

PROJECT AGREEMENT

For

THE CARRILLO CASTILLO LOT HOUSING PROJECT
400 West Carrillo Street
Santa Barbara, California

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PROJECT AGREEMENT

For

THE CARRILLO CASTILLO LOT HOUSING PROJECT

400 West Carrillo Street

Santa Barbara, California

This Project Agreement (this “**Agreement**”) dated this ____ day of _____, 2021, is entered into by the CITY OF SANTA BARBARA, a charter city (the “**City**”) and the HOUSING AUTHORITY OF THE CITY OF SANTA BARBARA, a public body, corporate and politic (the “**Housing Authority**”). Collectively, the City and the Housing Authority are referred to herein as the “**Parties**” and each a “**Party**”.

RECITALS

WHEREAS, the City is the owner of certain real property located in the City of Santa Barbara, CA, described in Exhibit A (the “**Property**”); and

WHEREAS, the City and Housing Authority signed a Memorandum of Understanding regarding the Property on April 20, 2020; and

WHEREAS, the Housing Authority intends to develop the Property with approximately 60 units of rental housing and a community room serving in order of priority: (i) a mixture of Moderate Income Households and Middle Income Households; (ii) all Middle Income Households; or (iii) all Low-Income Households according to the terms and conditions established by this Agreement (the “**Project**”); and

WHEREAS, the Housing Authority intends for the Project to be owned by a separate legal entity and financed with private equity and private debt, subject to use and affordability covenants, conditions, and restrictions established under this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the Parties hereto covenant and agree as follows:

Article 1. ENGAGEMENT

1.1 Agreement Purpose. The purpose of this Agreement is to memorialize the Parties’ intent with respect to:

- A. Development by the Housing Authority of the Project plans, Project Schedule and Project Budget; CEQA processing and land use approvals by the City; access to the Property by the Housing Authority for purposes of Project development;
- B. Transfer of the Property from the City to the Housing Authority subject to certain use and affordability covenants, conditions, and restrictions subsequent to transfer, and then the transfer of the Property from the Housing Authority to an

Owner Entity, for financing, development, construction, operation, and maintenance of the Project; and

- C. The option for the City to repurchase the Project at agreed upon terms and conditions (collectively, the “**Agreement Purpose**”).

1.2 Project Description. As more particularly described in Exhibit C, the preferred Project is intended to provide approximately 60 units of rental housing for residents earning 80% to 160% of Area Median Income. It is anticipated that some of the residential units will be rented to tenants with incomes in the 80% to 120% of AMI range (“Moderate Income Households”) the exact number to be agreed upon and specified in the Restrictive Covenant (defined below). The balance of the units may be rented to tenants with incomes in the 120% to 160% of AMI range (“Middle Income Households”). The Project will offer affordable rents to households with incomes within the target AMI range at a ratio to support the Investor Yield (defined below). Exhibit C provides detail on affordability range housing options, including alternatives of (i) 100% Middle Income Households; or(ii) 100% Low Income Households (in that order of priority), if the Investor Yield cannot be met with the preferred housing mix of Moderate Income Households and Middle Income Households.

1.3 Recitals and Exhibits. The foregoing recitals are true and correct and incorporated herein by reference as the agreements of the Parties. This Agreement incorporates all attached exhibits as the agreements of the Parties.

1.4 Definitions and Capitalization. Capitalized terms not defined in the body of this Agreement are defined in Exhibit B.

1.5 Good Faith Cooperation. The City and the Housing Authority shall cooperate with one another in good faith to successfully consummate the Project. Such cooperation shall include commercially reasonable efforts to respond to one another as expeditiously as is reasonably possible with regard to requests for information or approvals required hereby.

- A. With regard to materials or documents that require approval of one or more Parties, if such materials or documents are not approved as initially submitted, then the Parties shall engage in such communication as is necessary under the circumstances to resolve the issues resulting in such disapproval.
- B. A spirit of good faith and a mutual desire to complete the Project successfully shall govern the Parties’ relationship under this Agreement including, for instance, when unforeseen events, changes in law, regulation, policy, procedure, general market conditions not controlled by the Parties, and other facts or conditions discovered after the execution of this Agreement require the Parties to modify the Agreement.
- C. Notwithstanding paragraphs A and B of this section, and as further provided in section 3.6, this Agreement shall not be construed as an irrevocable commitment by the City with respect to the approval, conditional approval, or denial of any

environmental review document or development permit for the Project under applicable law.

1.6 Communications. In connection with the development process, the City and the Housing Authority will keep each other reasonably informed of all material events, information and communications relating to the Project. To facilitate timely communication, the Parties shall designate a representative with responsibility for the routine administration of each Party's obligations under this Agreement. The Parties initially appoint the following as representatives: _____ (or his/her designee) for the City, and the Director of Property, Development and Administration (or his/her designee) for the Housing Authority.

1.7 No Agency. Neither the Housing Authority nor the City is an agent of the other Party; therefore, except as may be expressly set forth herein, neither the Housing Authority nor the City shall have any authority to bind the other Party.

A. The Parties shall perform the duties and undertake their respective responsibilities herein set forth in a competent and professional manner using good faith and commercially reasonable efforts.

B. The Housing Authority shall provide the Project Services for the Project as defined in Section 2.2.

C. The City shall provide the City Services for the Project as described in Article 3.

1.8 Time of the Essence. Subject to Section 11.5 (Force Majeure) and except as otherwise expressly set forth herein, the Parties to this Agreement agree that time is of the essence to conclude the Project successfully, and the Housing Authority and the City shall each make best efforts to adhere to the Project Schedule, provided the Parties shall agree to reasonable extensions of the Project Schedule as circumstances shall dictate.

Article 2. HOUSING AUTHORITY RESPONSIBILITIES FOR THE PROJECT

2.1 Project Plan.

A. The Housing Authority will develop the plan for the Project (the "**Project Plan**"), which may include multiple phases as dictated in part by the availability of certain funding sources. The Project Plan must be consistent with the Agreement Purpose and Project Description as stated in Sections 1.1 and 1.2, and will include a Project Schedule and Project Budget (as defined below). The Housing Authority and the City will use good faith efforts to develop and agree upon a Project Plan that accounts for the availability of the particular funding sources.

B. The City's approval of any Project Budget and Project Schedule will confirm its commitment, in principle, of any resources ascribed to it in the Project Budget and Project Schedule (but not in excess of the financial commitments by the City, as described in this Agreement) and the City's approval of the proposed actions by Housing Authority described therein. The City's approval would also permit

the Housing Authority, lenders, investors and other third parties to proceed to finalize plans in reliance upon such approval, subject to Section 1.5 C. As the lenders, investors and other third parties providing funds commit to the Project, the Housing Authority shall, as part of its monthly reporting requirement described in Section 2.5, submit to the City detailed revisions and refinements to the Project Plan, the Project Budget and the Project Schedule.

- C. The Housing Authority shall propose as part of the Project Plan: (i) the restrictions which will apply to the Property, including but not limited to the affordability restrictions set forth herein; (ii) the approximate unit rental for each unit type; (iii) the approximate cost of the Project; and (iv) the expected types and sources of financing. Any such proposal shall be subject to the City's review and approval.

2.2 Project Budget and Schedule.

- A. The Housing Authority shall prepare a schedule and budget for the Project (the "**Project Schedule**" and "**Project Budget**", respectively) to be submitted to the City for review and approval in accordance with Section 2.4. Pursuant to Section 2.4, the Housing Authority shall submit proposed updates to the Project Schedule and the Project Budget as changes become necessary.
- B. The Housing Authority will use best efforts to seek private funding, public funding, and provide loan documents, or some combination of documents thereof subject to City review and approval to show sufficient secured funding to close any existing or subsequent budget gap.
- C. The Housing Authority and the City shall participate in planning, progress and review meetings (or video conferences or telephone conferences, if acceptable to the City) at least once each month during the Project Schedule, and additionally as deemed necessary by the City in its reasonable discretion, provided such additional meetings shall, upon the request of the Housing Authority, be held by video conference or telephone conference. The Project Budget and the Project Schedule shall be updated periodically by the Housing Authority and, upon reasonable review and approval by the City, shall be fully incorporated as if set forth herein.

2.3 Project Activities and Services.

- A. Generally. The Housing Authority shall diligently and in good faith provide the following services, equipment, and materials for the Project and shall also furnish, directly or through subcontractors, professional expertise, management, labor, materials, supplies, fixtures, equipment, tools and machinery, testing, supervision, facilities, and other services required to complete the Project (collectively, the "**Project Services**") in accordance with all applicable requirements of this Agreement and Loan Documents, as follows:

1. Development Services. All development services, including coordination with the City in all aspects of the Project and formation of an Owner Entity, listed on Exhibit C-1 (the “**Development Services**”). The Owner Entity shall include as its managing general partner an affiliate of the Housing Authority which shall oversee the management of the Owner Entity.
 2. Financial Services. All financing activities and services listed on Exhibit C-2 (the “**Financing Services**”).
 3. Construction Services. All construction services listed on Exhibit C-4 (the “**Construction Services**”).
- B. Additional Services. If the City requests any additional services other than those specified in this Agreement, and the Housing Authority agrees to provide such additional services, then the Parties shall execute a written contract modification amendment that specifies the additional services and any resulting change in the Project, Project Plan, Project Budget, Project Schedule or any other term or condition of this Agreement.
- C. Alternative Proposals. If any component of the Project described in Exhibit C cannot reasonably be completed as contemplated herein, the Housing Authority or the City, as applicable, may present alternative proposals for consideration by the other Party.

