the Indemnitee), and any judgment.

1.12 Condemnation. Any of the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Parking Deck, the Parking Deck Parcel or the Surface Parcel by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Parking Deck, the Parking Deck Parcel or the Surface Parcel, but creating a right to compensation, such as a change in grade of any street upon which the Auxiliary Parking Site abuts.

1.13 Condemnation Award. Any award(s) paid or payable (whether or not in a separate award) to either a Party or a Lender, after the Effective Date, because of or as compensation for any Condemnation, including: (a) any award made for any improvements that are the subject of the Condemnation; (b) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in any Condemnation proceeding; (c) any interest on such award; and (d) any other sums payable on account of such Condemnation, including any prepayment premium under any Security Instrument.

1.14 Construction. Any alteration, construction, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Auxiliary Parking Site, including new construction.

1.15 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person or bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

1.16 Controlling and Controlled. Exercising or having Control.

1.17 County. The County of Los Angeles, California.

1.18 Default. Any Monetary Default or Non-Monetary Default.

1.19 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the Usury Limit.

1.20 Depository. An Institutional Lender designated by a Permitted Lender (or, if no Permitted Lender exists, then by Grantor). A Permitted Lender that is an Institutional Lender may designate itself as Depository.

1.21 Easement. Defined in Section 2.

1.22 Easement Agreement. This Parking Deck Easement Agreement (Verizon Building).

1.23 Easement Term. The time period commencing on the Effective Date and ending on expiration or termination of the Easement pursuant to Section 2.

1.24 Effective Date. Defined in the initial paragraph of this Easement Agreement.

1.25 Equity Interest. All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

1.26 Event of Default. The occurrence of any one or more of the following:

1.26.1 *Monetary Default*. A Monetary Default that continues for seven (7) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

1.26.2 *Prohibited Liens*. Any failure of Grantee to comply with any obligation regarding Prohibited Liens set forth in Section 8 and Grantee does not remedy such failure within fifteen (15) days after Notice of such failure to comply with Section 8.

1.26.3 *Bankruptcy or Insolvency*. Grantee ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred eighty (180) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Grantee's assets or Grantee's interest in this Easement Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within one hundred eighty (180) days.)

1.26.4 *Insurance Maintenance Default*. Grantor gives Grantee Notice of an Insurance Maintenance Default and Grantee does not remedy such Insurance Maintenance Default within fifteen (15) days after the date of Grantee's Notice.

1.26.5 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Sections 1.26.2, 1.26.3 or 1.26.4, occurs and the Party alleged to be in Default does not cure it within thirty (30) days after Notice describing the Non-Monetary Default

in reasonable detail, or, in the case of a Non-Monetary Default that cannot with due diligence be cured within thirty (30) days from the date of such Notice, if the Party alleged to be in Default shall not: (a) within thirty (30) days from the date of such Notice advise the other Party of the intention the Party alleged to be in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances.

1.27 Executive Director. The Executive Director, from time to time, of Grantor or such Person's designee or successor in function.

1.28 Federal. The federal government of the United States of America.

1.29 FF&E. All movable furniture, equipment, and personal property of Grantee or anyone claiming through Grantee (excluding Building Equipment) that may be removed, without material damage to the Parking Deck or the Surface Parcel, and without adversely affecting: (a) the structural integrity of the Parking Deck or the Surface Parcel; (b) any electrical, plumbing, mechanical, or other system in the Parking Deck or the Surface Parcel; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Auxiliary Parking Site. FF&E includes items such as furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems and peripherals.

1.30 Fiscal Year. The time period beginning on the Effective Date and ending on the immediately following June 30 and, thereafter, each time period beginning on July 1 and ending on the immediately following June 30, with the last such period ending on the last day of the Easement Term.

1.31 General Public. The public generally.

1.32 Government. Each and every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider or other entity or instrumentality having or claiming jurisdiction over the Auxiliary Parking Site (or any activity this Easement Agreement allows), including the Federal, State and County governments and their subdivisions and municipalities, including the City and Grantor, any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee and all other applicable governmental agencies, authorities, and subdivisions thereof having or claiming jurisdiction over the Auxiliary Parking Site or any activities on or at the Auxiliary Parking Site.

1.33 Grantee. **[TO BE DETERMINED]** and its permitted successors and assigns under the DDA.

1.34 Grantee Parties. Collectively, Grantee, its governing body, elected officials, officers, directors, employees, agents and attorneys.

1.35 Grantee Party. Individually, Grantee, its governing body, elected officials, officers, directors, employees, agents and attorneys.

1.36 Grantor. The Community Development Commission of the City of Downey, a public body, corporate and politic.

1.37 Grantor Parties. Collectively, Grantor, its directors, officers, members, managers, partners, employees, agents and attorneys.

