

# SAN MATEO COUNTY COUNTYWIDE OVERSIGHT BOARD MEETING

## AGENDA

Monday, January 28, 2019 at 9:00 a.m.  
400 County Center, 1<sup>st</sup> Floor  
Board of Supervisors' Chambers  
Redwood City, California 94063

1. Call to Order
2. Roll Call
3. Oral Communications and Public Comment  
*This is an opportunity for members of the public to address the Oversight Board on any Oversight Board-related topics that are not on the agenda. If your subject is not on the agenda, the individual chairing the meeting will recognize you at this time. Speakers are customarily limited to two minutes.*
4. Action to Set the Agenda
5. Approval of the January 14, 2019 Countywide Oversight Board Meeting Minutes
6. Adopt a Resolution Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the Redwood City Successor Agency
7. Adopt a Resolution Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the San Bruno Successor Agency
8. Adopt a Resolution Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the East Palo Alto Successor Agency
9. Adopt a Resolution Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the Pacifica Successor Agency
10. Adjournment

*A copy of the Countywide Oversight Board agenda packet is available for review from the Clerk of the Board of Supervisors, 400 County Center, 1st Floor, Monday through Thursday 7:30 a.m.-5:30 p.m. and Friday 8 a.m.-5 p.m.*

*Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact Sukhmani Purewal, Assistant Clerk of the Board of Supervisors, at least two working days before the meeting at (650) 363-1802 and/or spurewal@smcgov.org. Notification in advance of the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Attendees to this meeting are reminded that other attendees may be sensitive to various chemical based products.*

# San Mateo County Countywide Oversight Board Meeting

Monday, January 14, 2019, 9:00 a.m.

400 County Center, 1<sup>st</sup> Floor, County of Board of Supervisors' Chambers, Redwood City, CA 94063

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## DRAFT MINUTES

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### 1. Call to Order

The meeting was called to order by Chair Tom Casey at 9:13 a.m.

### 2. Roll Call

#### **Present:**

Board Members: Chuck Bernstein; Barbara Christensen; Denise Porterfield; Jim Saco; and Chair Tom Casey.

Staff: Shirley Tourel, Assistant Controller; Matthew Slaughter, Controller Division Manager; Brian Wong, Deputy County Counsel; and Sukhmani S. Purewal, Assistant Clerk of the Board.

#### **Absent:**

Board Members: Mark Addiego and Trish Blinstrub

### 3. Oral Communications and Public Comment

None

### 4. Action to Set the Agenda

**RESULT:** **Approved**

**MOTION:** Denise Porterfield

**SECOND:** Jim Saco

**AYES [5]:** Chuck Bernstein, Tom Casey, Barbara Christensen, Denise Porterfield, and Jim Saco.

**NOES:** None

**ABSENT [2]:** Mark Addiego and Trish Blinstrub

**ABSTENTIONS:** None

### 5. Approval of the November 26, 2018 Countywide Oversight Board Meeting Minutes

**RESULT:** **Approved**

**MOTION:** Barbara Christensen

**SECOND:** Jim Saco

**AYES [5]:** Chuck Bernstein, Tom Casey, Barbara Christensen, Denise Porterfield, and Jim Saco.

**NOES:** None

**ABSENT [2]:** Mark Addiego and Trish Blinstrub

**ABSTENTIONS:** None

### 6. South San Francisco Successor Agency Study Session – PUC Properties Developer Selection Process (Discussion Only)

**Speakers:**

Alex Greenwood, Director of Economic & Community Development, City of South San Francisco  
Mike Futrell, City Manager, City of South San Francisco  
Brian Wong, Deputy County Counsel

7. Closed Session

**Conference with Legal Counsel - Anticipated Litigation**

Significant exposure to litigation pursuant to subdivision (d)(2) of Gov't Code Section 54956.9  
One Case

The Board adjourned to Closed Session at 9:47 a.m. to discuss the above closed session item.

The Board returned to open session at 10:18 a.m. with no further action to report out by Brian Wong, Deputy County Counsel.

8. Adopt Resolutions Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the South San Francisco Successor Agency

**Speakers:**

Shirley Tourel, Assistant Controller  
Suzy Kim, Associate at RSG and Successor Agency's Consultant  
Steve Mattas, Assistant City Attorney, City of South San Francisco  
David Blackwell, Allen Matkins Leck Gamble Mallory & Natsis LLP

**RESULT:**           **Approved (Resolution No. 2019-01)**  
**MOTION:**         Jim Saco  
**SECOND:**         Barbara Christensen  
**AYES [5]:**         Chuck Bernstein, Tom Casey, Barbara Christensen, Denise Porterfield, and Jim Saco.  
**NOES:**           None  
**ABSENT [2]:**     Mark Addiego and Trish Blinstrub  
**ABSTENTIONS:** None

9. Adopt Resolutions Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the Pacifica Successor Agency

**Speakers:**

Lorenzo Hines, Assistant City Manager, City of Pacifica  
Shirley Tourel, Assistant Controller  
Brenda Olwin, Finance Director, City of East Palo Alto

*The Board agreed to continue this item to the next Oversight Board Meeting on January 28, 2019, for further discussion.*

10. Adopt Resolutions Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the Foster City Successor Agency

**Speakers:**

Edmund Suen, Financial Services Director, City of Foster City

**RESULT:** **Approved (Resolution No. 2019-02)**  
**MOTION:** Jim Saco  
**SECOND:** Chuck Bernstein  
**AYES [5]:** Chuck Bernstein, Tom Casey, Barbara Christensen, Denise Porterfield, and Jim Saco.  
**NOES:** None  
**ABSENT [2]:** Mark Addiego and Trish Blinstrub  
**ABSTENTIONS:** None

11. Adopt Resolutions Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the East Palo Alto Successor Agency

**Speakers:**

Brenda Olwin, Finance Director, City of East Palo Alto

*The Board agreed to continue this item to the next Oversight Board Meeting on January 28, 2019, for further discussion.*

12. Adopt Resolutions Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the San Bruno Successor Agency

**Speakers:**

Keith DeMartini, Finance Director, City of San Bruno  
Matt Slaughter, Controller Division Manager

*The Board agreed to continue this item to the next Oversight Board Meeting on January 28, 2019, for further discussion.*

13. Adopt Resolutions Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the San Carlos Successor Agency

**Speakers:**

Suzy Kim, Associate at RSG and Successor Agency's Consultant

**RESULT:** **Approved (Resolution No. 2019-03)**  
**MOTION:** Jim Saco  
**SECOND:** Barbara Christensen  
**AYES [5]:** Chuck Bernstein, Tom Casey, Barbara Christensen, Denise Porterfield, and Jim Saco.  
**NOES:** None  
**ABSENT [2]:** Mark Addiego and Trish Blinstrub  
**ABSTENTIONS:** None

14. Adopt Resolutions Approving the Annual Recognized Obligation Payment Schedule (ROPS 19-20) and FY 2019-20 Administrative Budget of the Redwood City Successor Agency

**Speakers:**

Derek Rampone, Financial Services Manager, City of Redwood City  
Carolyn Kerans, Senior Accountant, City of Redwood City  
Matt Slaughter, Controller Division Manager

*The Board agreed to continue this item to the next Oversight Board Meeting on January 28, 2019, for further discussion.*



15. Adjournment

**RESULT:** **Approved**  
**MOTION:** Barbara Christensen  
**SECOND:** Denise Porterfield  
**AYES [5]:** Chuck Bernstein, Tom Casey, Barbara Christensen, Denise Porterfield, and Jim Saco.  
**NOES:** None  
**ABSENT [2]:** Mark Addiego and Trish Blinstrub  
**ABSTENTIONS:** None

The meeting was adjourned at 11:26 a.m.

# San Mateo County Countywide Oversight Board

Date: January 18, 2019 Agenda Item No. 6  
To: San Mateo County Countywide Oversight Board  
From: Shirley Tourel, Assistant Controller  
Subject: Redwood City Successor Agency (SA) Recognized Obligation Payment Schedule (ROPS) 19-20

## **Background**

California Health and Safety Section Code (HSC) 34180(g) requires all ROPS to be approved by the Oversight Board (the "Board").

## **Discussion**

The Annual ROPS 19-20 contains all the obligations of the former Redevelopment Agency (RDA) for fiscal year 2019-20.

The Redwood City SA presented their ROPS and Administrative Budget for fiscal year 2019-20 to the Board on January 14, 2019 for approval. The Board requested costs relating to the secretary (\$5,548) and the city clerk (\$4,765) be removed from the administrative budget. The SA has removed the city clerk's costs but retained the secretary's costs. The SA included an explanation on Attachment 4 - Exhibit C - Page 4.

Enclosed is the Redwood City SA's revised ROPS and Administrative Budget for fiscal year 2019-20 on which they are requesting approval by the Board to spend \$3,703,516 on outstanding obligations and administrative expenses.