2.4 Decision-Making Procedures.

- A. For all actions requiring City approval, the Housing Authority shall submit the request for approval and supporting information with a notice that bears a bold face legend substantially as follows: “*Important: Your Response is Required in 10 Business Days.*”
- B. (1) The City shall respond in writing within 10 business days, except for actions that require approval by the City Council, in which case the Housing Authority shall submit its written request for approval and supporting information no later than 21 business days before the next regular meeting of the City Council. The City shall provide a response to the Housing Authority no later than 5 business days after the City Council’s meeting.
- (2) The City’s response must include the basis for any objection and suggested modifications to obtain approval. For some issues, this Agreement identifies the number of days that the City shall have to respond. For other issues, the amount of response time shall be stated in the notice, and shall be proportionate to the type and magnitude of the decision and the need to keep the Project proceeding smoothly. For example, but not in limitation, the decision time for contract change orders from the Construction Manager shall be shorter than the time for review and approval of budgets.

- C. If the Housing Authority does not receive a response within the specified number of days, it may send the City a notice of non-response. Following the giving of this notice, the City shall have an additional 5 business days in which to respond.
- D. If the City does not respond within the period described in Section 2.4.C, the action shall be deemed approved by the City.
- E. The procedure described in this Section 2.4 does not apply to: (1) emergency circumstances, or (2) situations where the fiscal impact is minimal and a near-immediate decision is necessary.

2.5 Reporting Procedures.

- A. Monthly Report. No later than the tenth day of each month during which this Agreement is in effect, the Housing Authority shall provide the City with written progress reports of the previous month (“**Monthly Report**”) in such form as may reasonably be required by the City on the status of all Project activities, including work performed by the Housing Authority’s Subcontractors, and completion of Project Milestones. Such reports shall include:
 - 1. An update of the Project Schedule.
 - 2. A Project Budget that explains any changes from the prior month.
- B. City Review Procedure. The City shall have 10 days following its receipt from the Housing Authority of a Monthly Report to review it and provide comments to the Housing Authority. If the City makes no written objections to any updates, modifications or amendments to the Project Schedule, Project Budget, or both contained in a Monthly Report (collectively “**Housing Authority Updates**”) before the end of the 10 day period, then the Project Schedule and Project Budget as updated to include the Housing Authority Updates shall be deemed approved by the City. Any objections by the City to the Housing Authority Updates shall describe in reasonable detail the basis for the objection and an alternative proposal for consideration by the Housing Authority.

2.6 Selection of Professionals, Subcontractors and Consultants.

- A. Responsibility for Employees.
 - 1. The Housing Authority and the City shall each provide a competent staff for the proper administration, coordination, and supervision of the Project with respect to their respective obligations under this Agreement.
 - 2. All officers, employees and subcontractors of the Housing Authority shall be compensated by the Housing Authority, and shall be under the control of the Housing Authority. The City shall not have any liability or obligation with respect to any employment arrangement between the

Housing Authority and any of its officers, employees and subcontractors. All matters concerning the employment, supervision, compensation, promotion and discharge of such officers, employees and subcontractors shall be the responsibility of the Housing Authority.

3. All officers, employees and subcontractors of the City shall be compensated by the City, and shall be under the control of the City. The Housing Authority shall not have any liability or obligation with respect to any employment arrangement between the City and any of its officers, employees and subcontractors. All matters concerning the employment, supervision, compensation, promotion and discharge of such officers, employees and subcontractors shall be the responsibility of the City.

B. Non-Discrimination. The Housing Authority, its employees, and Subcontractors shall fully comply with all applicable laws and regulations with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing and other employer-employee related matters, including, without limitation, all laws, rules and regulations with respect to non-discrimination based on any protected class under applicable laws. Without limiting the generality of the foregoing, the Housing Authority, its employees, and Subcontractors agree in connection with the performance of work under this Agreement not to discriminate on the basis of any protected class for which discrimination is prohibited by applicable law, against applicants for employment, promotion, demotion or transfer, or recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

C. Subcontractors.

1. The Housing Authority shall use reasonable efforts to verify that all consultants, design professionals, construction professionals, and other professionals or contractors engaged by the Housing Authority (but not construction subcontractors) to provide services or supplies for the Project ("**Subcontractors**"), as well as such first tier subcontractors of the Subcontractors, shall supply the skill, licensure, required insurance, and judgment necessary to perform the required services in compliance with the Project Schedule and the Project Budget and in accordance with all requirements of their respective contracts.
2. The City shall have the power to require the Housing Authority to terminate any Subcontractor upon evidence of a conflict of interest causing the City to violate its obligations under applicable regulations or if the Subcontractor fails to meet or does not comply with the terms and conditions described herein, subject to the notice and cure periods of this Agreement.

- 2.7 **Performance and Completion Guaranty.** Housing Authority and affiliates (collectively the “**Guarantors**” and, individually, a “**Guarantor**”) will provide all guaranties required by the investors and third-party lenders, including Project completion. The Housing Authority will provide to the City a guaranty of completion (and no other guaranties) in connection with any City financing for the Project.
- 2.8 **Quality of Work.** All the activities performed under this Agreement shall be provided in accordance with: (i) generally accepted standards for comparable affordable rental developments in California; and (ii) standards, criteria and other requirements imposed by applicable statutes, regulations, ordinances, and orders of all governmental authorities having jurisdiction over the Project. The Housing Authority shall furnish the skill and judgment necessary to perform the required services in compliance with the Project Schedule and the Project Budget, both in an expeditious and economical manner consistent with the interests of the Parties. The Housing Authority agrees to submit the Project Schedule and Project Budget to City within eighteen months of this Agreement being executed by both Parties.
- 2.9 **Housing Authority Work on Behalf of Owner Entity.** The Parties acknowledge that much of the work to be performed by the Housing Authority (or its affiliates) will be done in the name of the Owner Entity. Consequently, work to be done by the Housing Authority (or its affiliates) herein may be done pursuant to additional agreements with the Owner Entity which will govern the relations of the various parties in accordance with their terms upon Closing.

Article 3. CITY RESPONSIBILITIES

- 3.1 **General Responsibilities of the City.** The City shall be responsible for such services as described in this Article 3. The City shall promptly review any matter submitted to it and advise the Housing Authority of its approval or non-approval. The City’s approval of any matter required under this Agreement shall not be unreasonably withheld, conditioned or delayed.
- 3.2 **Access to Property.** Before transferring the Property to the Housing Authority as set forth in Section 3.3, the City shall provide the Housing Authority full and complete access to the Property including rights of way and easements for access thereto, needed to accomplish the Project, subject to the environmental requirements outlined in Article 5, and pursuant to a site access agreement, if required by the City.
- 3.3 **Transfer of Property to Housing Authority.** The City and the Housing Authority shall enter into a purchase- sale agreement as provided in Article 8, to transfer ownership of the Property to the Housing Authority. Housing Authority will subsequently transfer the Property to the Owner Entity. subject to the conditions set forth in Article 8.
- 3.4 **Project Support.** The City shall provide assistance for the Project with local agencies, lenders and other applicable parties and will agree to reasonable requirements imposed on the Project by any lenders and equity investors investing in the Project. The City shall provide, to the extent appropriate, assistance requested by the Housing Authority in

obtaining licenses, approvals, clearances, or other cooperation from local, State and Federal agencies, the City Council, and other public governing bodies; however, the Housing Authority shall have the primary responsibility for obtaining such approvals except as otherwise provided herein.

3.5 Execution of Documents. Whenever statute or regulation or the successful implementation of this Agreement requires the City to take actions or execute documents to accomplish the Project, the City will do so promptly, so as not to impede the orderly progress of the work, provided however that actions that require approval by the City Council shall have until after the next regularly scheduled meeting of the City Council to take such actions or execute such documents.

3.6 Land Use Requirements. The City enters into this Agreement solely as the owner of the Property and for the purpose of ensuring that the Housing Authority develops the Property in accordance with the terms of this Agreement. This Agreement does not alter or in any way impact the City's quasi-judicial review and approval process for the development of the Property under its zoning ordinance and land use regulations. Nothing contained herein shall be deemed to entitle the Housing Authority to any City permit or other City approval necessary for the Project, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to the Housing Authority for the Project, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the Project, (c) guarantee to the Housing Authority or any other party any profits from the Project, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65865.

Article 4. CONSTRUCTION RESPONSIBILITIES OF THE HOUSING AUTHORITY

4.1 Design Process.

- A. The Housing Authority shall design the Project in accordance with this Agreement, the Design and Planning Services at Exhibit C-3, and the Project Schedule.
- B. The Housing Authority shall further require, by contractual obligation, the appropriate licensure and insurance for professional liability by the Principal Architect and any Subcontractor that provides services for mechanical, electrical plumbing, engineering, architectural services, civil and structural engineering, and landscape architecture, regardless of whether the Subcontractor is retained directly by the Housing Authority or indirectly through the Principal Architect.
- C. The Housing Authority shall develop plans and specifications for the Project Plan that includes, at minimum: (i) the number, type and bedroom distribution of the units to be constructed in the Project; (ii) incorporate green building practices; (iii) provide quality open/common area; and (iv) a general schematic site plan. The Housing Authority shall submit the proposed plan to the City for review. The Housing Authority shall reasonably consider proposed corrections, as requested

by the City. The Housing Authority shall be responsible for all design and planning services listed on Exhibit C-3 (the “**Design Services**”).