1.38 Grantor Party. Individually, Grantor, its directors, officers, employees, agents or attorneys.

1.39 Hazardous Substances. Flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq., or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. §§ 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; (m) any matter, waste or substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) any substance defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under any Laws or the regulations adopted pursuant to any Laws, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material.

1.40 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at, on, under, into or from the Auxiliary Parking Site, or relating to transportation of any Hazardous Substance to or from the Auxiliary Parking Site (whether on its own or contained in other material or property), or that arises at any time from the use, occupancy, or operation of the Auxiliary Parking Site or any activities conducted at, on,

under or in the Auxiliary Parking Site whether or not caused by a Party and whether occurring before or after the Effective Date.

1.41 Indemnify. Where this Easement Agreement states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise) any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Claim; or (b) in enforcing the Indemnitor’s indemnity obligation regarding the Claim. “Indemnified” shall have the correlative meaning.

1.42 Indemnitee. Any Person entitled to be Indemnified under this Easement Agreement.

1.43 Indemnitor. A Person that agrees to Indemnify any other Person pursuant to this Easement Agreement.

1.44 Institutional Lender. Defined in the DDA.

1.45 Insurance Maintenance Default. Grantee’s failure to obtain, replace, maintain or pay premiums for (or give Grantor evidence of) any insurance, when and as this Easement Agreement requires.

1.46 Law. All laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Auxiliary Parking Site, this Easement Agreement, or any Construction relating to the Auxiliary Parking Site in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Auxiliary Parking Site, or relating to any taxes, or otherwise relating to this Easement Agreement or any Party’s rights, obligations or remedies under this Easement Agreement, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.47 Legal Costs. For any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses, including in or as a result of any: (a) Bankruptcy Proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement with a Third Person requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Easement Agreement or the other Party; or (e) review or approval that the other Party requests of such Person. All references to Legal Costs shall include the salaries, benefits and costs of in-house or contract general counsel to Grantee or Grantor, respectively, and the lawyers employed in the office of such general counsel who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate and multiplied by the time spent on such matter rounded to increments of one-tenth of an hour, in addition to Legal Costs of outside counsel retained by Grantee or Grantor, respectively, for such matter.

1.48 Lender. Defined in the DDA.

1.49 Liability Insurance. Commercial general liability insurance against claims for bodily injury (including death) and property damage occurring upon, in, or about the Auxiliary Parking Site or adjoining streets and passageways, at least as broad as Insurance Services Office Occurrence Form CG 0001, or its equivalent successor form, with a minimum liability limit of Five Million Dollars (\$5,000,000) for any one occurrence. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Auxiliary Parking Site or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.50 Loss. Any Casualty or Condemnation relating to the Parking Deck or the Surface Parcel.

1.51 Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds relating to the Parking Deck.

1.52 Monetary Default. Any failure by a Party to: (a) pay, when and as this Easement Agreement requires, any amount of money, whether to the other Party or to a Third Person, or (b) as to Grantee only, any failure by Grantee to properly apply any Loss Proceeds or other money, if any, that this Easement Agreement requires Grantee to apply in a particular manner or for a particular purpose.

1.53 Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any breach by a Party of its obligations under this Easement Agreement; (b) a Party's failure to comply with any material restriction or prohibition in this Easement Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Easement Agreement.

1.54 Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Easement Agreement. Notices shall be delivered, and shall become effective, only in accordance with Section 18.2 of this Easement Agreement.

1.55 Notify. Give a Notice.

1.56 Parking Deck. The parking deck structure to be constructed by Grantee on the Parking Deck Parcel and the Surface Parcel pursuant to final plans and specifications approved by the City for the Project.

1.57 Parties. Collectively, Grantee and Grantor.

1.58 Party. Individually, Grantee or Grantor, as applicable.

1.59 Permitted Lender. Defined in the DDA.

1.60 Permitted Security Instrument. Defined in the DDA.

1.61 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.62 Prevailing Wage Determination. Regarding any Construction relating to the Auxiliary Parking Site: (a) any determination by the State Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or its successor for enforcement of State prevailing wage laws that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code Sections 1720 through 1781, as amended from time to time, regarding prevailing wages, including the obligation to maintain certified payroll records pursuant to California Labor Code Section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts, at law or in equity, including pursuant to California Labor Code Section 1781.

1.63 Prohibited Lien. Any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien asserted against Grantee's estate or interest in the Parking Deck Parcel or the Parking Deck or against Grantor's estate or interest in the Surface Parcel arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Grantee (or anyone claiming through Grantee).

1.64 Property Insurance. Commercial property insurance providing coverage for the Auxiliary Parking Site, the Parking Deck, all Building Equipment and FF&E, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County from time to time during the Easement Term, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of the Parking Deck, all Building Equipment and all FF&E (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Auxiliary Parking Site; coverage for terrorism; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

1.65 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Grantee, Grantor, Depository or any Lender.

1.66 Record, recorded, recording or recordation. Recordation of the referenced document in the official records of the County.