## **CAC Exhibits**

A. Redwood City SA's Annual ROPS 19-20

Date: January 16, 2019

To: San Mateo County Countywide Oversight Board

From: **Kimbra McCarthy, Assistant City Manager – Administrative Services, City of Redwood City**

Subject: Approval of the Recognized Obligation Payment Schedule (ROPS) 19-20 and Administrative Cost Allowance Budget of the Redwood City Successor Agency (SA)

Former RDA: **Redwood City Successor Agency**

### **Recommendation**

Adopt resolutions approving the Redwood City SA's ROPS 19-20 and Administrative Cost Allowance Budget.

### **Background**

SAs who are not currently on the Last and Final ROPS, must submit annually a ROPS listing the SA's enforceable obligations and expenses to the State Department of Finance (DOF) pursuant to Health & Safety Section Codes (H&S) 34177(m) and (o). The ROPS shall include an amount for the SA's Administrative Cost Allowance as authorized under the Dissolution Act which is subject to a cap as set forth under H&S 34171. The ROPS and the Budget for the SA's Administrative Cost Allowance must be approved by the Oversight Board.

### **Discussion**

Submitted for the Oversight Board's approval is the ROPS 19-20 (Exhibit A). While the DOF's ROPS template requires all enforceable obligations to be listed, the Oversight Board approval is for the funding of those items to be paid in fiscal year 2019-20. Exhibit C summarizes those items and provides supporting documentation.

### **Financial Impact**

No funds are involved with the approval of the ROPS.

### **Attachments:**

1. Resolution Approving the Redwood City SA's ROPS 19-20 and FY 2019-20 Administrative Budget
2. Exhibit A - Redwood City SA's ROPS 19-20
3. Exhibit B - Redwood City SA's Administrative Budget
4. Exhibit C - Summary of Obligations and Supporting Documents

**RESOLUTION NO. 2019-\_\_\_\_\_**

**RESOLUTION OF THE SAN MATEO COUNTY COUNTYWIDE OVERSIGHT BOARD APPROVING THE  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE 19-20 ("ROPS 19-20") AND FISCAL YEAR 2019-20  
ADMINISTRATIVE BUDGET OF THE SUCCESSOR AGENCY TO THE FORMER REDWOOD CITY  
REDEVELOPMENT AGENCY (RDA)**

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare a Recognized Obligation Payment Schedule ("ROPS") for each 12-month fiscal period, which lists the outstanding obligations of the former RDA and states the sources of funds for required payments; and

**WHEREAS**, the Successor Agency to the Former Redwood City Redevelopment Agency has prepared a draft ROPS for the period July 1, 2019 to June 30, 2020, referred to as "ROPS 19-20", claiming a total enforceable obligation amount of \$3,703,516, as set forth in the attached Exhibit A; and

**WHEREAS**, pursuant to HSC 34180(g) the Oversight Board must approve the establishment of each ROPS; and

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare an administrative budget for Oversight Board approval; and

**WHEREAS**, the Successor Agency to the Former Redwood City Redevelopment Agency has prepared an administrative budget for the period July 1, 2019 to June 30, 2020, for \$194,116, as set forth in the attached Exhibit B; and

**WHEREAS**, California Health and Safety Code Section (HSC) 34179(e) requires all action items of Countywide Oversight Boards, including the San Mateo County Countywide Oversight Board, be accomplished by resolution.

**NOW, THEREFORE, BE IT RESOLVED**, the San Mateo County Countywide Oversight Board hereby approves the Redwood City Successor Agency's ROPS 19-20 and Fiscal Year 19-20 Administrative Budget, attached hereto as Exhibits A and B and incorporated herein by this reference;

**BE IT FURTHER RESOLVED**, that the Oversight Board directs the Successor Agency to submit the ROPS 19-20 to the State Department of Finance upon approval by the Oversight Board.

\* \* \*

Exhibit A – Redwood City Successor Agency's Recognized Obligation Payment Schedule 19-20  
Exhibit B – Redwood City Successor Agency's FY 2019-20 Administrative Budget

**Recognized Obligation Payment Schedule (ROPS 19-20) - Summary  
Filed for the July 1, 2019 through June 30, 2020 Period**

**Successor Agency:** Redwood City  
**County:** San Mateo

<b>Current Period Requested Funding for Enforceable Obligations (ROPS Detail)</b>	<b>19-20A Total (July - December)</b>	<b>19-20B Total (January - June)</b>	<b>ROPS 19-20 Total</b>
<b>A Enforceable Obligations Funded as Follows (B+C+D):</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
B Bond Proceeds	-	-	-
C Reserve Balance	-	-	-
D Other Funds	-	-	-
<b>E Redevelopment Property Tax Trust Fund (RPTTF) (F+G):</b>	<b>\$ 99,358</b>	<b>\$ 3,604,158</b>	<b>\$ 3,703,516</b>
F RPTTF	2,300	3,507,100	3,509,400
G Administrative RPTTF	97,058	97,058	194,116
<b>H Current Period Enforceable Obligations (A+E):</b>	<b>\$ 99,358</b>	<b>\$ 3,604,158</b>	<b>\$ 3,703,516</b>

Certification of Oversight Board Chairman:  
Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named successor agency.

\_\_\_\_\_  
Name Title  
/s/ \_\_\_\_\_  
Signature Date

Redwood City Recognized Obligation Payment Schedule (ROPS 19-20) - ROPS Detail

July 1, 2019 through June 30, 2020

(Report Amounts in Whole Dollars)

A	B	C	D	E	F	G	H	I	J	K	19-20A (July - December)					19-20B (January - June)					W	
											Fund Sources					Fund Sources						
											L	M	N	O	P	Q	R	S	T	U		V
Item #	Project Name/Debt Obligation	Obligation Type	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Retired	ROPS 19-20 Total	Total	Total	Total	Total	Total	Total	Total	Total	Total			
								\$ 49,803,890		\$ 3,703,516	\$ 0	\$ 0	\$ 0	\$ 2,300	\$ 97,058	\$ 99,358	\$ 0	\$ 0	\$ 0	\$ 3,507,100	\$ 97,058	\$ 3,604,158
1	Tax allocation Bond, Series 2003A	Bonds Issued On or Before	10/15/2003	7/15/2032	US Bank	Debt service for bonds issued for RDA		13,059,451	N	\$ 1,450,684										1,450,684		\$ 1,450,684
2	Tax allocation Bond, Series 2003A for infrastructure projects [34171 (d) 1 (A)]	Bonds Issued On or Before	10/15/2003	7/15/2032	US Bank	Interest payments for bonds issued for RDA Project Area No. 2		32,515,547	N	\$ 2,054,316										2,054,316		\$ 2,054,316
7	On-going debt service bank and fiscal agent fees [34171 (d) 1 (A)]	Fees	10/15/2003	7/15/2032	US Bank and Willdan Financial	Bank fees and annual disclosure fees for the 2003 Bond		83,316	N	\$ 4,400			2,300		\$ 2,300					2,100		\$ 2,100
22	Villa Montgomery- FCH [34171 (d) 1 (B)]	City/County Loan (Prior 06/28/11), Other	5/25/2006	12/1/2045	San Mateo County	Loan payable to San Mateo County on part of FCH loan		500,000	N	\$ -												\$ -
23	Successor Agency Administrative Cost Allowance [34171 (b)]	Admin Costs	7/1/2012	7/15/2032	Successor Agency	Minimum amount of property tax to Successor Agency for general administrative costs		3,645,576	N	\$ 194,116				97,058	\$ 97,058						97,058	\$ 97,058

**Redwood City Recognized Obligation Payment Schedule (ROPS 19-20) - Report of Cash Balances**  
**July 1, 2016 through June 30, 2017**  
**(Report Amounts in Whole Dollars)**

Pursuant to Health and Safety Code section 34177 (I), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. For tips on how to complete the Report of Cash Balances Form, see [Cash Balance Tips Sheet](#).

A	B	C	D	E	F	G	H
		<b>Fund Sources</b>					
		<b>Bond Proceeds</b>		<b>Reserve Balance</b>	<b>Other Funds</b>	<b>RPTTF</b>	
	<b>ROPS 16-17 Cash Balances (07/01/16 - 06/30/17)</b>	Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, Grants, Interest, etc.	Non-Admin and Admin	<b>Comments</b>
<b>1</b>	<b>Beginning Available Cash Balance (Actual 07/01/16)</b> RPTTF amount should exclude "A" period distribution amount	108,914		3,505,000		201,006	previous balance included \$1459194 16-17A distribution
<b>2</b>	<b>Revenue/Income (Actual 06/30/17)</b> RPTTF amount should tie to the ROPS 16-17 total distribution from the County Auditor-Controller				1,386,850	6,557,028	deleted 17-18A payment of \$1012109 and added 16-17A distribution to this line
<b>3</b>	<b>Expenditures for ROPS 16-17 Enforceable Obligations (Actual 06/30/17)</b>					6,557,028	
<b>4</b>	<b>Retention of Available Cash Balance (Actual 06/30/17)</b> RPTTF amount retained should only include the amounts distributed as reserve for future period(s)	108,914		3,505,000			In FY 17-18, bond proceeds were transferred to City for expenditures consistent with the original stated purpose of the bonds; Debt service on bonds (\$3,505,000) due July 2017
<b>5</b>	<b>ROPS 16-17 RPTTF Prior Period Adjustment</b> RPTTF amount should tie to the Agency's ROPS 16-17 PPA form submitted to the CAC	No entry required					
<b>6</b>	<b>Ending Actual Available Cash Balance (06/30/17)</b> <b>C to F = (1 + 2 - 3 - 4), G = (1 + 2 - 3 - 4 - 5)</b>	\$ 0	\$ 0	\$ 0	\$ 1,386,850	\$ 201,006	Sum = \$1,587,856 comprised of loan payoff amounts, interest income and rents