- D. The Housing Authority shall cause the Project to be designed in material compliance with all applicable Federal, State, county and local laws, codes, ordinances, rules and regulations.

4.2 Demolition. The Housing Authority shall be responsible for demolition of all improvements currently existing on the Property. The Housing Authority shall keep City informed of its progress, any conditions it encounters that impact the agreed-upon Project Milestones, Project Plan, or both, and any need for additional activities or expenses that were not planned or budgeted.

4.3 Permits and Compliance with Laws.

- A. Obtain Permits and Other Approvals. The Housing Authority shall diligently and in good faith pursue such actions as may be necessary or appropriate to obtain all construction permits, licenses, easements and approvals necessary from any governmental agency to obtain, establish, or construct the Project, including on-site and off-site utilities necessary for the Project, and roads, transportation, and other facilities or physical improvements contemplated by the construction documents (“**Construction Documents**”). The Housing Authority shall use commercially reasonable efforts to, on an ongoing and timely basis, advise the City as to the status of the processing of all applications necessary to obtain all governmental approvals the Housing Authority is required to obtain in accordance with this Agreement. The Housing Authority shall advise the City of any hearings regarding matters described in this Section 4.3 with sufficient advance notice to enable the City to elect to attend such hearings. The Housing Authority shall use commercially reasonable efforts to, on an ongoing and timely basis, advise the City as to the status of the processing of the building permit or permits. Construction shall not proceed before issuance of applicable permits.

- B. Compliance with Laws and Permits. The Housing Authority shall cause the Project to be designed and constructed in material compliance with all applicable Federal, State, county and local laws, codes, ordinances, rules and regulations.

4.4 Procurement of Goods and Services By Housing Authority. To the full extent required by all applicable laws, rules and regulations, if any, Housing Authority and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.*, as the same may be applicable to the Project.

Article 5. INDEMNIFICATION

5.1 Generally.

- A. Housing Authority Indemnity. The Housing Authority shall indemnify, defend and hold harmless the City and its councilmembers, directors, officers, agents and employees hereunder from any loss, cost, damage, claim, demand, suit, liability,

judgment and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of or relating to any injury, disease, or death of persons, or damage to or loss of property resulting in whole or in part from any material breach of this Agreement or willful misconduct by the Housing Authority or its member entities, agents, employees, and Subcontractors arising or occurring after the Effective Date.

- B. City Indemnity. The City shall indemnify, defend and hold harmless the Housing Authority and its commissioners, members, officers, and their affiliates from any loss, cost, damage, claim, demand, suit, liability, judgment and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of or relating to any injury, disease, death of persons, or damage to or loss of property resulting in whole or in part from any material breach of this Agreement or willful misconduct by the City, its councilmembers, directors, officers, agents and employees arising or occurring after the Effective Date.

5.2 Survival. The Housing Authority's and the City's respective obligations under this Article 5 shall survive termination of this Agreement.

Article 6. ENVIRONMENTAL RESPONSIBILITIES

6.1 Environmental Responsibilities of the City and Housing Authority

A. Covenant Regarding Prohibited Substances.

1. Neither the Housing Authority nor the City shall, in regard to this Agreement, bring onto the Property any prohibited substance (collectively, (a)-(c) are the "**Prohibited Substances**"):
 - a. Asbestos or asbestos-containing material or polychlorinated biphenyl material; or
 - b. Hazardous substances or hazardous waste as defined under any Federal, State or local law, that may require remediation under applicable law (other than quantities or such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Project); or
 - c. Soil containing volatile organic compounds other than "clean fill" that contains volatile organic compounds in amounts not prohibited by Federal, State, or local law or regulation.
2. The City and the Housing Authority shall each be liable for the consequences of, and responsible for proper removal and lawful disposal, at its sole expense, of any Prohibited Substances brought onto the site resulting from a default under this Section.

B. Pre-Existing Conditions. The Housing Authority shall not be liable for and the City shall indemnify, defend and hold harmless the Housing Authority and its commissioners, members, officers, and its and their affiliates from any loss, cost, damage, claim, demand, suit, liability, judgment and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of any environmental conditions that existed or arose on the Property before the Entry Date. Without limiting the foregoing, the parties acknowledge and agree that there is an underground storage tank cleanup and remediation currently in progress on the Property, and that the City is currently and will continue to handle, pay for and take sole responsibility for the full completion of such cleanup and remediation efforts, through and including case closure by the responsible agencies, even after transfer of the Property to the Housing Authority pursuant Section 3.3.

C. Environmental Conditions.

1. The City is responsible to submit all required documents to any governmental entity, as required by applicable law and regulation, for environmental review on the Property, except that the Housing Authority shall be responsible for any environmental review related to its funding applications and commitments. The City is responsible for any Environmental Testing required for such review(s).
2. The Housing Authority covenants and agrees to indemnify, defend and hold the City free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses (including reasonable attorneys' fees) which may at any time be imposed upon, reasonably incurred by or asserted or awarded against the City in connection with or arising from:
 - a. The existence of any Prohibited or Hazardous Substance first discovered or placed on, in, or under all or any portion of the portions of the Property on or after the Entry Date by the Housing Authority, except for violations of which the City had actual knowledge and failed to disclose to the Housing Authority.
 - b. Any violation of Environmental Laws by the Housing Authority at or relating to any portion of the Property that arises out of its acts or omissions, or conditions existing on or after the Entry Date by the Housing Authority, except for violations of which the City had actual knowledge and failed to disclose to the Housing Authority.

6.2 Environmental Responsibilities of the City. The City covenants and agrees with the Housing Authority that the City will be responsible for any and all costs, damages and other liabilities in connection with or arising from:

- A. The existence of any Prohibited Substances or Hazardous Substances first placed on, in, or under all or any portion of the Property prior to the Entry Date, other than by the Housing Authority; and
- B. Any violation of Environmental Laws at or relating to a portion of the Property which arises out of conditions existing prior to the Entry Date covering such portion of the Property other than violations by or arising out of or resulting from the actions or omissions by the Housing Authority.

6.3 **Definitions.**

- A. “Environmental Laws” means any and all Federal, State, county and local laws, regulations, statutes codes, rules, resolutions, directives, orders, executive orders, consent orders, guidance from regulatory agencies, policy statements, judicial decrees, ordinances, or any judicial or administrative interpretation of, any of the foregoing, pertaining to the protection of land, water, air, or the environment whether now or in the future enacted, promulgated or issued.
- B. “Hazardous Substances” includes any substances, chemicals, materials or elements that are defined as "hazardous" or "toxic," otherwise regulated by any Environmental Laws. The term "Hazardous Substances" shall also include, without limitation, any substance, chemical, material, or element (i) defined as a "hazardous substance" under the *Comprehensive Environmental Response, Compensation and Liability Act of 1980* (42USC§§ 9601, et seq.), as amended by the *Superfund Amendment and Reauthorization Act of 1986*, and as further amended from time to time and regulations promulgated thereunder; (ii) defined as a "regulated substance" within the meaning of Subtitle I of the *Resource Conservation and Recovery Act* (42 USC §6991-6991(i)), as amended from time to time and regulations promulgated there under; (iii) designated as a "hazardous substance" pursuant to Section 311 of the *Clean Water Act* (33 USC §1321), or listed pursuant to Section 307 of the *Clean Water Act* (33 USC § 1317); (iv) defined as "hazardous," "toxic," or otherwise regulated under any Environmental Laws adopted by the state in which the Property is located, or its agencies or political subdivisions; (v) which is petroleum, petroleum products or derivatives or constituents thereof; (vi) which is asbestos or asbestos-containing materials; (vii) the presence of which requires notification, investigation or remediation under all Environmental Laws or common laws; (viii) the presence of which on the Property poses or threatens to pose a hazard to the health or safety of persons on or about the Property; (ix) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (x) which is lead-based paint or lead-based paint-containing materials; (xi) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (xii) which is radon or radon-containing or producing materials; or (xiii) which by any laws of any governmental City requires special handling in its collection, storage, treatment or disposal.

Article 7. INSURANCE

7.1 Insurance Requirements. The Housing Authority shall carry and pay for or cause its Subcontractors to carry and pay for (and shall ensure that its Subcontractors' subcontractors are insured under appropriate insurance policies), as applicable:

A. Housing Authority

1. Commercial General Liability Insurance, or equivalent, with limits of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Excess and Umbrella liability coverage with limits of not less than five million dollars (\$5,000,000) aggregate and per occurrence. The City is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and
2. Comprehensive Auto Liability Insurance (Primary and Umbrella) that covers bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
3. Worker's Compensation and Occupational Disease Insurance in accordance with the laws of California.