1.67 Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Parking Deck improvements, substantially equivalent to their condition before the Loss, subject to any changes in Law that would limit the foregoing.

1.68 Restore. Accomplish a Restoration.

1.69 Senior. Defined in the DDA.

1.70 State. The State of California.

1.71 Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest, employee or agent of a Party.

1.72 Usury Limit. The highest rate of interest, if any, that Law allows under the circumstances.

1.73 Waiver of Subrogation. A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Easement Agreement for any loss such policy covers.

1.74 Work. The work of Construction of the Parking Deck on or in the Parking Deck Parcel or the Surface Parcel and, thereafter, routine maintenance and any necessary repairs to the Parking Deck to keep the Parking Deck in good condition and repair, reasonable wear and tear excepted, and any Restoration required by this Easement Agreement.

1.75 Workers' Compensation Insurance. Both of the following, covering all employees of Grantee: (i) workers' compensation insurance complying with the provisions of State law (statutory limits); and (ii) an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

2. GRANT OF EASEMENT. Subject to the terms and conditions of this Easement Agreement, as of the Effective Date, Grantor grants to Grantee an easement over the Surface Parcel for Construction of the Parking Deck, support of the Parking Deck, ingress and egress of vehicles weighing less than seven thousand (7,000) pounds gross weight to and from the Parking Deck and all other activities reasonably related to the performance of the Work ("**Easement**"). The Easement shall terminate upon the earlier to occur of: (1) termination of the DDA; (2) failure of the Parking Deck to be completed, as evidenced by issuance of a Certificate of Occupancy (or similar approval) for the completed Parking Deck by City, on or before 5:00 P.M. Pacific Time on [**DATE CERTAIN TO BE DETERMINED**]; (3) the expiration or earlier termination of that certain Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Verizon Building) between Grantor and Grantee, dated as of [**TO BE DETERMINED**], relating to the Project; (4) the Dwelling Units of the Project are not at least sixty percent (60%) occupied by persons or families of low or moderate income, as defined in Health and Safety Code Section 50093, for any consecutive period of twelve (12) months; (5) termination of Grantee's estate in the Parking Deck Parcel; or (6) other termination of this Easement Agreement in accordance with its terms. Upon written request from Grantor following expiration or termination of the Easement in accordance with this Section 2, Grantee shall sign a reasonable written quitclaim of Grantee's interest in the Surface Parcel created by this Easement Agreement, in recordable form. The Easement is an easement in gross, to be held and enjoyed during the Easement Term by Grantee

for the timely completion of the Work and the ingress, egress to and parking of vehicles on the Parking Deck by residents or guests of the Project.

3. PERFORMANCE OF WORK. In entering upon the Surface Parcel in performance of the Work, Grantee shall reasonably minimize interference with, impairment of or disruption of the existing or future use, enjoyment, occupancy or operation of the Surface Parcel by Grantor or any other Person using, occupying or operating the Surface Parcel. Grantee and the Builder shall perform the Work in an efficient and workmanlike manner. Any and all items or materials brought onto the Surface Parcel by Grantee or the Builder pursuant to this Easement Agreement, including any and all equipment, machinery, wells, pipelines, structures or improvements, shall be and remain the personal property of Grantee or the Builder, respectively. No such items shall be left on the Surface Parcel, except as may be reasonably necessary for customary performance of the Work. As between Grantor and Grantee, all costs incurred in connection with performance of any item of the Work shall be paid by Grantee. Grantee covenants and agrees that at all times while Grantee's employees, the Builder or any and all sub-contractors may be present on the Surface Parcel, Grantee shall ensure that the activities of Grantee's employees, the Builder or any and all sub-contractors comply with all applicable Laws, including all Environmental Laws. Grantee shall take all reasonable and necessary safety and security precautions in connection with the performance of the Work.

4. RESTORATION OF SURFACE PARCEL. Within thirty (30) days following completion of any and all Work, Grantee shall restore any portion of the Surface Parcel adversely physically affected by Work to a condition as reasonably close as possible to the condition as the Surface Parcel existed immediately prior to Grantee's entry upon the Surface Parcel for performance of such Work. Grantee and the Builder shall leave the Surface Parcel in a neat, clean, safe and sightly condition. All Work shall be completed by Grantee or the Builder in a good and workmanlike manner with reasonable diligence, in compliance with all applicable Laws (including all requirements of Government).

5. HAZARDOUS SUBSTANCE DISCHARGE. Grantee shall not cause or permit any Hazardous Substance Discharge. If any Hazardous Substance Discharge occurs, Grantee shall immediately remedy, repair and remediate any damage or harm caused by such Hazardous Substance Discharge at Grantee's sole cost and expense and shall notify Grantor of such Hazardous Substance Discharge, as soon as possible, but in all cases within seven (7) calendar days of the occurrence of such Hazardous Substance Discharge.