**Successor Agency to the Former City of Redwood City Redevelopment Agency  
ROPS 19-20 Administrative Cost Allowance Budget  
Period: 7/1/19 to 6/30/20**

<b>Description of Cost/Expense</b>	<b>Amount</b>	<b>Comments</b>
<i>Best, Best &amp; Krieger - estimated legal costs related to:</i>		
<i>a. LAS litigation</i>		based on 100 hours at \$300 per hour for work
<i>b. Maple/Lathrop parcel disposition</i>	\$ 30,000	Staff estimates the following cost associated with the disposition of the culvert parcel: Appraisal report \$6000; Geotechnical Report \$6000; Consultant 90 hours x \$200/hr
<i>Estimated property consultant services related to Maple/Lathrop parcel disposition</i>	\$ 30,000	Attached are copies of invoices paid for FY 17 audit that total \$1343; assume slight increase in costs
<i>Badawi &amp; Associates - estimated costs FY 18-19 audit</i>	\$ 1,500	Attached is a list positions, budget, and description of duties related to Successor Agency Administration
<i>Staff costs</i>	\$ 132,616	
<b>Total</b>	<b><u>\$ 194,116</u></b>	

## SUMMARY OF OBLIGATIONS AND SUPPORTING DOCUMENTS

ROPS Item No.	ROPS Category	Description of Obligation	Payee	ROPS 19-20 Requested Funding	Supporting Document
1	Bonds	Tax Allocation Bonds, Series 2003A (Principal)	US Bank	\$ 1,450,684	Exhibit C Page 2 - Debt Service Schedule
2	Bonds	Tax Allocation Bonds, Series 2003A (Interest)	US Bank	2,054,316	
3	Other/Miscellaneous	On-going debt service bank and fiscal agent fees [34171 (d) 1 (A)]	US Bank/Willdan	4,400	Exhibit C Page 3 - Ongoing Debt Service Bank and Fiscal Agent Fee Schedule
5	Admin	Successor Agency Administrative Cost Allowance {34171 (b)}Legal, audit, staff costs	Successor Agency	194,116	Refer to Exhibit B - Additional support in Exhibit C Pages 4 and 5 - Admin Staffing Summary and Audit Fees

**Total****\$ 3,703,516**

## Debt Service Schedule

The following table presents debt service for the Bonds, as well as for the 1997 Bonds, which are payable from Tax Revenues on a parity with the Bonds. A portion of the 1997 Bonds were used for housing purposes and 20% of the debt service on the 1997 Bonds is payable from moneys in the Agency's Housing Set-Aside moneys. See "SECURITY FOR THE BONDS – Low and Moderate Housing Set-Aside."

**TABLE 2**  
**REDEVELOPMENT AGENCY OF THE CITY OF REDWOOD CITY**  
**Redevelopment Project Area No. 2**  
**Debt Service Schedule**

Bond Year Ending July 15	1997 Bonds Debt Service <sup>(1)</sup>	2003A Current Interest Bonds Principal	2003A Current Interest Bonds Interest	2003A Capital Appreciation Bonds Denominational Amount	Series 2003A Capital Appreciation Bonds Compounded Interest	Series 2003A Bonds Total Debt Service	1997 Bonds and 2003A Bonds Aggregate Debt Service
2004	\$1,548,977.50		\$463,356.25			\$ 463,356.25	\$2,012,333.75
2005	1,545,746.75		654,150.00			654,150.00	2,199,896.75
2006	1,540,365.00		654,150.00			654,150.00	2,194,515.00
2007	1,544,265.00		654,150.00			654,150.00	2,198,415.00
2008	1,545,580.00		654,150.00			654,150.00	2,199,730.00
2009	1,543,350.00		654,150.00			654,150.00	2,197,500.00
2010	1,541,850.00	\$1,225,000	654,150.00			1,879,150.00	3,421,100.00
2011	1,545,705.00	1,265,000	611,275.00			1,876,275.00	3,421,980.00
2012		2,480,000	560,675.00			3,040,675.00	3,040,675.00
2013		2,895,000	461,475.00			3,356,475.00	3,356,475.00
2014		3,045,000	309,487.50			3,354,487.50	3,354,487.50
2015		2,850,000	149,625.00	\$ 292,668.60	\$ 217,331.40	3,509,625.00	3,509,625.00
2016				1,889,860.95	1,615,139.05	3,505,000.00	3,505,000.00
2017				1,773,915.55	1,731,084.45	3,505,000.00	3,505,000.00
2018				1,663,893.60	1,841,106.40	3,505,000.00	3,505,000.00
2019				1,557,657.05	1,947,342.95	3,505,000.00	3,505,000.00
2020				1,450,684.45	2,054,315.55	3,505,000.00	3,505,000.00
2021				1,352,544.45	2,152,455.55	3,505,000.00	3,505,000.00
2022				1,256,332.20	2,248,667.80	3,505,000.00	3,505,000.00
2023				1,172,831.40	2,337,168.60	3,510,000.00	3,510,000.00
2024				1,090,125.10	2,414,874.90	3,505,000.00	3,505,000.00
2025				1,025,983.60	2,479,016.40	3,505,000.00	3,505,000.00
2026				967,415.05	2,537,584.95	3,505,000.00	3,505,000.00
2027				911,965.95	2,593,034.05	3,505,000.00	3,505,000.00
2028				859,566.20	2,645,433.80	3,505,000.00	3,505,000.00
2029				810,005.50	2,694,994.50	3,505,000.00	3,505,000.00
2030				763,178.70	2,741,821.30	3,505,000.00	3,505,000.00
2031				719,901.00	2,790,099.00	3,510,000.00	3,510,000.00
2032				678,918.50	2,826,081.50	3,505,000.00	3,505,000.00

(1) 20% of debt service on the 1997 Bonds is payable from Housing Set-Aside amounts.

DOF Item #7 - Ongoing Debt Service Bank & Fiscal Agent Fees						
	Bank Fees Trustee	Continuing Disclosure	Arbitrage Fees	Total	Remaining Obligation	Fiscal Year Total
ROPS 13-14B		2,100	2,000	4,100	105,709	
ROPS 14-15A	2,321			2,321	103,389	
ROPS 14-15B		2,142		2,142	101,247	4,463
ROPS 15-16A	2,367			2,367	98,880	
ROPS 15-16B		2,185		2,185	96,695	4,552
ROPS 16-17A	2,414			2,414	94,281	
ROPS 16-17B		2,229		2,229	92,052	4,643
ROPS 17-18A	2,463			2,463	89,590	
ROPS 17-18B		2,273		2,273	87,317	4,736
ROPS 18-19A	2,512		2,200	4,712	82,605	
ROPS 18-19B		2,319		2,319	80,286	7,030
ROPS 19-20A	2,562			2,562	77,724	
ROPS 19-20B		2,365		2,365	75,359	4,927
ROPS 20-21A	2,613			2,613	72,746	
ROPS 20-21B		2,412		2,412	70,334	5,025
ROPS 21-22A	2,666			2,666	67,668	
ROPS 21-22B		2,460		2,460	65,208	5,126
ROPS 22-23A	2,719			2,719	62,489	
ROPS 22-23B		2,510		2,510	59,979	5,229
ROPS 23-24A	2,773		2,420	5,193	54,786	
ROPS 23-24B		2,560		2,560	52,226	7,753
ROPS 24-25A	2,829			2,829	49,398	
ROPS 24-25B		2,611		2,611	46,787	5,440
ROPS 25-26A	2,885			2,885	43,901	
ROPS 25-26B		2,663		2,663	41,238	5,549
ROPS 26-27A	2,943			2,943	38,295	
ROPS 26-27B		2,717		2,717	35,578	5,660
ROPS 27-28A	3,002			3,002	32,577	
ROPS 27-28B		2,771		2,771	29,806	5,773
ROPS 28-29A	3,062		2,662	5,724	24,082	
ROPS 28-29B		2,826		2,826	21,256	8,550
ROPS 29-30A	3,123			3,123	18,132	
ROPS 29-30B		2,883		2,883	15,250	6,006
ROPS 30-31A	3,186			3,186	12,064	
ROPS 30-31B		2,941		2,941	9,124	6,126
ROPS 31-32A	3,249			3,249	5,874	
ROPS 31-32B		2,999	2,875	5,874	0	9,124
	49,687	47,965	12,157	109,809		

**Exhibit C****REDWOOD CITY SUCCESSOR AGENCY ADMINISTRATIVE BUDGET****Personnel Costs****ROPS 19-20 July 1, 2019 - June 30, 2020**