B. Construction Manager

1. Commercial General Liability Insurance (Primary and Umbrella) or equivalent with limits of not less than two million dollars (\$2,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. The City is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and
2. Comprehensive Auto Liability Insurance (Primary and Umbrella) covering bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
3. Builder's Risk. All of the Construction Manager's material subcontractors should provide proof they have a Builders Risk/Installation Floater in place with limits not less than the cost of their portion of the job/contract. Riggers Liability: Limit of Liability \$2,000,000 Aggregate/\$1,000,000 per occurrence if the subcontractor's operation includes rigging.
4. Worker's Compensation and Occupational Disease Insurance in accordance with the laws of California.

C. Owner Entity

1. Commercial General Liability Insurance, or equivalent, with limits of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Excess and Umbrella liability coverage with limits of not less than five million dollars (\$5,000,000) aggregate and per occurrence. The City is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and
2. Comprehensive Auto Liability Insurance (Primary and Umbrella) that covers bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
3. Property Insurance (post-construction) in accordance with the laws of California.

D. Management Agent

1. Commercial General Liability Insurance, or equivalent, with limits of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Excess and Umbrella liability coverage with limits of not less than five million dollars (\$5,000,000) aggregate and per occurrence. The City is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and *Comprehensive Auto Liability Insurance (Primary and Umbrella)* that covers bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
2. Worker's Compensation and Occupational Disease Insurance in accordance with the laws of California.

7.2 Insurance Endorsement. With respect to Section 7.1 above, these policies shall be endorsed to name the City, its councilmembers, officers, employees, agents and named volunteers as additional insured's and as loss payees.

7.3 Insurance Policy Requirements. To the extent eligible, the Housing Authority agrees to implement a General Liability Wrap-Up Insurance Program for the insurance required under this Article 7. All insurance shall be carried with companies selected by the Housing Authority, Construction Manager or Subcontractor that are authorized to do business in California and rated B++ or higher by A.M. Best with a financial size

category rating by A.M. Best of VII or higher, provided that if such insurance company is rated by A.M. Best lower than A, or if it has a financial size category rating by A.M. Best of lower than X, then such insurance company must carry reinsurance with a reinsurance company rated A or higher by A.M. Best with a financial size category rating by A.M. Best of XII or higher. With respect to policies described in Section 7.1:

- A. The appropriate policies under Section 7.1.A must be in place before the execution of this Agreement and in-force insurance is a condition precedent to all applicable contracts executed pursuant to this Agreement;
- B. The Housing Authority shall provide the City with a Certificate of Insurance as evidence of the limits and coverages described above, which shall be acknowledged and accepted by the City by issuing a notice of acceptance; and which shall affirmatively state that:
 - 1. When appropriate, the coverage is written on an occurrence form;
 - 2. Where required by this Agreement, the City is named as an additional insured and loss payee here and on the insurance held by all material Subcontractors; and
 - 3. On all property insurance policies, subrogation is waived.
- C. In the event that the Housing Authority's insurance is scheduled to expire during the execution of this Agreement, the Housing Authority shall provide the City with copies of renewal certificates 30 days prior to the expiration date of the expiring coverage;
- D. The insurance contracts shall require the insurance company to provide the City with 30 days prior written notice of a substantial change, cancellation or non-renewal in coverage during the policy term;
- E. The policies must be placed with such companies, on such conditions, and with such beneficial interest appearing thereon as shall be reasonably acceptable to the City; and
- F. The Housing Authority shall require all material subcontractors to carry the appropriate insurance, or the Housing Authority may provide the coverage for any or all Subcontractors, and if so, the Housing Authority's insurance should so stipulate.

7.4 Claims. In the event of a claim that takes place because of this Agreement, the Housing Authority shall notify the City within 30 days following discovery of the claim by the Housing Authority. In addition, the Housing Authority shall investigate and furnish the City with reports of all accidents, claims and known potential claims for damage or injury and shall cooperate with its insurers and those of the City.

- 7.5 **City Insurance.** The Housing Authority understands and agrees that any insurance or self-insurance program maintained by the City shall apply in excess of, and not contribute with insurance provided by the Housing Authority and its Subcontractors under this Agreement.
- 7.6 **Owner Entity’s Insurance.** The Housing Authority shall require the Owner Entity to acquire insurance as provided in this Article 7, as appropriate.

Article 8. PROJECT FINANCING AND RELATED DOCUMENTS

- 8.1 **Generally.** The Owner Entity will enter into the project financing documents (“**Project Financing Documents**”) defined herein. The Project Financing Documents will provide the City with the option to re-acquire the Property as described in Exhibit E (“Purchase Option and Right of First Refusal”).
- 8.2 **Owner Entity Formation.** The Housing Authority shall form the Owner Entity (“**Owner Entity**”) to own the Project. The Owner Entity shall be a separate, single-purpose entity whose general partner, managing member or equivalent will be either a member (or members) or a partner or partners of the Housing Authority, its Affiliates, members, officers, managers or other direct or indirect owners of the members or partners of the Housing Authority, or some combination thereof.
- 8.3 **Purchase - Sale Agreement.** The City and Housing Authority shall enter into a purchase - sale agreement for the transfer of the Property at no cost, subject to the Restrictive Covenant. The Housing Authority shall thereafter transfer ownership of the Property to the Owner Entity, upon terms and conditions to be determined by the Housing Authority, and subject to the Restrictive Covenant in favor of the City (as defined below).
- 8.4 **Loan Documents.** The investor in the Owner Entity will have the right to place institutional financing on the Property after construction and initial lease-up. The borrower will be the Owner Entity. The proceeds of such financing could be used to return a portion of the initial Capital Investment made in the Project, or to make needed capital improvements to the Property over time. The amount of debt financing will be capped at 65% of the then-appraised value of the completed Project. The Restrictive Covenant will provide for common lender’s rights consistent with the long-term use of the property for the provision of affordable housing, and City will cooperate with respect to any institutional lender’s typical processing and due diligence requirements for multifamily apartment lending. To secure this debt financing, the Owner Entity may enter into certain loan transactions, which may be secured by mortgages and other security interests in the Property of the Owner Entity (the “**Loan Documents**”).
- 8.5 **Owner Entity Documents.** All documents evidencing the formation of the Owner Entity, its rights and obligations with regard to the general and limited partners and or members, including but not limited to the payment of Housing Authority fees, guarantees, and pledges (collectively, the “**Owner Entity Documents**”) shall be subject to the reasonable approval of the City.

- 8.6 Declaration of Restrictive Covenant.** At Closing, the Housing Authority shall cause the Owner Entity to record a Declaration of Covenants, Conditions and Restrictions Imposed on Real Property for the benefit of the City wherein the Owner Entity shall be obligated to cause the Project to be operated in accordance with certain affordability restrictions as described in Exhibit C (“**Restrictive Covenant**”), will require that the Housing Authority will be the property manager for the Property (unless terminated for cause) and wherein the City shall have the option to re-acquire the Property upon expiration of the affordability term as described in Exhibit E (“**Purchase Option and Right of First Refusal**”). All loans and security interests entered into shall be subject to and subordinate to the Restrictive Covenant.
- 8.7 Management Documents.** The Housing Authority shall prepare all applicable management documents needed for the Closing of the Project including, but not limited to (as applicable), a management agreement, management plan, tenant selection policy and grievance procedures for Project units. Such documents (as applicable) shall comply with applicable housing laws and regulations, and shall be approved by the Housing Authority and the City. The form of resident lease for the Project shall be based on the Housing Authority’s standard form lease.
- 8.8 Closing.** The Owner Entity, the Housing Authority, investor(s), other lenders, and the City will participate in the closing for the Project pursuant to the Project Schedule at which time all of the Project Financing Documents described in this Article 8, and such other documents as may be reasonably required by the Housing Authority, the City, other lenders or investor(s) for the conveyance of the Property and construction of the Project will be executed (the “**Closing**”).

Article 9. PROJECT MILESTONES

- 9.1 Generally.** Subject to the conditions and limitations contained in this Agreement, the Housing Authority and the City covenant to meet each targeted deadline in accordance with its terms as described in the Project Schedule as the same shall be updated, modified or amended as contemplated in this Agreement (the “**Project Milestones**”). These responsibilities may be modified by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, delayed or conditioned.
- 9.2 Outside Factors.** The City and the Housing Authority acknowledge that some of the Project Milestones may not be achieved by the targeted deadline and, in certain situations, may be unachievable due to factors, including changes in State laws, changes in the Project Plan by the City and, where necessary, market conditions, Force Majeure as defined at Section 11.5, or a combination thereof. The Parties agree to reasonably revise the Project Milestones as and when necessary as a result of outside factors that are not in the control of the Parties.