6. SURFACE PARCEL MAINTENANCE COST. Grantee shall pay fifty percent (50%) of the cost to maintain the Surface Parcel as determined by Grantor on a Fiscal Year basis for the Easement Term. Within forty-five (45) days following the end of each Fiscal Year during the Easement Term and following the last day of the Easement Term, Grantor shall send Notice to Grantee of the total amount expended by Grantor on maintenance of the Surface Parcel during the particular Fiscal Year. Grantee shall pay fifty percent (50%) of the total amount expended by Grantor on maintenance of the Surface Parcel during the particular Fiscal Year to Grantor within thirty (30) days after Grantee receives Notice of such amount. If such maintenance cost is not paid to Grantor by Grantee within thirty (30) calendar days after Notice to Grantee of such amount, the amount shall accrue Default Interest until paid in full with the amount of any accrued Default Interest.

7. NO LIMITATION ON GRANTOR OR CITY AUTHORITY. Nothing in this Easement Agreement shall be deemed to limit, modify or abridge the governmental police power or other legal authority (whether direct or delegated) of either Grantor or City under applicable Law regarding either the Parking Deck Parcel, the Surface Parcel or Grantee.

8. PROHIBITED LIENS.

8.1 Grantee's Covenant. Following Notice of a Prohibited Lien, Grantee shall, within thirty (30) days after receiving such Notice (but in any case within fifteen (15) days after Grantee receives Notice of commencement of foreclosure proceedings regarding any Prohibited Lien), cause such Prohibited Lien to be paid, discharged, and cleared from title to the Surface Parcel or the Parking Deck Parcel, as applicable.

8.2 Protection of Grantor. NOTICE IS HEREBY GIVEN THAT GRANTOR SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO GRANTEE UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE SURFACE PARCEL. NOTHING IN THIS EASEMENT AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE GRANTOR'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING GRANTEE ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE SURFACE PARCEL. GRANTEE SHALL INDEMNIFY GRANTOR AGAINST ANY CONSTRUCTION UNDERTAKEN BY GRANTEE OR ANYONE CLAIMING THROUGH GRANTEE AND AGAINST ALL PROHIBITED LIENS.

8.3 No Liens Against Public Property. GRANTEE ACKNOWLEDGES AND AGREES THAT THE SURFACE PARCEL IS OWNED BY GRANTOR, WHICH IS A PUBLIC ENTITY, AND THAT THE SURFACE PARCEL IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF LABOR, MATERIAL OR SERVICES. GRANTEE FURTHER AGREES TO INFORM EACH OF THE PROVIDERS OF LABOR, MATERIAL OR SERVICES ON OR TO THE SURFACE PARCEL OR THE PARKING DECK PARCEL OF SUCH FACT AND THAT GRANTOR IS NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF LABOR, MATERIAL OR SERVICES. GRANTOR SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE SURFACE PARCEL ANY NOTICES THAT GRANTOR MAY DEEM NECESSARY FOR THE PROTECTION OF GRANTOR OR THE SURFACE PARCEL FROM MECHANIC'S LIENS OR OTHER CLAIMS. GRANTEE SHALL GIVE GRANTOR TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ANY CONSTRUCTION OR OTHER WORK TO BE DONE ON THE SURFACE PARCEL OR THE PARKING DECK PARCEL TO ENABLE GRANTOR TO POST ANY SUCH NOTICES.

9. INSURANCE.

9.1 Grantee. Grantee shall maintain, to protect the Grantor Parties against all insurable Claims resulting from the actions of Grantee in connection with this Easement Agreement, the Auxiliary Parking Site, the Parking Deck or other portions of the Project, at the sole cost and expense of Grantee, until the fifth (5th) anniversary of the last day of the Easement Term, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance; (c) Property Insurance; (d) Builder's Risk Insurance; and (e) Workers Compensation Insurance.

9.2 Nature of Insurance. All Liability Insurance, Property Insurance and Automobile Liability Insurance policies this Easement Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State. Grantee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Auxiliary Parking Site and the Project, which amount(s) shall equal or exceed the amount(s) required by this Easement Agreement; and (ii) such policy otherwise complies with this Easement Agreement.

9.3 Policy Requirements and Endorsements. All insurance policies required by this Easement Agreement shall contain (by endorsement or otherwise) the following provisions:

9.3.1 **Insured**. Liability Insurance and Automobile Liability Insurance policies shall name the Grantor Parties as "additional insured." Property Insurance and Builder's Risk Insurance policies shall name Grantor as a "loss payee." The coverage afforded to the Grantor Parties shall be at least as broad as that afforded to Grantee regarding the Auxiliary Parking Site and the Project and may not contain any terms, conditions, exclusions, or limitations applicable to the Grantor Parties that do not apply to Grantee.

9.3.2 **Primary Coverage**. Any insurance or self-insurance maintained by the Grantor Parties shall be excess of all insurance required under this Agreement and shall not contribute with any insurance required under this Agreement.