<b>Personnel Costs and Duties</b>	<b>Department</b>	<b>FTE Allocation</b>	<b>Budget</b>
<b>Assistant City Manager - Administrative Services</b> Finance Director/Treasurer to the City and Successor Agency. Oversight for all items related to the Successor Agency; attends Oversight Board meetings as needed.	Administrative Services Department	0.07	25,762
<b>Assistant City Manager - Community Development</b> Community Development Director. Oversees and provides direction on disposing last remaining former RDA and Successor Agency property; attends Oversight Board meetings as needed.	Community Development Department	0.05	18,401
<b>Financial Services Manager</b> Attends all Oversight Board meetings; liason to Controller's Office and Department of Finance. Ensures accurate accounting and annual audit of all former RDA and Successor Agency transactions.	Administrative Services Department	0.05	13,221
<b>City Manager</b> Executive Director to the Successor Agency. Oversight for all items related to the former RDA, Successor Agency, attends Oversight Board meetings as needed.	City Manager's Office	0.01	4,498
<b>City Attorney</b> Ongoing legal support for all matters concerning the dissolution of the redevelopment agency and the Successor Agency. This includes managing and working with outside legal counsel; preparing legal documentation; providing legal review. Attends Oversight Board meetings as needed.	City Attorney's Office	0.05	19,643
<b>Principal Analyst</b> Attends all Oversight Board meetings; preparation of oversight board meeting agenda items; liason to Controller's Office and Department of Finance. Submission of ROPS and actions to DOF; maintains permanent files and website.	Administrative Services Department	0.10	23,151
<b>Secretary</b> Assists the Assistant City Manager - Community Development (Community Development Director) with all tasks associated with the former RDA and Successor Agency related to property disposition including coordinating appraisal, deeds, and / or surveys.	Community Development Department	0.04	5,548
<b>Senior Accountant</b> Attends all Oversight Board meetings. Preparation of Recognized Obligation Payment Schedules, Administrative Budgets. Oversight of accounting and financial obligations of the former RDA and Successor Agency including reconciliation of ledger. Serve as liason to Controller's Office and Department of Finance.	Administrative Services Department	0.08	17,140
<b>Senior Assistant City Attorney</b> Ongoing legal support for all matters concerning the dissolution of the redevelopment agency and the Successor Agency. This includes legal research to provide advice and counsel.	City Attorney's Office	0.02	5,252
<b>Total</b>		<b>0.47</b>	<b>\$ 132,616</b>

Badawi & Associates - Audit Contract fee by fund

	Account #	FY 2016-17	FY 2017-18	FY 2018-19	Allocation by 6.30.16 Revenues	
General	150-61710-50	\$ 30,007	\$ 30,907	\$ 31,839	118435016	59.68%
Sewer	688-61710-50	\$ 8,804	\$ 9,069	\$ 9,342	34751478	17.51%
Water	687-61710-50	\$ 9,350	\$ 9,631	\$ 9,921	36906034	18.60%
Parking	681-61710-50	\$ 608	\$ 627	\$ 645	2400997	1.21%
Docktown	695-61710-50	\$ 168	\$ 173	\$ 178	663658	0.33%
	<b>Direct Charges</b>					
CDBG	258-66310-50-17001	\$ 3,220	\$ 3,320	\$ 3,420		
Measure A	262-61710-50	\$ 3,600	\$ 3,700	\$ 3,820		
UUT	153-61710-50	\$ 1,800	\$ 1,850	\$ 1,910		
Successor Agency	293-66410-50	\$ 1,343	\$ 1,383	\$ 1,425	5299083	2.67%
Gas Tax	261-61710-50	\$ 1,100	\$ 1,130	\$ 1,160		
Port	paid directly by Port	\$ 16,520	\$ 17,020	\$ 17,530		
	<b>TOTAL</b>	\$ 76,520	\$ 78,810	\$ 81,190		

**TOTAL**

# San Mateo County Countywide Oversight Board

Date: January 18, 2019 Agenda Item No. 7  
To: San Mateo County Countywide Oversight Board  
From: Shirley Tourel, Assistant Controller  
Subject: San Bruno Successor Agency (SA) Recognized Obligation Payment Schedule (ROPS)  
19-20

## **Background**

California Health and Safety Section Code (HSC) 34180(g) requires all ROPS to be approved by the Oversight Board (the "Board").

## **Discussion**

The Annual ROPS 19-20 contains all the obligations of the former Redevelopment Agency (RDA) for fiscal year 2019-20.

The San Bruno SA presented their ROPS and Administrative Budget for fiscal year 2019-20 to the Board on January 14, 2019 for approval. The Board requested the SA to remove the costs associated with the City Clerk and the Community Development Director. The overhead was also adjusted.

Enclosed is the San Bruno SA's revised ROPS and Administrative Budget for fiscal year 2019-20 on which they are requesting approval by the Board to spend \$1,369,498 on outstanding obligations and administrative expenses.

## **CAC Exhibits**

A. San Bruno SA's Annual ROPS 19-20

Date: December 7, 2018

To: San Mateo County Countywide Oversight Board

From: **Keith DeMartini, Finance Director, City of San Bruno**

Subject: San Bruno Successor Agency (SA) Recognized Obligation Payment Schedule (ROPS)  
19-20 Revised

Former RDA: **San Bruno**

**Recommendation**

Adopt resolutions approving the San Bruno SA's ROPS 19-20 and FY 2019-20 Administrative Cost Allowance Budget.

**Background**

The City of San Bruno Successor Agency recently submitted a request on November 28<sup>th</sup>, 2018 to the Department of Finance (DOF) for approval of an action taken by the San Mateo County Oversight Board and the Successor Agency approving the Issuance of Lease Revenue Bonds, Series 2019 in order to Refund the Certificates of Participation (COP), Series 2000. The DOF has accepted receipt of our documentation which is currently under review. Therefore San Bruno currently does not qualify to submit our Last and Final ROPS. Instead, The San Bruno Successor Agency submits their 2019-20 ROPS listing the SA's enforceable obligations and expenses to the DOF pursuant to Health & Safety Section Codes (H&S) 34177(m) and (o). The ROPS include an amount for the SA's Administrative Cost Allowance as authorized under the Dissolution Act which is subject to a cap as set forth under H&S 34171. The ROPS and the Budget for the SA's Administrative Cost Allowance are subject to approval by the Oversight Board.

**Discussion**

Submitted for the Oversight Board's approval is the ROPS 19-20 (Exhibit A). While the DOF's ROPS template requires all enforceable obligations to be listed, the Oversight Board approval is for the funding of those items to be paid in fiscal year 2019-20. Exhibit C summarizes those items and provides supporting documentation.

**Financial Impact**

No funds are involved with the approval of the ROPS.

**Attachments:**

1. Resolution Approving the San Bruno SA's ROPS 19-20 and FY 2019-20 Administrative Budget
2. Exhibit A - San Bruno SA's ROPS 19-20
3. Exhibit B - San Bruno SA's Administrative Cost Allowance Budget
4. Exhibit C - Summary of Obligations Due Under ROPS 19-20 and Supporting Documents



**RESOLUTION NO. 2019-\_\_\_\_\_**

**RESOLUTION OF THE SAN MATEO COUNTY COUNTYWIDE OVERSIGHT BOARD APPROVING THE  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE 19-20 (“ROPS 19-20”) AND FISCAL YEAR 2019-20  
ADMINISTRATIVE BUDGET OF THE SUCCESSOR AGENCY TO THE FORMER SAN BRUNO  
REDEVELOPMENT AGENCY (RDA)**

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare a Recognized Obligation Payment Schedule (“ROPS”) for each 12-month fiscal period, which lists the outstanding obligations of the former RDA and states the sources of funds for required payments; and

**WHEREAS**, the Successor Agency to the Former San Bruno Redevelopment Agency has prepared a draft ROPS for the period July 1, 2019 to June 30, 2020, referred to as “ROPS 19-20”, claiming a total enforceable obligation amount of \$1,369,498, as set forth in the attached Exhibit A; and

**WHEREAS**, pursuant to HSC 34180(g) the Oversight Board must approve the establishment of each ROPS; and

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare an administrative budget for Oversight Board approval; and

**WHEREAS**, the Successor Agency to the Former San Bruno Redevelopment Agency has prepared an administrative budget for the period July 1, 2019 to June 30, 2020, for \$38,848, as set forth in the attached Exhibit B; and

**WHEREAS**, California Health and Safety Code Section (HSC) 34179(e) requires all action items of Countywide Oversight Boards, including the San Mateo County Countywide Oversight Board, be accomplished by resolution.

**NOW, THEREFORE, BE IT RESOLVED**, the San Mateo County Countywide Oversight Board hereby approves the San Bruno Successor Agency’s ROPS 19-20 and Fiscal Year 19-20 Administrative Budget, attached hereto as Exhibits A and B and incorporated herein by this reference;

**BE IT FURTHER RESOLVED**, that the Oversight Board directs the Successor Agency to submit the ROPS 19-20 to the State Department of Finance upon approval by the Oversight Board.