Article 10. FEE AND PAYMENT

- 10.1 Development Fee.** In consideration of the Project, the Housing Authority (or its affiliates) shall be entitled to a development fee (“Development Fee”) from the Owner Entity in the amount shown and agreed upon in the Project Budget.
- 10.2 Property Management Fee.** The Housing Authority (or its affiliates) shall serve as the property manager on behalf of the Owner Entity and shall be responsible for maintaining the Property in good condition. The Owner Entity shall pay the Housing Authority a property management fee not to exceed 4% of Project gross revenues. All terms for the property management agreement will be subject to the City’s review and approval, and the Housing Authority will provide supporting documentation evidencing that fees charged by a property management entity are no greater than the customary fees charged in the market for moderate affordable housing.
- 10.3 City In-lieu Parking Income Fee.** The construction of the Project will remove the City’s present revenue stream associated with the parking fees charged to commuters for monthly parking, upon commencement of construction of the Project. The current estimated City net income from parking fees after expenses is approximately \$26,000/year. To compensate the City for the loss of this revenue stream, the Project will pay to the City a minimum \$15,000/year during the time when the Project net cash flow is less than the Cumulative Investor Yield, and when the cash flow exceeds the Cumulative Investor Yield, the Project will pay to the City, the amount up to \$30,000 per year from net cash flow, adjusted annually for inflation on the same basis as the Net Investment inflation adjustment factor. This fee will be known as the In-lieu Parking Income Fee. It is recognized that during the construction and initial lease-up period, there will be no net cash flow from the Project available to pay the Fee; therefore, during the construction period, the Fee will be capitalized into the Project’s cost based on \$30,000/year. After lease-up is complete, the payment will then be treated as an operating expense.
- 10.4 Cash Flow Distribution Waterfall.** Net Cash Flow from operations of the completed Project will be distributed out of the Owner Entity as follows: first, to the Investor until all Cumulative Investor Yield has been paid; second, to the City until the In-Lieu Parking Income Fee described above has been paid; third, to the Members of the Owner Entity in accordance with their percentage interests. The members of the Owner Entity will determine the available distributable cash on a quarterly basis. All distributions will be reported in the annual report and certification to the City by the Owner Entity.

Article 11. TERMINATION AND DEFAULT

11.1 Termination and Events of Default, Generally.

- A. This Agreement may be terminated prior to Closing:
1. By the mutual agreement of the City and the Housing Authority; or

2. By either party, if an Event of Default described herein occurs with respect to the other party.
- B. Cure Period. In the event of any Event of Default by the Housing Authority or the City under this Agreement, the non-defaulting Party shall provide written notice to the defaulting Party (“**Notice of Default**”). No remedies shall be enforced against the defaulting Party unless the defaulting Party fails to cure such default within 30 days after receiving the Notice of Default.
 - C. Extension of Cure Period. If the Event of Default cannot be cured within 30 days, the defaulting Party shall have such additional time as is reasonably necessary to cure such default so long as the defaulting Party has diligently commenced curing such default and proceeds in reasonable and good faith to correct the Event of Default.

11.2 Events of Default by Housing Authority. Upon written notice from the City, and subject to the cure rights in Section 11.1 hereof, any of the following shall constitute an “Event of Default” by the Housing Authority under this Agreement, subject to Section 11.5 (Force Majeure) and Section 11.6 (Change in Circumstances), if it has a material adverse impact upon the Project, the City, or Owner Entity:

- A. The Housing Authority materially breaches any covenant in this Agreement;
- B. The Housing Authority or any Guarantor (individually, the “**Defaulting Party**” and collectively the “**Defaulting Parties**”) becomes insolvent, is adjudged bankrupt, makes a general assignment for the benefit of creditors, or becomes a subject of any proceeding commenced under any statute or law for the relief of debtors; *provided that* no Event of Default shall be deemed to have occurred if: (1) the Defaulting Party shall effect the dismissal within 90 days after commencement of any such involuntary proceeding; or (2) the remaining members or guarantors of the Defaulting Party shall, within the same 90- day period, either remove the Defaulting Party and (i) replace it with another entity acceptable to the City, or (ii) provide the City with reasonable assurances of performance for the Defaulting Party’s obligations; or
- C. A receiver, trustee or liquidator of any of the property or income of the Housing Authority or any guarantor of the Housing Authority’s performance hereunder shall be appointed and such appointment is not dismissed within ninety (90) days; or
- D. The Housing Authority unilaterally withdraws from the Project; or
- E. The Housing Authority fails to enforce any material terms, provisions, conditions, covenants or agreements in the Construction Documents to be observed, performed, or both on the part of the Housing Authority, its Construction Manager, and all other Subcontractors.

11.3 Events of Default by City. Upon written notice from the Housing Authority, and subject to the cure rights herein, a material breach of any covenant in this Agreement shall constitute an “Event of Default” by the City under this Agreement, subject to Section 11.5 (Force Majeure), and Section 11.6 (Change in Circumstances), if it has a material adverse impact upon the Project, the Housing Authority, or Owner Entity.

11.4 Reserved.

11.5 Force Majeure.

- A. If the Housing Authority or City is delayed in performing any covenant hereunder due to causes beyond the control and without intentional misconduct or negligence of the Party seeking to invoke the provisions of this Section 11.5 (“**Force Majeure**”), then the time for performing the applicable covenant shall be extended for a period of time corresponding to the period of delay, with a reasonable adjustment to any applicable Project Milestones affected by the Force Majeure event.

- B. Examples of such causes include without limitation, and if without intentional misconduct or negligence of the Party claiming Force Majeure: (a) acts of God, or public enemy, (b) war, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes or labor disputes, (h) freight embargoes, (i) unusually severe weather, or (j) delays of subcontractors or suppliers at any time arising from causes that were not reasonably foreseeable and beyond the control and without the intentional misconduct or negligence of the Housing Authority, (k) acts or failure to act of any governmental entity in either their sovereign or contractual capacity, to the extent that action by such governmental entity is required hereunder, provided that the Party hereunder seeking such action by such governmental entity properly requests same in a timely manner and thereafter diligently pursues the same; and (l) litigation other than litigation between the City and the Housing Authority or the Housing Authority’s affiliates. The governmental entity described in clause (k) above specifically excludes the City of Santa Barbara, or any of its boards, commissions or advisory committees.

11.6 Changed Circumstances.

- A. Development Contingencies. The City acknowledges that the Housing Authority’s ability to perform many responsibilities under this Agreement (collectively, “**Development Contingencies**”) is substantially contingent upon actions by third parties over which the Housing Authority has limited control, or factual circumstances that could not reasonably have been determined as of the date of this Agreement. Such Development Contingencies include, but may not be limited to, the following items as to which the Project Plan reflects certain expectations of the Parties:
 - 1. The successful elimination from the Property of Prohibited Substances;

2. The successful elimination or control of adverse geotechnical conditions or environmental matters; *provided however*, the cause of the environmental matter is not attributed to the Housing Authority's or City's direct or indirect action or inaction;
 3. The receipt of all City-required approvals, with conditions of approval that are acceptable to Housing Authority and the Owner Entity;
 4. The availability of public and private assistance, including grants and loans in the aggregate amounts set forth in the Project Budget.
- B. Change in Circumstances. If a Development Contingency necessary for completion of the Project fails to occur after all commercially reasonable efforts by the Housing Authority to cause it to occur in a manner generally consistent with this Agreement, the City and the Housing Authority shall jointly revise the Project Plan by extending deadlines, revising goals, or as otherwise agreed. The failure of a Development Contingency due to causes beyond the control of the Housing Authority shall not be deemed an Event of Default of the Housing Authority.
- C. Withdrawal. If a Development Contingency necessary for completion of the Project fails to occur prior to Closing due to causes beyond the control of the Housing Authority, and the Parties, using commercially reasonable and good faith efforts, cannot within 90 days after the occurrence of any Development Contingency resolve such Development Contingency in a manner reasonably satisfactory to the Housing Authority, then the Housing Authority may, upon written notice to the City, terminate this Agreement, in which case neither Party shall have any obligation to the other under this Agreement, except for those obligations that expressly survive the termination of this Agreement.

Article 12. REMEDIES

- 12.1 Remedies, Generally**. Upon the occurrence of an Event of Default by either the Housing Authority or City, as defined at Sections 11.1 - 11.3, and expiration of any applicable cure period, the non-defaulting Party may terminate this Agreement and exercise any and all remedies available at law or equity pursuant to this Agreement or any subsequent project financing documents. However, this Article 12 shall not apply to the Project if it has achieved Closing.
- 12.2 Alternate City Remedies**. After expiration of the applicable cure period for any Event of Default by the Housing Authority without cure, the City shall have the right to impose reasonable special conditions or restrictions upon the Housing Authority in addition to any remedies provided at law or pursuant to this Agreement, with which the Housing Authority shall comply, including, but not limited to the following types of special conditions or restrictions:
- A. Requiring additional, more detailed financial reports.

- B. Requiring additional monitoring.
- C. Establishing additional prior approvals.
- D. Requiring the Housing Authority, within a time period established by the City, to prepare a revised plan for implementation.
- E. Requiring the Housing Authority to terminate defaulting contractors, subcontractors, and service providers.

12.3 **Assignment.**

- A. Generally. All of the Housing Authority’s right, title and interest in, to and under any and all documents, drawings, plans, specifications, studies, files, contracts, permits, approvals, grants and all other documents and materials (including but not limited to architectural documents) accumulated, generated, prepared for or by the Housing Authority (the “**Project Documents**”), whether completed or in process, shall be assigned and transferred, to the extent assignable and subject to the rights of lenders, to the City, or at its option, a designee entity upon an Event of Default not cured within the applicable notice and cure periods hereunder by the Housing Authority or Owner Entity, subject to the payment therefore by the assignee. As security for the Housing Authority’s obligations hereunder, the Housing Authority hereby pledges and assigns to the City and grants the City a security interest in any and all rights, title and interest of the Housing Authority in, to or under the Project Documents. (Such security interests shall be released by the City at the Closing so as to not interfere with the rights of future potential lenders.) It is understood that the Housing Authority does not represent such data to be suitable for use or re-use for another project or purpose. If the City re-uses the subject data without the Housing Authority’s written permission, such re-use will be at the City’s sole risk without liability to the Housing Authority.
- B. Compensation for Work Product Documents. Upon termination of this Agreement due to an Event of Default by the Housing Authority or change in circumstances, all plans, studies, reports, drawings, permits, approvals, and other work product produced or obtained by the Housing Authority in connection with the Project and all of the Housing Authority’s interests in agreements relating to such work product shall, to the extent legally assignable and subject to the rights of other lenders, be properly assigned to the City so long as such items have been paid for by the City without further compensation due the Housing Authority (except for such compensation as may be determined owed under Section 11.4, by mutual agreement or subsequently by an arbitrator).