9.3.3 **Contractual Liability**. Liability Insurance policies shall contain contractual liability coverage for Grantee's indemnity obligations under this Agreement. Grantee's obtaining or failure to obtain such contractual liability coverage shall not relieve Grantee from nor satisfy any indemnity obligation of Grantee under this Agreement.

9.3.4 **Deliveries to Grantor**. Grantee shall deliver to Grantor evidence of Grantee's maintenance of all insurance policies required by this Easement Agreement prior and as a condition precedent to the right of Grantee, Builder or their contractors or subcontractors entering onto the Auxiliary Parking Site to perform any Work (including mobilization). Builder's Risk Insurance shall incept at the time of Builder mobilization for the Project and may terminate on issuance of a Completion Certificate for the Project by Grantor pursuant to the

DDA. No later than three (3) days before any insurance required by this Easement Agreement expires, is cancelled or its liability limits are reduced or exhausted, Grantee shall deliver to Grantor evidence of Grantee's maintenance of all insurance this Easement Agreement requires. Each insurance policy required by this Easement Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to Grantor by certified mail, return receipt requested; provided, however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Grantor Parties pursuant to this Easement Agreement.

9.3.5 **Waiver of Certain Claims.** Grantee shall cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the Grantor Parties, if not already in the policy. To the extent that Grantee obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this Easement Agreement.

9.3.6 **No Representation.** No Party makes any representation that the limits, scope, or forms of insurance coverage this Easement Agreement requires are adequate or sufficient.

9.3.7 **No Claims Made Coverage.** None of the insurance coverage required under this Easement Agreement may be written on a claims-made basis.

9.3.8 **Fully Paid and Non-Assessable.** All insurance obtained and maintained by Grantee in satisfaction of the requirements of this Easement Agreement shall be fully paid for and non-assessable.

9.3.9 **Grantor Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Grantee to carry any insurance required by this Easement Agreement, Grantor may, at its sole option, purchase any such required insurance coverage and Grantor shall be entitled to immediate payment from Grantee of any premiums and associated reasonable costs paid by Grantor for such insurance coverage. Any amount becoming due and payable to Grantor under this Section 9.3.9 that is not paid within fifteen (15) calendar days after written demand from Grantor for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the Usury Limit, whichever is less. Any election by Grantor to purchase or not to purchase insurance otherwise required by the terms of this Easement Agreement to be carried by Grantee shall not relieve the Grantee of its obligation to obtain and maintain any insurance coverage required by this Easement Agreement.

9.3.10 **Separation of Insured.** All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Grantee and the Grantor Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Easement Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

9.3.11 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions under insurance policies required by this Easement Agreement shall be declared to and approved by Grantor. Grantee shall pay all such deductibles or self-insured retentions regarding the Grantor Parties or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to the Grantor Parties.

9.3.12 **No Separate Insurance.** Grantee shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Easement Agreement, unless Grantor is made an additional insured thereon, as required by this Easement Agreement.

9.3.13 **Insurance Independent of Indemnification.** The insurance requirements of this Easement Agreement are independent of the Parties' indemnification and other obligations under this Easement Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Parties' indemnification or other obligations or to limit the Parties' liability under this Easement Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude Grantor from taking such other actions as are available to Grantor under any other provision of this Easement Agreement or otherwise at law or in equity.

10. INDEMNIFICATION; LIABILITY.

10.1 Indemnification.

10.1.1 **Grantee Indemnity Obligations.** Grantee shall Indemnify Grantor Parties against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of the Grantee Parties; (b) any agreements that Grantee (or anyone claiming by or through Grantee) makes with a Third Person regarding this Easement Agreement, the Surface Parcel, the Parking Deck Parcel or the Project; (c) any workers' compensation Claim or determination arising from employees or contractors of the Grantee Parties or the Builder; (d) any Prevailing Wage Determination; or (e) any Hazardous Substance Discharge occurring on or after the Effective Date.

10.1.2 **Independent of Insurance Obligations.** Grantee's indemnification obligations under this Easement Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Grantee's insurance or other obligations under this Easement Agreement. Grantee's obligation to Indemnify Grantor Parties under this Easement Agreement is independent of Grantee's insurance and other obligations under this Easement Agreement.

Grantee's compliance with its insurance obligations and other obligations under this Easement Agreement shall not in any way restrict, limit, or modify Grantee's indemnification obligations under this Easement Agreement and are independent of Grantee's indemnification and other obligations under this Easement Agreement.