\* \* \*

Exhibit A – San Bruno Successor Agency’s Recognized Obligation Payment Schedule 19-20  
Exhibit B – San Bruno Successor Agency’s FY 2019-20 Administrative Budget

**Recognized Obligation Payment Schedule (ROPS 19-20) - Summary  
Filed for the July 1, 2019 through June 30, 2020 Period**

**Successor Agency:** San Bruno  
**County:** San Mateo

<b>Current Period Requested Funding for Enforceable Obligations (ROPS Detail)</b>	<b>19-20A Total (July - December)</b>	<b>19-20B Total (January - June)</b>	<b>ROPS 19-20 Total</b>
<b>A Enforceable Obligations Funded as Follows (B+C+D):</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
B Bond Proceeds	-	-	-
C Reserve Balance	-	-	-
D Other Funds	-	-	-
<b>E Redevelopment Property Tax Trust Fund (RPTTF) (F+G):</b>	<b>\$ 170,499</b>	<b>\$ 1,198,999</b>	<b>\$ 1,369,498</b>
F RPTTF	151,075	1,179,575	1,330,650
G Administrative RPTTF	19,424	19,424	38,848
<b>H Current Period Enforceable Obligations (A+E):</b>	<b>\$ 170,499</b>	<b>\$ 1,198,999</b>	<b>\$ 1,369,498</b>

Certification of Oversight Board Chairman:  
Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named successor agency.

Tom Casey Board Chair  
Name Title  
/s/ \_\_\_\_\_ 12/10/2018  
Signature Date

San Bruno Recognized Obligation Payment Schedule (ROPS 19-20) - ROPS Detail

July 1, 2019 through June 30, 2020

(Report Amounts in Whole Dollars)

A	B	C	D	E	F	G	H	I	J	K	19-20A (July - December)					19-20B (January - June)					W		
											Fund Sources					Fund Sources							
											L	M	N	O	P	Q	R	S	T	U		V	
																							Bond Proceeds
Item #	Project Name/Debt Obligation	Obligation Type	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Retired	ROPS 19-20 Total	Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	19-20A Total	Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	19-20B Total	
								\$ 17,132,029		\$ 1,369,498	\$ 0	\$ 0	\$ 0	\$ 151,075	\$ 19,424	\$ 170,499	\$ 0	\$ 0	\$ 0	\$ 1,179,575	\$ 19,424	\$ 1,198,999	
1	2000 Certificates of Participation	Bonds Issued On or Before	7/25/2000	2/1/2031	Union Bank	Certificates of Participation/Bonds	San Bruno	7,771,029	N	\$ 647,150				148,575		\$ 148,575				498,575		\$ 498,575	
2	2000 Certificates of Participation Fiscal Agent fees	Fees	7/25/2000	2/1/2031	Union Bank	Fiscal Agent fees associated with Certificate of Participation issuance for the Police Facility	San Bruno Redevelopment Project Area	30,000	N	\$ 2,500				2,500		\$ 2,500							\$ -
3	Archstone II Owner Participation Agreement	OPA/DDA/Construction	3/4/2005	7/1/2022	ASN Tanforan Crossing LLC	Tax increment reimbursement of affordable housing subsidy	San Bruno Redevelopment Project Area	1,480,000	N	\$ 370,000						\$ -					370,000		\$ 370,000
4	Archstone I Owner Participation Agreement	OPA/DDA/Construction	12/11/2002	7/1/2039	ASN Tanforan Crossing LLC	Tax increment reimbursement of affordable housing subsidy	San Bruno Redevelopment Project Area	6,531,000	N	\$ 311,000						\$ -					311,000		\$ 311,000
5	Administrative Costs	Admin Costs	1/1/2030	1/1/2030	Successor Agency	Administrative Allowance	San Bruno Redevelopment Project Area	1,320,000	N	\$ 38,848					19,424	\$ 19,424						19,424	\$ 19,424
8	City Advances to the Redevelopment Agency in accordance with Cooperation Agreement dated August 10, 1998 plus accrued interest from loan origination 6/27/13-5/31/14	City/County Loan (Prior 06/28/11), Cash exchange	8/10/1998	12/31/2014	City of San Bruno	Loan for operating and admin costs plus accrued interest set at revised rate of 3% per SB 107. 20% of repayment amounts will be transferred to Low and Mod Housing Asset Fund.	San Bruno Redevelopment Project Area	0	N	\$ -				0		\$ -					0		\$ -

**San Bruno Recognized Obligation Payment Schedule (ROPS 19-20) - Report of Cash Balances**  
**July 1, 2016 through June 30, 2017**  
**(Report Amounts in Whole Dollars)**

Pursuant to Health and Safety Code section 34177 (l), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. For tips on how to complete the Report of Cash Balances Form, see [Cash Balance Tips Sheet](#).

A	B	C	D	E	F	G	H	
		<b>Fund Sources</b>						
		<b>Bond Proceeds</b>		<b>Reserve Balance</b>	<b>Other Funds</b>	<b>RPTTF</b>		
	<b>ROPS 16-17 Cash Balances (07/01/16 - 06/30/17)</b>	Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, Grants, Interest, etc.	Non-Admin and Admin	<b>Comments</b>	
1	<b>Beginning Available Cash Balance (Actual 07/01/16)</b> RPTTF amount should exclude "A" period distribution amount					353,244	Cash balance at 7/1/16 less \$766,800 (16-17A Distribution recvd 6/7/16), less \$336,485 and \$84,121 (16-17 A City Advances recorded 6/30/16 Principal and 20% to Low Mod), less (15-16 Subsidy) \$176,997 paid 8.15.16.	
2	<b>Revenue/Income (Actual 06/30/17)</b> RPTTF amount should tie to the ROPS 16-17 total distribution from the County Auditor-Controller					2,361,246	\$766,800 from 6/7/16 plus \$1,594,446 from 1/3/2017 debit entries on GL Trial Balance Detail Reports FY16 and FY17	
3	<b>Expenditures for ROPS 16-17 Enforceable Obligations (Actual 06/30/17)</b>					1,861,929	interest, legal services, 16-17A & B admin allowance, COP interest and principal due, fiscal agent fees, 16-17 A advance repaid to City & 20% of loan transferred to Low Mod Housing Asset Fund on 063016, 16-17 B and subsidy \$183K paid 12.27.17 and cash	
4	<b>Retention of Available Cash Balance (Actual 06/30/17)</b> RPTTF amount retained should only include the amounts distributed as reserve for future period(s)						Includes RPTTF authorized/distributed for future debt service payment(Excluded from G3, above)	
5	<b>ROPS 16-17 RPTTF Prior Period Adjustment</b> RPTTF amount should tie to the Agency's ROPS 16-17 PPA form submitted to the CAC	No entry required					499,317	Unexpended RPTTF reported as the PPA for the current reporting period
6	<b>Ending Actual Available Cash Balance (06/30/17)</b> C to F = (1 + 2 - 3 - 4), G = (1 + 2 - 3 - 4 - 5)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 353,244		



**Successor Agency of the San Bruno Redevelopment Agency  
Administrative Budget  
July 1, 2019 - June 30, 2020**

<b>Personnel Costs</b>				
<b>Department</b>	<b>Cost for FY19-20</b>	<b>Position</b>	<b>Percent Allocation</b>	<b>Budget</b>
<b>Management Services</b>	<b>356,352</b>	<b>City Manager</b>	<b>1.00%</b>	<b>3,564</b>
<i>Continuing review of City Recognized Obligation Payment Schedules, Administrative Budgets, and other related reports that go to the City Council and Oversight Board.</i>				
<b>Legal Services</b>	<b>345,667</b>	<b>City Attorney</b>	<b>1.00%</b>	<b>3,457</b>
<i>Ongoing legal support for matters concerning the dissolution of redevelopment, including working with outside legal counsel.</i>				
<b>Finance</b>	<b>306,873</b>	<b>Finance Director</b>	<b>4.00%</b>	<b>12,275</b>
<i>Preparation of Recognized Obligation Payment Schedules, Administrative Budgets, oversight of financial obligations of former RDA, preparation of Oversight Board Agenda Packets, serve as liaison to Department of Finance and follow-up on related information requests, and attend Oversight Board meetings as needed.</i>				
<b>Finance</b>	<b>216,452</b>	<b>Finance Manager</b>	<b>4.00%</b>	<b>8,658</b>
<i>Maintain the financial records of the Successor Agency, which includes working on the annual audit of the Redevelopment Obligation Retirement Fund and related disclosures, ensure accurate accounting of all former RDA transactions, and reconciliation of bank account and ledger for the Successor Agency.</i>				
<b>Community Development</b>	<b>193,926</b>	<b>Long Range Planning Manager</b>	<b>2.50%</b>	<b>4,848</b>
<i>Attend Oversight Board Meetings as needed. Continue to oversee the City's low and moderate income housing program and ensure continuing compliance with Archstone Owner Participation Agreements. Complete required compliance reports and review annual subsidy requests. Update and maintain website of the Successor Agency and Oversight Board.</i>				
<b>Total Personnel Costs</b>				<b>32,802</b>
<b>Overhead Costs of 15% (Payroll, IT, Accounts Payable, etc)</b>				<b>4,921</b>
<b>Supplies and Materials</b>				
<b>Office supplies, utilities, communications, printing and copying</b>				<b>125</b>
<b>Outside legal costs for Successor Agency and Oversight Board</b>				<b>1,000</b>
<b>Total Administrative Budget for July 1, 2019 - June 30, 2020</b>				<b>\$38,848</b>