12.4 **Damages.**

- A. The Housing Authority and its sureties shall be liable for any damage to the City (including without limitation reasonable attorney's fees and other costs and expenses, but not consequential damages) directly resulting from (i) an Event of Default by Housing Authority hereunder, or (ii) termination of this Agreement by

the City pursuant to Section 11.1.A.2. if the Housing Authority has not exercised a good-faith effort to secure the necessary funding commitments for the Project as required by the Project Schedule. This liability includes, without limitation, all costs incurred by the City or its assignee directly related to completing the Project as contemplated in the Project Documents (as such term is defined in Section 12.3 herein).

- B. For purposes of 12.4.A(ii) above, a “good faith effort” means that the Housing Authority must explore all reasonable options available to obtain and arrange for the necessary funding commitments as required by the Project Schedule.

Article 13. HOUSING AUTHORITY REPRESENTATIONS AND WARRANTIES

13.1 Organization and Powers. The Housing Authority represents and warrants that it is a public body, corporate and politic, duly organized, validly existing and in good standing under the laws of California. The Housing Authority has the power and authority to own assets and properties, to carry on activities as now conducted by it, and to execute, deliver and perform this Agreement.

13.2 Authorization and Binding Agreement. The Housing Authority represents and warrants that this Agreement has been duly and validly executed and delivered by the Housing Authority and constitutes a valid and legally binding obligation enforceable in accordance with its terms.

13.3 Litigation, Limited Denial of Participation, or Debarment.

- A. The Housing Authority represents and warrants that there is no action, suit or proceeding pending or threatened before any court or government or administrative body or agency which may reasonably be expected to: (1) result in a material adverse change in the activities, operations, assets or properties or in the condition, financial or otherwise, of the Housing Authority or Owner Entity, or (2) impair the ability of the Housing Authority to perform its obligations under this Agreement.
- B. The Housing Authority is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court or any governmental or administrative body or agency.
- C. The Housing Authority is not the subject of a prohibition on conducting business with public agencies in California or other jurisdictions.

13.4 Conflicting Obligations.

- A. The Housing Authority represents and warrants that it is not a party to any contract or agreement, nor subject to any charter or other legal restriction of any kind, that materially and adversely affects the business, property or assets, or the condition, financial or otherwise, of the Housing Authority.

- B. Neither the execution and delivery of this Agreement, nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any law or any regulation, order or decree of any court or governmental agency, or any indenture or other agreement or instrument to which the Housing Authority is subject, or will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Housing Authority pursuant to the terms of any such indenture or agreement or instrument, and will not require the approval of any Federal regulatory body or of any State or local commission or city having jurisdiction with respect thereto, unless such approval has been obtained and is in full force and effect on the Effective Date.

Article 14. CITY REPRESENTATIONS AND WARRANTIES

- 14.1 Organization and Powers.** The City represents and warrants that it is a municipal corporation, validly existing and in good standing under the laws of California. The City has the power and authority to own its assets and properties, to carry on its activities as now conducted by it, to execute, deliver and perform this Agreement.
- 14.2 Authorization, Binding Agreement.** The City represents and warrants its authority to execute, deliver and perform all requisite actions necessary under this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of the City.
- 14.3 Litigation, Limited Denial of Participation, or Debarment.**
- A. The City represents and warrants that there is no action, suit or proceeding pending or threatened before any court or government or administrative body or agency which may reasonably be expected to: (1) result in a material adverse change in the activities, operations, assets or properties or in the condition, financial or otherwise, of the City; or (2) impair the ability of the City to perform its obligations under this Agreement.
- B. The City is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court or any governmental or administrative body or agency, which would impair its ability to perform its obligations under this Agreement.
- 14.4 Financial Condition.** Before execution of this Agreement, the City will have reviewed, and accepted as sufficient, comprehensive financial information submitted by the Housing Authority that demonstrate no material adverse change to the current financial condition of the Housing Authority. During the life of this Agreement, however, the City retains the continuous right to review the financial condition of any Guarantor.

Article 15. MISCELLANEOUS

- 15.1 Notices.** All notices, demands, requests or other communications or documents to be provided under this Agreement (“Notice”) shall be in writing and shall be deemed to have

been given if served personally, by nationally recognized overnight delivery service (such as Fed Ex), or sent by United States Registered or Certified Mail, return receipt requested, or by facsimile machine (and only upon telephonic confirmation by the delivering Party of receipt by the recipient Party, with an additional copy sent by one of the foregoing methods) addressed to the addresses set forth below or such other addresses as either Party may designate by notice to the other:

If to City: City of Santa Barbara
Attn: Public Works Director
630 Garden Street
Santa Barbara, CA 93101
Email:

With copies to: Office of the City Attorney
Attn: City Attorney
740 State Street, Suite 201
Santa Barbara, CA 93101
Email: DHentschke@SantaBarbaraCA.gov

If to Housing Authority: Housing Authority of the City of Santa Barbara
Attn: Executive Director/CEO
808 Laguna Street
Santa Barbara, CA 93101
Telephone: (805) 897-1051
Facsimile: (805) 564-7041
Email: rfredericks@hascb.org

With copy to: Price, Postel & Parma LLP
Attn: Mark S. Manion
200 E. Carrillo Street, Suite 400
Santa Barbara, CA 93101
Email: mmanion@ppplaw.com

15.2 Written Materials and Public Statements. The Parties agree to cooperate and consult with each other regarding any public statements or publication made regarding the Project. The Housing Authority shall provide the City with drafts of any written material prepared in connection with the Project prior to submission. The Housing Authority shall revise such drafts in accordance with reasonable requests by the City. In addition, the Housing Authority shall provide the City with any changes to documents that materially affect the activities or understandings reflected by this Agreement and final versions of all written submissions.

15.3 Contracting Officer. The Contracting Officer shall be the Housing Authority's Executive Director/CEO or designee.

- 15.4 Further Assurances.** Each Party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transactions contemplated by this Agreement.
- 15.5 Subcontracts.** The Housing Authority will cause all applicable provisions of this Agreement to be inserted in all contracts with third parties and subcontractors.
- 15.6 Assignment.** The obligations under this Agreement shall not be assignable by either Party except upon written consent of the other party. Notwithstanding the foregoing, the Housing Authority may assign its rights and obligations hereunder to an affiliate of the Housing Authority.
- 15.7 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.
- 15.8 Interpretation and Governing Law.** This Agreement shall not be construed against the Party who prepared it, but shall be construed as though prepared by both parties. This Agreement shall be construed, interpreted, and governed by the laws of California.
- 15.9 Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.
- 15.10 Parties Bound.** No officer, director, shareholder, employee, agent, or other person authorized to act for and on behalf of either Party shall be personally liable for any obligation, express or implied, hereunder.
- 15.11 Final Agreement.** Unless otherwise provided herein, this Agreement constitutes the final understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the Party to be bound thereby.
- 15.12 Modification of Agreement.** This Agreement may not be altered, modified, rescinded, or extended orally.
- 15.13 Conflict of Interest.** The Housing Authority covenants that neither it nor any of its commissioners, officers, partners or employees has any interest, nor shall acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder, including the causing of the City to suffer a conflict of interest prohibited by applicable laws, regulations, or contracts with a funding entity. The Housing Authority further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or shall subcontract with it to perform duties under this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Housing Authority intends for and the City has

approved the Construction Manager and the management agent to be Affiliates of Housing Authority.