10.1.3 **Survival of Indemnification and Defense Obligations.** The indemnity and defense obligations of Grantee under this Easement Agreement shall survive the expiration of the Easement Term or earlier termination of this Easement Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Easement Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

10.2 **No Liability of Grantor.** During the Easement Term: (a) during initial Construction of the Parking Deck, Grantee shall be in exclusive control and possession of the Surface Parcel and the Parking Deck Parcel and, thereafter, Grantee shall be in exclusive control and possession of the Parking Deck Parcel and the Parking Deck improvements; and (b) Grantor shall not be liable for and Grantee shall Indemnify Grantor regarding any injury or damage to any property (of Grantor, Grantee or any other Person) or to any Person occurring on or about the Surface Parcel or the Parking Deck Parcel relating to Construction, operation, maintenance, repair or Restoration of the Parking Deck improvements or relating to the use of the Surface Parcel or the Parking Deck by residents, guests, invitees or other Persons related to the Project, except to the extent caused by the negligence or willful misconduct of Grantor.

10.3 **Indemnification Procedures.** Wherever this Easement Agreement requires any Indemnitor to Indemnify any Indemnitee:

10.3.1 **Prompt Notice.** Indemnitee shall promptly Notify Indemnitor of any Claim.

10.3.2 **Selection of Counsel.** Indemnitor shall select counsel reasonably acceptable to Indemnitee. Counsel to Indemnitor's insurance carrier that is responding to such Claim shall be deemed satisfactory, except in the event of an actual or potential conflict of interest for such counsel regarding the representation of any Grantor Party or any Grantee Party or where such counsel proves to be incompetent regarding the representation. Even though Indemnitor shall defend the action, Indemnitee may engage separate counsel to advise it regarding the Claim and its defense, at Indemnitee's expense, unless Indemnitor has made a reservation of rights with respect to the indemnity, in which case Indemnitor shall be responsible for Legal Costs for the separate counsel directly related to the matter. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall actively consult with Indemnitee's counsel.

10.3.3 **Cooperation.** Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

10.3.4 **Settlement.** Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle a Claim. All settlements shall include a general release, for the

benefit of the Indemnitee of all Claims related to the facts and circumstances from which the Claim arose.

10.4 Access and Inspection. Notwithstanding anything to the contrary in this Easement Agreement, Grantor and its agents may enter the Auxiliary Parking Site upon reasonable Notice, during regular business hours, solely to: (a) ascertain whether Grantee is complying with this Easement Agreement; (b) cure Grantee's Defaults; (c) inspect the Work; or (d) perform such tests, borings, and other analyses as Grantor determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substance Discharge. Grantor shall Indemnify Grantee against any Claims arising from Grantor's entry upon the Auxiliary Parking Site to the extent arising from the negligence or willful misconduct of Grantor. Grantor may enter the Auxiliary Parking Site without Notice in the case of an emergency. Grantor (either through its staff or Third Person consultants or both) shall have the right of reasonable access to the Auxiliary Parking Site, without the payment of charges or fees, during normal business hours. Any and all Grantor representatives who enter the Auxiliary Parking Site shall at all times be accompanied by a representative of Grantee, while on the Auxiliary Parking Site. Grantee shall make a representative of Grantee available for this purpose at all times during normal business hours, upon reasonable advance Notice from Grantor. If in Grantor's reasonable judgment it is necessary, Grantor shall have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Auxiliary Parking Site regarding compliance by Grantee with the provisions of this Easement Agreement. Grantee acknowledges and agrees that: (i) any such Grantor inspections are for the sole purpose of protecting Grantor's rights under this Easement Agreement; (ii) are made solely for Grantor's benefit; (iii) Grantor's inspections may be superficial and general in nature; (iv) are for the purposes of informing Grantor of the conformity of the Auxiliary Parking Site with the terms and conditions of this Easement Agreement; and (v) Grantee shall not be entitled to rely on any such inspection(s) as constituting Grantor's approval, satisfaction, acceptance or conformity of the Auxiliary Parking Site with the provisions and conditions of this Easement Agreement or otherwise.

10.5 **HAZARDOUS SUBSTANCES.** GRANTOR SHALL HAVE NO LIABILITY TO GRANTEE OR TO GRANTEE'S SUCCESSORS, ASSIGNS, OR OTHERS WHO USE OR ACQUIRE AN INTEREST IN THE PARKING DECK PARCEL FROM OR THROUGH GRANTEE WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCES ON OR AFFECTING THE SURFACE PARCEL OR THE PARKING DECK PARCEL, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE BY GRANTOR.

11. LOSS

11.1 Prompt Notice. If either Party becomes aware of any Casualty or actual, contemplated, or threatened Condemnation during the Easement Term, then such Party shall promptly Notify the other Party of such matter.

11.2 Casualty. If any Casualty occurs during the Easement Term, Grantee shall Restore the Parking Deck and the Surface Parcel with reasonable promptness, regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose.