**SUMMARY OF OBLIGATIONS TO BE APPROVED UNDER ROPS 19-20 AND SUPPORTING DOCUMENTATIONS - Revised**

<b>ROPS Item No.</b>	<b>ROPS Category</b>	<b>Description of Obligation</b>	<b>Payee</b>	<b>ROPS 19-20 Funding</b>	<b>Supporting Documentation</b>
1	Bonds Issued	2000 Certificates of Participation	Union Bank	\$ 647,150	Exhibit C Page 2 - Debt Service Schedule
2	Fees	2000 Certificates of Participation Fiscal Ag	San Bruno	\$ 2,500	Exhibit C Page 3 - Agent Fees
3	OPA/DDA/Construction	Archstone II Owner Participation Agreement	AvalonBay	\$ 370,000	Exhibit C Pages 5 and 39 - Housing Subsidy Amount Calculation
4	OPA/DDA/Construction Admin Costs	Archstone I Owner Participation Agreement	AvalonBay Successor	\$ 311,000	Exhibit C Pages 5 and 90 as amended by 107 Housing Subsidy Amount Calculation
5		San Bruno Redevelopment Project Area	Agency	\$ 38,848	See Exhibit B - Admin Budget
<b>Total</b>				<b>\$ 1,369,498</b>	

**DEBT SERVICE SCHEDULE**

The following table shows the annual debt service due with respect to the Certificates.

<u>Year Ending February 1</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2002	\$ --	\$568,720.83	\$568,720.83
2003	145,000	501,812.50	646,812.50
2004	155,000	491,662.50	646,662.50
2005	165,000	480,812.50	645,812.50
2006	180,000	469,262.50	649,262.50
2007	190,000	458,462.50	648,462.50
2008	200,000	449,437.50	649,437.50
2009	205,000	439,937.50	644,937.50
2010	215,000	430,200.00	645,200.00
2011	225,000	419,987.50	644,987.50
2012	240,000	409,637.50	649,637.50
2013	250,000	398,357.50	648,357.50
2014	260,000	386,357.50	646,357.50
2015	275,000	373,617.50	648,617.50
2016	285,000	359,867.50	644,867.50
2017	300,000	345,617.50	645,617.50
2018	315,000	330,467.50	645,467.50
2019	335,000	314,402.50	649,402.50
<b>2020</b>	<b>350,000</b>	<b>297,150.00</b>	<b>647,150.00</b>
2021	370,000	278,775.00	648,775.00
2022	390,000	259,350.00	649,350.00
2023	410,000	238,875.00	648,875.00
2024	430,000	217,350.00	647,350.00
2025	450,000	194,775.00	644,775.00
2026	475,000	171,150.00	646,150.00
2027	500,000	146,212.50	646,212.50
2028	530,000	119,962.50	649,962.50
2029	555,000	92,137.50	647,137.50
2030	585,000	63,000.00	648,000.00
2031	615,000	32,287.50	647,287.50
<b>TOTAL</b>	<b>\$9,600,000</b>	<b>\$9,739,645.83</b>	<b>\$19,339,645.83</b>





**City of San Bruno**  
 567 El Camino Real  
 San Bruno, CA 94066

Attachment 4 - Exhibit C - Page 3 of 116

CLAIM  
 VOUCHER NO. 173516

Attachment 4 - Exhibit C - Schedule II - Page 1 of 2

DATE 2/20/2018	CHECK NUMBER 173516	VENDOR NUMBER 0017876	VENDOR UNION BANK OF CALIFORNIA	CLAIM VOUCHER NO. 173516
-------------------	------------------------	--------------------------	------------------------------------	-----------------------------

	PURCHASE ORDER NO.	P.O. DATE	INVOICE NUMBER	INVOICE DESCRIPTION	ACCOUNT DISTRIBUTION	AMOUNT DUE
1.			1074628	12/1/17-11/30/18 2000 COP (POLICE	153-3513-6419	2,013.00
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
<b>GRAND TOTAL</b>						<b>2,013.00</b>

**AUDITING OFFICER'S CERTIFICATION**

I, the undersigned do hereby certify under penalty of perjury, that the materials have been furnished, the services rendered, or the labor performed as described herein, and that the claim is a just, due and unpaid obligation against the City of San Bruno, and that I am authorized to authenticate and certify to said claim.

X \_\_\_\_\_

168508  
 2/14 not  
 pd ylt  
 ✓



Ref No. 1074628  
 December 21, 2017

Please Remit Payment To:  
 Union Bank  
 Union Bank Trust Department - Fees  
 P. O. Box 51477  
 Los Angeles, CA 90051-5777

Account Number: 6711658800  
 CITY OF SAN BRUNO 2000 COP(POL FAC)  
 Administrator: TY JORDAN  
 213-236-5916

CITY OF SAN BRUNO  
 ATTN: FINANCE DEPT.  
 567 EL CAMINO ROAD  
 SAN BRUNO CA 94066

E  
 153-3513 -  
 6419  
 ✓ 0017876

<b>Amount Due:</b>	<b>\$2,013.00</b>
--------------------	-------------------

Return this Portion with Your Remittance or Your Instruction to Charge Your Account

	<u>Amount Due</u>
Ref No. 1074628	
<b>Prior Period Balance</b>	\$2,013.00
Payments Received as of December 7, 2017 (thank you)	(\$2,013.00)
<b>Beginning Balance</b>	\$0.00
Fee for Current Period	<b>\$2,013.00</b>
<b>Net Amount Due:</b>	<b>\$2,013.00</b>

Current Period	Over 30 Days	Over 60 Days	Over 90 Days	<b>Net Amount Due</b>
\$2,013.00	\$0.00	\$0.00	\$0.00	\$2,013.00

**Services for the Period December 1, 2017 - November 30, 2018**

6711658800	CITY OF SAN BRUNO 2000 COP(POL FAC)
6711658801	CTY SAN BRUNO 2000 LEASE PYMT FD
6711658802	CTY SAN BRUNO 2000 RESERVE FD

	<u>Rate</u>	<u>Annual Amount</u>	<u>This Period</u>
<u>Annual Administration Fee</u>		\$1,800.00	\$1,800.00
<u>Out of Pocket Expenses</u>			
<u>6% of Annual Administration Fee</u>		\$108.00	\$108.00
<u>Wires</u>	3 @ \$35.00	\$105.00	\$105.00
Services for the Period 12/01/2016 - 11/30/2017			

**Fee for the Current Period** **\$2,013.00**

Fees not paid within 30 days of the date of this invoice will be charged to the account(s). If the account(s) cannot be charged after 30 days because of document restrictions or due to insufficient funds in the account, unpaid fees may be subject to a late charge of 1% per month on the unpaid balance.

**Calculation of Annual Affordable Housing Subsidy**  
**AvalonBay, The Crossing San Bruno**  
**City of San Bruno Housing Successor Agency**  
**FY 2017-18**

**Avalon San Bruno I**

Parcel Number: 020-013-210	
Date of Certificate of Completion	12/9/2005
Operating Year	13
Affordable Housing Subsidies Cap	\$ 311,000
Benchmark Debt Coverage Ratio	<b>1.75</b>

**Debt Coverage Ratio - 2017**

Net Operating Income	\$ 7,586,191
Debt Service	\$ 2,227,608
Debt Coverage Ratio	3.41

**Affordable Housing Set Aside Subsidy**

2017 Assessed Value	\$ 91,515,265
20% Affordable Housing Set-Aside	\$ 183,031
Set-Aside Subsidy %	100%
Set-Aside Subsidy Amount	\$ 183,031

**Unrestricted Tax Increment Subsidy**

The Project does not qualify to receive Unrestricted Tax Increment Subsidy in 2017 because the Project's Debt Coverage Ratio exceeds the Benchmark Debt Coverage Ratio, in accordance with Section Section 401.3(b) of the Owner Participation Agreement for The Crossing San Bruno Apartments, Phase 1 Project.

<b>Total Subsidy</b>	<b>\$ 183,031</b>
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**Subsidy Terms**

Owner Participation Agreement  
The Crossing San Bruno Apartments, Phase 1 Project  
Section 401.3 Affordable Housing Subsidies

Affordable Housing Set Aside Subsidy

Years 1-30 = 100% up to \$311,000  
Years 31-35 = subject to 1.75 DCR cap

Unrestricted Tax Increment Subsidy

Years 1-35 = subject to 1.75 DCR cap

**Avalon San Bruno II**

Parcel Number: 020-013-220	
Date of Final Certificate of Occupancy	8/20/2007
Operating Year	11
Affordable Housing Subsidies Cap	\$ 370,000
Benchmark Debt Coverage Ratio	<b>1.15</b>

**Debt Coverage Ratio - 2017**

Net Operating Income	\$ 4,609,035
Debt Service	\$ 1,620,596
Debt Coverage Ratio	2.84

**Affordable Housing Fixed Subsidy**

The Affordable Housing Fixed Subsidy ended after the Project's 5th operating year, pursuant to Section 401.2(a)(i) of the Owner Participation Agreement for The Crossing San Bruno Apartments, Phase 2 Project

**Affordable Housing Variable Subsidy**

The Project does not qualify to receive the Affordable Housing Variable Subsidy in 2017 because the Project's Debt Coverage Ratio exceeds the Benchmark Debt Coverage Ratio, in accordance with Section 401.2(a)(ii) of the Owner Participation Agreement for The Crossing San Bruno Apartments, Phase 2 Project.