- 15.14 Waivers.** The failure of any Party to insist in any one or more cases upon the strict performance of any of the obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver by any Party of any provision of this Agreement shall be deemed to have been made unless set forth in writing and signed by the Party to be charged. In addition to the other remedies herein provided, either Party may restrain by injunction the violation or threatened violation of either Party's obligations under this Agreement and may obtain specific performance by either Party of its obligations under this Agreement.
- 15.15 Successors.** The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the Parties hereto, their successors and assigns.
- 15.16 Certain Approvals.** Unless otherwise stated, all approvals or consents required of either Party hereunder shall not be unreasonably withheld, conditioned or delayed.
- 15.17 References to this Agreement.** All references to this Agreement shall include all documents and exhibits incorporated by reference. If there is any ambiguity or conflict among any two or more of these, or internally in any one of such documents, if the ambiguity or conflict arises from the use of development funds, the resolution of the ambiguity shall be consistent with the City's obligations, as determined by the City in its reasonable discretion.
- 15.18 Headings.** The headings in this Agreement are inserted for convenience only and shall not be used to define, limit or describe the scope of this Agreement or any of the obligations herein.
- 15.19 Construction.** Whenever in this Agreement a pronoun is used, it shall be construed to represent either the singular or the plural, either the masculine or the feminine, as the case shall demand.
- 15.20 Document Retention Period.** The Housing Authority shall maintain a copy of all Construction Documents and records for the Project for a period of three (3) years that begins upon completion of each component, unless State law mandates otherwise. Such obligation shall survive the termination of this Agreement.
- 15.21 Power to Execute.** The undersigned individuals represent and warrant that they are expressly authorized by their respective entities or agencies to execute this Agreement and to bind their respective entities or agencies legally as set forth in this Agreement.
- 15.22 Reasonableness.** The City and the Housing Authority shall act in a reasonable manner with respect to their respective obligation as set forth in this Agreement, including the granting of any consent or approval.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

City: City of Santa Barbara

By: _____
Name:
Title:

ATTEST

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____
Name:
Title:

Housing Authority: Housing Authority of the City of Santa Barbara

By: _____
Name: Rob Fredericks
Title: Executive Director

APPROVED AS TO FORM:

By: _____
Name: Mark S. Manion
Price, Postel & Parma LLP

Exhibit A - Legal Description of Property

Real property in the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

ALL THOSE CERTAIN PORTIONS OF BLOCK 146, IN THE CITY OF SANTA BARBARA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL MAP THEREOF, DESCRIBED AS PARCEL ONE, PARCEL TWO, PARCEL THREE, PARCEL FOUR AND PARCEL FIVE IN THE GRANT DEED TO THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA RECORDED ON APRIL 1, 1983, AS INSTRUMENT NO. [83-15727](#), OF OFFICIAL RECORDS OF SAID COUNTY OF SANTA BARBARA, SAID PARCELS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT A POINT IN THE SOUTHWESTERLY LINE OF CASTILLO STREET DISTANT 150 FEET SOUTHEASTERLY FROM THE MOST NORTHERLY CORNER OF BLOCK 146, AS SAID STREET AND SAID BLOCK ARE DESIGNATED AND SHOWN ON THE OFFICIAL MAP AND SURVEY OF SAID CITY OF SANTA BARBARA, AND RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF CASTILLO STREET, 50 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY AND INTO SAID BLOCK 150 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY 50 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 150 FEET TO THE SOUTHWESTERLY LINE OF CASTILLO STREET AND THE PLACE OF BEGINNING;

PARCEL TWO:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF CASTILLO STREET WITH THE NORTHWESTERLY LINE OF CARRILLO STREET; AND RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF CARRILLO STREET 225 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY 275 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 75 FEET; THENCE AT RIGHT ANGLES SOUTHEASTERLY 175 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 150 FEET TO SAID SOUTHWESTERLY LINE OF CASTILLO STREET; THENCE SOUTHEASTERLY ALONG SAID LINE 100 FEET TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED DECEMBER 30, 1959, AS INSTRUMENT NO. 43729 IN [BOOK 1701, PAGE 371](#) OF OFFICIAL RECORDS;

PARCEL THREE:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF CASTILLO STREET, DISTANT THEREON 300 FEET SOUTHEASTERLY FROM THE MOST NORTHERLY CORNER OF SAID BLOCK; THENCE SOUTHEASTERLY ALONG SAID STREET LINE 50 FEET TO A POINT; THENCE AT RIGHT ANGLES SOUTHWESTERLY 150 FEET TO A POINT; THENCE AT RIGHT ANGLES NORTHWESTERLY 50 FEET TO THE POINT

OF BEGINNING;

PARCEL FOUR:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF CASTILLO STREET, DISTANT THEREON 250 FEET SOUTHEASTERLY FROM THE NORTHERLY CORNER OF SAID BLOCK; THENCE SOUTHEASTERLY ALONG SAID LINE OF CASTILLO STREET 50 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 150 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY 50 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 150 FEET TO THE POINT OF BEGINNING;

PARCEL FIVE:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF CASTILLO STREET, DISTANT THEREON 200 FEET SOUTHEASTERLY FROM THE NORTHERLY CORNER OF SAID BLOCK 146; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE 50 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY 150 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY 50 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 150 FEET TO THE POINT OF BEGINNING.

APN: 039-261-009

Exhibit B – Definitions

Business days means all days except Saturdays, Sundays, and designated City holidays.

City Council means the City Council of the City of Santa Barbara.

Construction Budget means the sum established by the Housing Authority as needed for construction of the Project, as such sums shall be approved by the City and the Housing Authority at Closing.

Construction Documents mean all documents required to obtain permits and to complete the Project, which includes all surveys and all architectural, landscape and engineering drawings and reports.

Construction Manager means the approved General Contractor for the Project.

Construction Services are defined at Exhibit C-4.

Design Services are defined at Exhibit C-3.

Entry Date means as applicable, the date when the Housing Authority enters the Property and begins any activity, other than Environmental Testing, that physically affects the real property or buildings thereupon including, but not limited to abatement, site preparation, demolition, or infrastructure or construction.

Environmental Testing means, for purposes of this Agreement, onsite activities of the City including test borings, soil sample collections, geotechnical analysis and other similar physical investigations in connection with the environmental condition of the Property.

Financing Services are defined at Exhibit C-2.

Investor Yield means the required ongoing target rate of return on capital investment of 5%, also known as an annual cash yield on investment or cash-on-cash return. This Investor Yield would be considered substantially below a “market rate” return on a relatively risky investment involving new development. The Investor Yield would be generated through net residual cash flow from the Project revenues, after paying operating expenses and capital reserves, and is on an “unlevered” basis (i.e., assumes 100% equity financing). It is considered a “cumulative” rate of return (i.e. Cumulative Investor Yield) meaning that, during years where the yield is not achieved because of lack of Project cash flow (the Unpaid Cumulative Yield), it will carry-forward and will be compounded monthly.

Principal Architect means Cearnal Collective (Christine Pierron), the lead architect for the Project, or portion thereof, with a direct contractual relationship to the Housing Authority, and primary responsibility for the architectural/engineering services of the Project.

Property Expenses means (1) all necessary and reasonable operating expenses of each Property including debt service requirements of any fixed payment lender mortgages issued and real property taxes; (2) payments in lieu of real property taxes (“PILOT”) provided this does not

violate any BOE regulation; (3) deposits to any lender- or investor-required reserve for replacement and required deposits; (4) management fees payable pursuant to the Management Agreement; (5) legal and accounting expenses associated with the operation of the Property; (6) any amounts paid to tenants as a utility allowance; and (7) replenishment of reserves previously drawn upon.

Project Budget is a “sources and uses” budget covering the Project described at Section 2.3. The current version is attached at Exhibit D. References thereto are to the Project Budget, as it may be changed in accordance with this Agreement.

Project Schedule is the schedule for the Project to be agreed upon by the Parties. References thereto are to the Project Schedule as it may be changed in accordance with this Agreement.

Substantial Completion means that time in the construction process at which the Principal Architect or supervising architect certifies that the Project is substantially complete in accordance with the Project Plan and the Owner Entity receives a temporary or final Certificate of Occupancy, or its equivalent, issued by the appropriate local governmental entity for any part of the Project and the Owner Entity provides such documentation to the City.

Exhibit C - General Description Of Project

The Project shall consist of approximately 60 units of rental housing and a community room and shall serve residents earning incomes between 80% and 160% of Area Median Income. Some of the residential units shall be rented to Moderate-Income households (i.e. households with incomes in the 80% to 120% of AMI range). The balance of the units may be rented to Middle-Income households (i.e. households with incomes in the 120% to 160% of AMI range). The Project will offer affordable rents to households with incomes within the target AMI range and support the return on investment required by the investor as follows:

Units Serving Households between 80% and 120% of AMI (Moderate Income)

	<u>Initial Maximum Rent</u>	<u>Income Limit</u>
Studios:	\$1,600	\$75,684
One-bedrooms:	\$1,900	\$97,308
Two-bedrooms:	\$2,200	\$108,120

Units Serving Households between 120% and 160% of AMI (Middle Income)

	<u>Initial Maximum Rent</u>	<u>Income Limit</u>
Studios:	\$2,523	\$100,912
One-bedrooms:	\$2,883	\$129,744
Two-bedrooms:	\$3,244	\$144,160

The rent and income limits shown above are based on 2021 area median income levels and would be subject to annual adjustment. Rents would be subject to annual increases at amounts in line with market conditions. **The City acknowledges that these rents are different from those that may be specified in its typical Affordable Housing Policy document and that there is no utility allowance proposed for the Project.**

Since the cost to build the Project cannot be precisely known at this time, the way in which the investor's yield requirement is achieved is by adjusting the mix between the percentage of moderate income (80%-120% of AMI) and middle income (120-160% of AMI) units. The final affordability mix will be determined at the time the Property transfers to the Owner Entity and the Declaration of Covenants, Conditions and Restrictions Imposed on Real Property is recorded.