11.3 Use of Loss Proceeds to Restore. All Loss Proceeds shall be paid to Depository, to be disbursed by Depository. Depository shall retain the Loss Proceeds and pay them over to Grantee, from time to time, upon the following terms, for Restoration. Depository shall first reimburse Grantee and Grantor from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Grantee, from time to time, as Restoration progresses, in accordance with the procedures required by the Senior Permitted Security Instrument. If no Permitted Security Instrument exists, then Depository shall disburse the Loss Proceeds to Grantee (or directly pay to Grantee's contractors, if Grantee so requests), from time to time, in proportion to the percentage of completion of the Construction constituting the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Grantee has completed and paid for all of the subject Restoration, Depository shall release to Grantee and Grantee may retain (subject to rights of Permitted Lenders) any remaining Loss Proceeds. Until Grantee has completed and paid for all of the subject Restoration, Grantee shall hold all Loss Proceeds in trust for the benefit of Grantor to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Auxiliary Parking Site, Grantee shall not be entitled to receive any further installment of Loss Proceeds, until Grantee has bonded, satisfied or otherwise discharged such Prohibited Lien, pursuant to Section 8. If Loss Proceeds are insufficient to Restore, then Grantee shall nevertheless Restore at Grantee's sole cost and expense. Depository shall not release any Loss Proceeds, unless and until Grantee has expended an amount equal to any insufficiency of Loss Proceeds for such Restoration.

12. NO DISCRIMINATION OR SEGREGATION. Grantee covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that this Easement Agreement is entered into upon and subject to the following conditions continuously throughout the Easement Term:

12.1 Standards. That there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and Paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Easement, nor shall the Grantee, itself, himself or herself, or any Person claiming under or through it, 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, subtenants, sublessees, or vendees in the Surface Parcel or the Parking Deck Parcel.

12.2 Interpretation. Notwithstanding Section 12.1, with respect to familial status, Section 12.1 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 12.1 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 12.1.

13. ADDITIONAL DOCUMENTS. To further implement this Easement Agreement, each Party agrees to and shall execute and deliver such other instruments as may be necessary or

proper to grant or otherwise establish, confirm or terminate the Easement and the provisions and conditions of this Easement Agreement.

14. MERGER. This Easement Agreement shall not be deemed merged into the title of the Grantor in any property by virtue of any subsequent conveyance of title to any property.

15. AMENDMENTS. This Easement Agreement may be amended or modified at any time by recording in the official records of the Recorder of the County, an instrument in writing reciting such amendment or modification, and bearing the acknowledged signatures of the authorized representative(s) of both the Grantor and Grantee.

16. GOVERNING LAW. The laws of the State shall govern the interpretation, validity, performance and enforcement of this Easement Agreement, without application of conflicts or choice of laws principles or statutes.

17. GRANTOR REMEDIES.

17.1 Right to Enter and Cure Defaults. Following the occurrence of an Event of Default by Grantee under this Easement Agreement, Grantor shall have the right, but not the obligation, to enter the Auxiliary Parking Site, following five (5) days advance Notice to Grantee, and cure the subject Default(s). Any sum expended by Grantor to cure any Default of Grantee pursuant to this Section 17 shall be reimbursed to Grantor by Grantee, within thirty (30) calendar days after Notice to Grantee of the amount. Any amount expended by Grantor to cure any Default of Grantee pursuant to this Section 17 that is not reimbursed to Grantor by Grantee within thirty (30) calendar days after Notice to Grantee of such amount, shall accrue Default Interest, until paid in full.

17.2 All Available Remedies. In addition to the rights of Grantor under Section 17.1, in the sole and absolute discretion of Grantor, following the occurrence of an Event of Default by Grantee under this Easement Agreement, Grantor may pursue any remedies or proceedings available to Grantor at law or in equity against Grantee regarding a Default, including recovering monetary damages, specific performance or any other remedy provided for at law or in equity.

17.3 Remedies Cumulative. The rights and remedies of Grantor under this Easement Agreement regarding a Default by Grantee shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of another right or remedy for the same or any subsequent Default.

18. MISCELLANEOUS.

18.1 Intent to Bind Successors. All terms, conditions, covenants restrictions or agreements set forth in this Easement Agreement shall be binding upon and be enforceable against Grantee and Grantee's successors or assigns, whether by operation of Law or in any other manner whatsoever, and shall inure to the benefit of and be enforceable by Grantor. Grantee may not transfer or convey its rights under this Easement Agreement without the prior written consent of Grantor, which may be given or withheld in Grantor's sole and absolute discretion.

18.2 Notices. All Notices shall be in writing and shall be addressed to Grantee and Grantor as set forth in Section 18.2.1. Notices shall be delivered by Federal Express, United Parcel Service, or other nationally recognized overnight (one-night) courier service to the addresses set forth in Section 18.2.1. A Notice shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to the address(es) set forth in Section 18.2.1. Either Party may change its address or the name and address of its attorneys by giving Notice in compliance with this Easement Agreement. Notice of such a change shall be effective only upon delivery or deemed delivery. Any Party giving a Notice may request the recipient to acknowledge delivery of such Notice. The recipient shall promptly comply with any such acknowledgment request, but failure to do so shall not limit the effectiveness of any Notice. Notice given for a Party by any attorney who represents such Party shall constitute Notice by such Party. Any correctly addressed Notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified shall be considered to be effective as of the first date that the Notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight courier service.