<b>Total Subsidy</b>	<b>\$ -</b>
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**Subsidy Terms**

Owner Participation Agreement  
The Crossing San Bruno Apartments, Phase 2 Project  
Section 401.2 Affordable Housing Subsidy

Affordable Housing Set Aside Subsidy

Years 1-5 = 100% up to \$370,000

Affordable Housing Variable Subsidy

Years 6-15 = up to \$370,000  
subject to 1.15 DCR cap

**OWNER PARTICIPATION AGREEMENT**

**By and Between**

**CITY OF SAN BRUNO REDEVELOPMENT AGENCY**  
a public body existing and organized under the Community Redevelopment Law  
(the "Agency")

**And**

**THE CROSSING APARTMENT ASSOCIATES II LLC**  
a Delaware limited liability company  
("Participant")

**FOR**

**THE CROSSING|SAN BRUNO APARTMENTS, PHASE 2 PROJECT**  
(Paragon Apartments)

**March 1, 2005**

**SAN BRUNO REDEVELOPMENT PROJECT**  
San Bruno, California

## TABLE OF CONTENTS

		Page
100.	DEFINITIONS; REPRESENTATIONS AND WARRANTIES.....	3
101.	Definitions.....	3
102.	Representations and Warranties.....	11
102.1	Agency Representations.....	11
	(a) Authority.....	11
	(b) No Conflict.....	11
	(c) No Superior Obligations.....	11
102.2	Participant's Representations.....	11
	(a) Authority.....	11
	(b) No Conflict.....	12
	(c) No Participant Bankruptcy.....	12
	(d) Leases and Other Interests.....	12
	(e) Title.....	12
	(f) Litigation.....	12
	(g) Governmental Compliance.....	12
102.3	Limitations on Right to Assign.....	12
	(a) Prior to Issuance of Certificate of Completion.....	13
	(b) Following Issuance of Certificate of Completion.....	13
	(c) Pre-Approved Transfers.....	14
200.	DEVELOPMENT OF THE SITE.....	16
201.	Scope of Development.....	16
202.	Permits and Approvals.....	16
203.	Schedule of Performance.....	16
204.	Design Review.....	16
204.1	Conceptual Site Plan.....	16
204.2	Design Review Plans and Planned Development and Architectural Review Permits.....	16
204.3	Construction Drawings and Related Documents.....	16
204.4	Construction Approvals.....	17
204.5	Revisions.....	17
204.6	Consultation and Coordination.....	17
204.7	Defects in Plans.....	17
204.8	Cost of Construction.....	18
205.	Insurance Requirements.....	18
206.	Rights of Access.....	18
207.	Compliance With Laws.....	18
208.	Prevailing Wages.....	18
209.	Taxes and Assessments.....	19
210.	Project Sign.....	19
211.	Liens and Stop Notices.....	19
212.	Submission of Evidence of Financing Commitments.....	19
213.	Certificate of Completion.....	20

214.	Mortgage, Deed of Trust, Sale and Lease-Back Financing.....	21
214.1	No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development .....	21
214.2	Holder Not Obligated to Construct Improvements.....	21
214.3	Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.....	21
215.	Condition of the Site.....	22
300.	COVENANTS, RESTRICTIONS AND AGREEMENTS.....	22
301.	Use and Affordable Housing Covenants.....	22
302.	Maintenance Covenants.....	22
	(a) Maintenance Standards.....	23
	(b) Failure to Maintain Improvements.....	24
303.	Nondiscrimination Covenants.....	24
	(a) In deeds.....	25
	(b) In leases.....	25
	(c) In contracts.....	25
304.	Minimum Project Cost.....	25
305.	Replacement Reserve Requirement.....	25
306.	Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction.....	26
307.	Affordable Housing Covenant.....	26
308.	Indemnification Limitation for Approved Lenders.....	26
400.	FINANCIAL PROVISIONS.....	27
401.	Agency Assistance.....	27
401.1	Affordable Housing Fee Grant.....	27
401.2	Affordable Housing Subsidy.....	27
	(a) Amount of Affordable Housing Subsidy.....	27
	(b) Source of Affordable Housing Subsidy Payments.....	28
	(c) Accrual and Payment of Unpaid Affordable Housing Subsidy.....	28
	(d) Timing of Affordable Housing Subsidy Payments and Accrual Payments.....	29
	(e) Cap on Affordable Housing Subsidy Payment and Accrual Payment.....	29
402.	Conditions Precedent to Disbursement of Agency Assistance.....	29
	(a) No Default.....	29
	(b) Execution of Documents.....	29
	(c) Insurance.....	29
	(d) Permits and Land Use Approvals.....	29
	(e) Payment of Development Fees.....	30
	(f) Payment of Property Taxes.....	30
	(g) Completion of Improvements.....	30
	(h) Minimum Project Cost.....	30
	(i) Subordination Agreements and Affordable Housing Covenant Report.....	30
	(j) Financial Statements and Reports.....	30

403.	Eligible Project Costs.....	30
404.	Reduction in Amount of Affordable Housing Subsidy Following Reassessment .....	31
405.	Intentionally Omitted.....	31
406.	Financial Records and Auditing and Reporting Obligations .....	31
407.	Pledge of Agency Assistance to Bond Trustee.....	32
408.	Future Tax Allocation Bonds.....	33
500.	DEFAULTS AND REMEDIES .....	33
501.	Default Remedies.....	33
502.	Institution of Legal Actions .....	34
503.	Termination by Participant .....	34
504.	Termination by Agency .....	35
505.	Acceptance of Service of Process.....	35
506.	Rights and Remedies Are Cumulative.....	35
507.	Inaction Not a Waiver of Default.....	35
600.	GENERAL PROVISIONS .....	35
601.	Notices, Demands and Communications Between the Parties .....	35
602.	Enforced Delay; Extension of Times of Performance.....	37
603.	Successors and Assigns.....	37
604.	Memorandum of Agreement.....	37
605.	Relationship Between Agency and Participant.....	37
606.	Agency Approvals and Actions .....	37
607.	Counterparts.....	38
608.	Integration .....	38
609.	Titles and Captions .....	38
610.	Interpretation.....	38
611.	No Waiver.....	38
612.	Modifications .....	38
613.	Severability .....	38
614.	Computation of Time .....	38
615.	Legal Advice.....	39
616.	Time of Essence.....	39
617.	Cooperation.....	39
618.	Conflicts of Interest.....	39
619.	Time for Acceptance of Agreement by Agency .....	39
620.	Participant's Indemnity .....	39
621.	Effective Date .....	40
622.	Nonliability of Officials and Employees of the Agency and Participant.....	40
	(a) Agency .....	40
	(b) Participant.....	40
623.	Assignment by Agency.....	41
624.	Applicable Law.....	41
625.	Estoppel Certificate.....	41
626.	Third-Party Beneficiary .....	42

**ATTACHMENTS**

Attachment No. 1(A)	Site Map (Final Map No. 02-01, "Parcel 2")
Attachment No. 1(B)	Site Map (Development Agreement Exhibit A-1, "Office/Residential Flex C Component")
Attachment No. 2	Site Legal Description
Attachment No. 3	Scope of Development
Attachment No. 4	Schedule of Performance
Attachment No. 5	Affordable Housing Covenant
Attachment No. 6	Certificate of Completion
Attachment No. 7	Memorandum of Owner Participation Agreement
Attachment No. 8	Resolution Authorizing Execution of this Agreement
Attachment No. 9	Conceptual Site Plans and Design Review Plans
Attachment No. 10	Insurance Requirements
Attachment No. 11	Subordination Agreement



**OWNER PARTICIPATION AGREEMENT  
(Paragon Apartments)**

THIS OWNER PARTICIPATION AGREEMENT (this "Agreement") dated as of this 1st day of March, 2005, is entered into by and between the CITY OF SAN BRUNO REDEVELOPMENT AGENCY, a public body existing and organized under the Community Redevelopment Law (the "Agency"), and THE CROSSING APARTMENT ASSOCIATES II LLC, a Delaware limited liability company (the "Participant") pursuant to the authority of the Community Redevelopment Law, the Redevelopment Plan, and the Agency Rules.

**RECITALS**

The following recitals are a substantive part of this Agreement (capitalized terms used herein and not otherwise defined are defined in Section 100 of this Agreement):

A. The purpose of this Agreement is to effectuate the Redevelopment Plan for the San Bruno Redevelopment Project which was approved and adopted by the City Council of the City on July 6, 1999 by Ordinance No. 1620 ("Redevelopment Plan") by providing for the redevelopment of the second phase of The Crossing|San Bruno Project.