The above guidelines are currently anticipated limits based on research and feedback from the potential investor and current market conditions. In the event the Housing Authority determines, in its reasonable judgment, that the minimum Investor Yield requirement cannot be met based upon the proposed hybrid development serving both Moderate Income Households and Middle Income Households described above, the Housing Authority will, in the alternative, provide, in order of preference, one of the following alternatives for occupancy of the Project:

- 1) The Project would be leased 100% to Middle Income (i.e. 120% to 160% of AMI) households; or, if that fails to meet the minimum Investor Yield requirement as determined by the Housing Authority's reasonable judgment, then;
- 2) The Project would be leased to Low-Income households pursuant to financing using Low Income Housing Tax Credits.

A Declaration of Covenants, Conditions and Restrictions Imposed on Real Property would be recorded with an initial 90 year term with the maximum income and rent formula that we describe herein included in the recorded covenant. It will also require that the Housing Authority will be the property manager for the Property (unless terminated for cause). It will also contain the City's option to purchase the Property from the Owner Entity via Option/Right of First Refusal rights, the major terms of which are summarized in Exhibit E.

Exhibit C-1 - Development Services

The Housing Authority shall be responsible for the following:

1. Developing and organizing an Owner Entity for the Project in form and with such partners as are reasonably approved by the City. M3 Multifamily is pre-approved as a potential partner.
2. Using commercially reasonable efforts to cause the Project to proceed and close in accordance with the Project Schedule and the Project Budget.
3. Assuring that all Project activities performed shall be provided in accordance with generally accepted standards for quality development and construction of housing of a similar nature in Santa Barbara.
4. Furnishing the skill and judgment necessary to perform Project services in a quality, expeditious and economical manner consistent with the best interests of the City.
5. Subject to the review and approval of the City, negotiating and entering into all necessary agreements between lenders, Construction Manager, equity investors, governmental bodies and the Owner Entity.
6. Entering into an agreement, including management policies, with a management agent approved by the City to manage the Project.
7. Performing such other services that are necessary for the Project.

Exhibit C-2 - Financing Services

The Housing Authority shall be responsible for preparing for the City's review and approval, an overall plan for the financing and equity investment necessary to complete the Project ("**Financing Plan**"). Such plan shall set forth, *inter alia*, the debt and equity to be raised, the sources for all funds, and expected uses. It shall also include a 20 year Proforma showing at a minimum: the operation and program income; operation, debt service and reserve expenses; and both operation and program net cash flow. Once the Financing Plan is approved by the City, the Housing Authority shall be responsible for its implementation including:

1. Procuring all construction, gap and permanent financing, for the Project, including any public funding.
2. Maintaining all Project books of account and financial records in accordance with the City and other equity requirements.
3. Preparing and submitting to the City such financial reports relating to the Project as the City may reasonably request.
4. Performing such other Financing Services that are reasonably requested by the City, or necessary for the Project.

Exhibit C-3 - Design Services and Guidelines

The Housing Authority shall be responsible for the following:

1. Selecting the Principal Architect and preparing a bidding package strategy that conforms to City procurement requirements and any financial source regulations, which may include state or federal governmental requirements.
2. Preparing and submitting all design documents, as defined by AIA document B-141 to the City for review and approval.
3. Performing all such other Design Services that are necessary in connection with the Project.
4. Monitoring the performance of all persons and entities that are to provide Design Services to the Project and take such actions as are necessary to maintain adherence to commercially reasonable quality standards.

Exhibit C-4 - Construction Services

The Housing Authority shall be responsible for the following:

1. Reviewing all construction plans, budgets, schedules and contracts, including those with the Principal Architect, contractors and other parties working on the Project. All such plans, budgets, schedules and contracts shall be subject to the review and approval of the City.
2. Performing all necessary duties for the Project itself or through an affiliate.
3. Working with the Principal Architect and prepare a bidding package strategy with the advice and consent of the City.
4. Selecting the construction contractor with the advice and consent of the City.
5. Applying for and obtaining all permits (including building and construction permits), licenses, easements and approvals necessary for the physical improvements contemplated by the Project. The process for such permitting and approvals shall run concurrently with any amendment to the Specific Plan, if necessary.
6. Monitoring, reviewing and certifying draw schedules, and monitoring the approved Project Budget and construction budget. In conjunction with its monthly report requirements, the Housing Authority shall develop and submit to the City cash flow reports and forecasts showing actual costs for activities in process and estimates for uncompleted work.
7. On an ongoing and timely basis, advising the City on the status of all applications necessary to obtain all governmental approvals required for the Project. Advising the City as to any hearings or meetings regarding the Project with sufficient advance notice to enable the City to participate in the hearings or meetings.
8. Permit the City or its representative, as reasonably requested by the City, to participate in all meetings with the construction contractor, Principal Architect and other contractors. The Housing Authority shall also insure that the City or its representative has access to the Project to inspect its progress as set forth in the Agreement.
9. Causing the construction and completion of the Project in accordance with this Agreement, the Project Schedule, and the Project Budget.
10. Monitoring the performance of all persons and entities that are to provide materials, equipment, or services to the Project. The Housing Authority shall take necessary actions to maintain adherence to commercially reasonable quality standards, safety standards, production schedules, shipping dates, and job-site requirements.
11. Submitting construction progress reports to the City in conjunction with its monthly report requirements.

12. At both Substantial Completion and six months after Substantial Completion of the Project, the Housing Authority shall inspect the work in conjunction with the Principal Architect. The Housing Authority shall require the construction contractor to replace or correct faulty work.
13. Require the construction contractor to provide property insurance with coverages and amounts required under the Agreement, and in form and substance reasonably acceptable to the City. Additionally, the Housing Authority shall provide the City with payment and performance bonds, and warranties of good title and workmanship for the Improvements.
14. Perform all such other Construction Services that are reasonably necessary in connection with the Project.

Exhibit D - Project Budget

This budget is based on working assumptions to date, is extremely preliminary and should not be relied on. The final project budget will depend on the final approved plans for the project and the cost of labor and materials at that time. The numbers shown below will change.

Land Cost	\$ 0	(City-owned property)
Construction Costs	\$19,100,000	
Soft Costs	\$ 3,200,000	
Developer Fee	<u>\$ 900,000</u>	
Total	\$23,200,000*	

* Preliminary numbers subject to change.

Exhibit E - Purchase Option and Right of First Refusal

The investor in the Owner Entity will have the right to trigger a sale of the Property (a Triggering Event) at any time after initial lease-up to the City. The City may, in City's sole discretion, assign its rights and obligations under the Purchase Option and Right of First Refusal to the Housing Authority, which assignment the Housing Authority will accept. In addition, the Restrictive Covenant will provide that the City will have the right to repurchase the Property upon both the occurrence of a Triggering Event and on the first 10-year anniversary of the Restrictive Covenant, as follows.

A. In order to protect the public interest from the investor receiving the benefit of a potential gain from sale above an inflation-adjusted value of its original investment, the City may repurchase the Property. A sale price formula will be created in the Restrictive Covenant that will create certain repurchase rights for the City.

B. Repurchase Formula. For purposes of City repurchase of the Property, the sale price of the Property will be set as the original cost basis of the Property, plus an annual inflation adjustment to the Net Investment (defined below), plus any capital investments required to be made beyond the initial construction, plus any Unpaid Cumulative Yield. The Repurchase price will be calculated as of the date of Closing of such sale.

C. Sale Upon a Triggering Event. When the investor in the Owner Entity (or a future owner) notifies City of its intent to sell the Property, City will have a 90-day first right of refusal to repurchase the Property on the above valuation formula. The City and Housing Authority would cooperate as to how they would exercise the repurchase right.

D. If City elects to exercise the repurchase right, escrow will close within 120 days of the notice of the Triggering Event. Pursuant to the cooperation mentioned above, the City would thereafter own the Property.

E. If the City does not elect to exercise the repurchase right, Owner Entity or a future owner may then proceed to sell the Property on the open market, subject to the terms of the Restrictive Covenant using the then current Area Median Income figures published by the U.S. Department of Housing and Urban Development ("HUD"), and the requirement for the Housing Authority to be the property manager (unless terminated due to cause). In this case, the Repurchase Formula in "B" above would not apply, and the Property would be sold at market value subject to the Restrictive Covenant. Upon the occurrence of such a "market rate sale," the following would apply:

1. Upon a sale to a new owner, a new cost basis would then be set for the Property, and the next owner would then own the Property subject to the terms of the Restrictive Covenant.
2. If the sale price of the Property at market value exceeds the then-calculated Repurchase Formula, any excess proceeds would first be used to repay the City Investment (if any) with accrued interest.
3. If net proceeds remain after repayment of the City Investment (defined below), 20% of the calculated net surplus will be contributed by the Owner Entity to the City's Affordable Housing Asset Fund (or some equivalent affordable housing fund controlled by City as may exist in the

future). In this way, if the market value exceeds the Repurchase Formula, the City retains the benefits of both the Restrictive Covenant as well as additional funds for other new City-directed affordable housing priorities at that time. The 20% level is set as an approximation of the value of the contribution of the City-owned land to the Project as compared to the overall development cost.

Net Investment. Because the Owner Entity's capital investment into the Property can change over time (for example, through placing financing on the Property, a need for additional capital expenditures on the Property, or through a sale to a new owner), the inflation adjustment factor will be applied to the annual Net Investment balance, which shall be reported to the City upon each annual report and certification required by the Restrictive Covenant. The inflation adjustment factor will be an agreed-on publicly published price index to be determined. For purposes of this definition, depreciation is not considered a reduction to Net Investment or Cost Basis.