18.2.1 Addresses. The following are the addresses for delivery of Notices to the Parties, as of the Effective Date.

To Grantor: Community Development Commission of the
City of Downey
11111 Brookshire Avenue
Downey, CA 90241
Attn: Executive Director

To Grantee: _____

18.3 No Third-Party Beneficiaries. No Person shall have any enforceable rights under this Easement Agreement other than the Parties and their successors and assigns, notwithstanding any provision of this Easement Agreement that contemplates other Persons exercising certain privileges (if any).

18.4 No Waiver. No waiver of any Default shall be implied from any omission by the non-defaulting Party to take any action in respect of such Default. No express waiver of any Default shall affect any Default or cover any period of time other than the Default and period of time specified in such express waiver. One or more waivers of any Default in the performance of any term, provision or covenant contained in this Easement Agreement shall not be deemed a waiver of any subsequent Default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Easement Agreement. The consent or approval by a Party to or of any act or request of the other Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. The rights and remedies given to the Parties by this Easement Agreement are cumulative, and none of such rights and remedies shall be exclusive of

any of the others, or of any other right or remedy at Law or in equity that a Party might otherwise have by virtue of a Default of the other Party under this Easement Agreement.

18.5 Estoppel Certificates. Each Party covenants that upon receipt of written request from the other Party, it shall, within fifteen (15) days after receipt of such request, give to the requesting Party or such other Person specified by the requesting Party, an estoppel certificate stating: (a) whether the Party knows of any Default by the Grantor or Grantee under this Easement Agreement, and if there are known Defaults, specifying the nature of such Defaults; (b) whether to its knowledge any provision of this Easement Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); (c) that to such Party's knowledge, this Easement Agreement, as of the date of the estoppel certificate, is in full force and effect; and (d) any other information reasonably required by the requesting Party.

18.6 Negation of Partnership. None of the terms or provisions of this Easement Agreement shall be deemed to create a partnership between or among the Parties, nor shall it cause them to be considered joint venturers, or members of any joint enterprise, in the operation of the Project or otherwise.

18.7 Entire Agreement. This Easement Agreement and the other documents and exhibits referred to in this Easement Agreement contain the entire agreement of the Parties as to the rights granted in this Easement Agreement and the obligations assumed in this Easement Agreement, and no oral statement or representation regarding such subject matter shall be of any force or effect.

18.8 Severability. Invalidation of any covenant, condition, or restriction or any other provision contained in this Easement Agreement or the application of any term, agreement, covenant, condition or restriction or any other provision contained in this Easement Agreement to any Person by judgment or court order shall in no way affect any of the other terms, agreements, covenants, conditions, restrictions, or provisions in this Easement Agreement, or the application of any covenant, condition or restriction or any other provision contained in this Easement Agreement to any other Person and the same shall remain in full force and effect.

18.9 Headings. The caption headings of the various sections of this Easement Agreement are for convenience of reference and identification only and shall not be deemed to limit, expand or define the intent, meaning or interpretation of the respective sections.

18.10 Counterparts. The Easement Agreement may be signed by the Parties in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document.

18.11 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Easement Agreement. The Parties have both participated substantially in its negotiation, drafting, and revision, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Easement Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Easement Agreement. The words "include" and "including" shall be construed to be followed by the

words: "without limitation." Each collective noun in this Easement Agreement shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise. Every reference to any document, including this Easement Agreement, refers to such document as modified from time to time, and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time. The use in this Easement Agreement of the neuter gender shall include the masculine and the feminine, and the singular number shall include the plural, whenever the context so requires.

[Signatures on following page]

**Signature Page
To
Parking Deck Easement Agreement
(Verizon Building)**

IN WITNESS WHEREOF, Grantee and Grantor sign this Parking Deck Easement Agreement (Verizon Building), by and through the signatures of their authorized representatives, as follow:

GRANTOR:

COMMUNITY DEVELOPMENT
COMMISSION OF THE CITY OF
DOWNEY, a public body, corporate and
politic

By: _____
Gerald Caton
Executive Director

ATTEST:

By: _____
Secretary

APPROVED AS TO FORM:

Best Best & Krieger LLP

By: _____
Special Counsel

GRANTEE:

[TO BE DETERMINED]

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EXHIBIT "A"
To
Parking Deck Easement Agreement
(Verizon Building)

Surface Parcel Legal Description

[To be attached behind this cover page]

Exhibit "A"

EXHIBIT "B"
To
Parking Deck Easement Agreement
(Verizon Building)

Parking Deck Parcel Legal Description

[To be attached behind this cover page]

Exhibit "B"