B. The Crossing|San Bruno Project is located on the approximately 20.1-acre former U. S. Navy Site within the City of San Bruno, County of San Mateo, State of California. The Crossing|San Bruno Project is a compact, interactive, and pedestrian-friendly community based on the principles of transit-oriented development offering a mix of multi-family, senior, and affordable housing, hotel, meeting space, restaurant space, neighborhood-serving retail, office space, recreational opportunities, and parking facilities, in the manner described in the Specific Plan for the U. S. Navy Site and its Environs ("Specific Plan") and Development Agreement.

C. For the purposes of this Agreement, the second phase of The Crossing|San Bruno Project is the development of an approximately 3.206-acre parcel of real property depicted as "Parcel 2" on Final Map No. 02-01, attached hereto as Attachment No. 1(A) and depicted as "Office/Residential C Flex Component" on Exhibit A-1 of the Development Agreement, attached hereto as Attachment No. 1(B), and more particularly described in the Site Legal Description attached hereto as Attachment No. 2 (the "Site").

D. Prior to the Effective Date of this Agreement, as defined herein, Participant will own the Site in fee and qualify as an "owner participant" as that term is defined in the Redevelopment Plan, the Community Redevelopment Law, and Agency Rules. Participant desires to participate in the redevelopment of the Site in accordance with the Community Redevelopment Law, the Redevelopment Plan, the Agency Rules, and the terms of this Agreement.

E. Consistent with the terms of this Agreement, including the Affordable Housing Covenant, attached hereto as Attachment No. 5, and the Existing Approvals, Participant intends to develop on the Site a 185-unit, multi-family residential rental project with ancillary parking uses, including thirty seven (37) (twenty percent (20%)) Affordable Units available to Very Low

Income Households. The Improvements are further defined in the Scope of Development, Attachment No. 3, and depicted in the Conceptual Site Plan, Attachment No. 9.

F. Agency is authorized and empowered under the Community Redevelopment Law and the Redevelopment Plan to enter into agreements for the acquisition, disposition and development of real property and otherwise to assist in the redevelopment of real property within the Redevelopment Project Area in conformity with the Redevelopment Plan; to acquire real and personal property in the Redevelopment Project Area; to receive consideration for the provision by the Agency of redevelopment assistance; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to incur indebtedness to finance or refinance the Redevelopment Project.

G. Agency and Participant desire to enter into this Agreement to set forth the terms and conditions relating to: (i) Participant's development, use, operation and maintenance of the Project, including the thirty seven (37) Affordable Units; and (ii) the provision of the Agency Assistance to the Participant related to the provision of those Affordable Units.

H. Agency further desires to enter into this Agreement because the Project will aid in the phased redevelopment of a former military site to accommodate a high quality, planned mixed-use residential community, upgrade site infrastructure, improve site aesthetics, and provide much needed multi-family and affordable housing opportunities. The Project will also provide substantial economic benefits to the Agency, the Redevelopment Project Area, and the City, its residents and surrounding communities. Specifically, the Project will increase employment opportunities in the Redevelopment Project Area both during and after construction, increase the property values of the community by removing blighted conditions, and generate available tax increment.

I. Agency anticipates that separate owner participation agreement(s), generally consistent with the terms and format of this Agreement, may be entered into to provide certain public agency participation and/or assistance in connection with both the development of senior affordable housing units on the Senior Component consistent with the Affordable Housing Plan and the development of parking facilities and other forms of assistance to encourage the development of the Hotel Component (as defined in the Development Agreement) and the ECR Commercial Project Component (as defined in the Development Agreement). The parties acknowledge that Agency is under no obligation to enter into these agreements and, should Agency opt to do so, it will require quality assurance and a demonstration of financial need and determine on a case-by-case basis the terms and extent of Agency assistance, if any.

J. The fulfillment of this Agreement is consistent with the General Plan and Redevelopment Plan, in the vital and best interests of the City, and the health, safety and welfare of its residents, and in accord with the provisions of applicable federal, state and local law.

K. The terms and conditions of this Agreement have undergone extensive review by Agency and its staff, and by the resolution attached hereto as Attachment No. 8 and incorporated herein by reference, Agency has found the Agreement just and reasonable and in conformance with the Community Redevelopment Law, Redevelopment Plan, and Agency Rules.

**A G R E E M E N T**

NOW, THEREFORE, Agency and Participant hereby agree as follows:

**100. DEFINITIONS; REPRESENTATIONS AND WARRANTIES**

**101. Definitions.**

"*Accrual Payment*" is defined in Section 401.2(c) hereof.

"*Affiliate of Participant*" means an entity or entities in which one or more of Participant, Martin/Regis San Bruno Associates, L.P., TMG Partners, or REGIS Homes of Northern California collectively retains more than fifty percent (50%) in the aggregate, directly or indirectly, of the ownership or beneficial interest and retains full management and control of the transferee entity or entities, either directly or indirectly through another entity, subject only to certain major events requiring the consent or approval of the other owners of such entity.

"*Affordable Housing Covenant*" means the Affordable Housing Covenant to be recorded against the Site as provided in Section 307 in the form attached hereto as Attachment No. 5.

"*Affordable Housing Fee Grant*" is defined in Section 401.1 hereof.

"*Affordable Housing Fee Grant Cap*" is defined in Section 401.1 hereof.

"*Affordable Housing Fixed Subsidy*" is defined in Section 401.2(a)(i) hereof.

"*Affordable Housing Fund*" means the low and moderate income housing fund established by the Agency pursuant to Section 33334.3 of the Community Redevelopment Law, into which Agency must deposit a portion of the property tax increment from the Redevelopment Project [currently twenty percent (20%)] to be used for the purposes of increasing, improving and preserving the supply of low- and moderate-income housing within the territorial jurisdiction of the Agency.

"*Affordable Housing Plan*" means the Affordable Housing Plan attached as Exhibit E to the Development Agreement, which establishes the minimum affordability requirements for The Crossing/San Bruno Project.

"*Affordable Housing Set Aside Revenues*" means that portion of the property tax increment revenues allocated to and received by Agency attributable by the San Mateo County Assessor to the Site and the improvements thereon (currently twenty percent [20%] of the gross property increment revenues), which Agency is required by law to set-aside in the Agency's Low and Moderate Income Housing Fund pursuant to the Community Redevelopment Law.

"*Affordable Housing Subsidy*" is defined in Section 401 hereof.

"*Affordable Housing Subsidy Accrual*" is defined in Section 401.2(c) hereof.

"*Affordable Housing Subsidy Cap*" is defined in Section 401.2(e) hereof.

"*Affordable Housing Subsidy Payment Shortfall*" is defined in Section 401.2(c) hereof.

"*Affordable Housing Subsidy Payment Sources*" is defined in Section 401.2(b) hereof.

"*Affordable Housing Variable Subsidy*" is defined in Section 401.2(a)(ii) hereof.

"*Affordable Units*" is defined in Section 307 hereof.

"*Agency*" means the City of San Bruno Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

"*Agency Assistance*" is defined in Section 401 hereof.

"*Agency Rules*" means the Agency Owner Participation and Business Reentry Rules, adopted by Resolution A99-4.

"*Agreement*" means this Owner Participation Agreement between Agency and Participant.

"*Approved Lender*" is defined in Section 214.1 hereof.

"*Architectural Review Committee*" means the City's Architectural Review Committee.

"*Base Year Affordable Housing Set Aside Revenues*" means the Affordable Housing Set Aside Revenues attributable to the Site and the improvements thereon, allocated to and received by the Agency in the property tax fiscal year 1999/2000.

"*Base Year Unrestricted Property Tax Increment Revenues*" means the Unrestricted Property Tax Increment Revenues attributable to the Site and the improvements thereon, allocated to and received by the Agency in the property tax fiscal year 1999/2000.

"*Benchmark Debt Coverage Ratio*" means a Debt Coverage Ratio equal to 1.15000, or 115.00%.

"*Bonds*" is defined in Section 407 hereof.

"*Certificate of Completion*" means the document evidencing Participant's satisfactory completion of construction and installation of the Improvements, as set forth in Section 213 hereof, in the form of Attachment No. 6 hereto.

"*City*" means the City of San Bruno, a California municipal corporation.

"*Community Redevelopment Law*" means the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.).

"*Conceptual Site Plan*" is defined in Section 204.1 hereof.

"*Conditions Precedent to Disbursement of Agency Assistance*" is defined in Section 402 hereof.

"*Construction Drawings*" is defined in Section 204.3 hereof.

"*County of San Mateo Letter of Understanding and Agreement*" means the letter of understanding and agreement dated November 12, 1999, between City and the County of San Mateo providing for City to pay to the County of San Mateo an amount equal to a portion of the annual property taxes attributable to the Navy Property (Assessors Parcel Nos. 020-010-580, 020-013-050, and 020-013-060, consisting of approximately 26.806 acres as more particularly described therein) that would have otherwise accrued to the County of San Mateo had the Navy Property not been included within the Redevelopment Project. Participant acknowledges having received a copy of the County of San Mateo Letter of Understanding and Agreement.

"*Debt Coverage Ratio*" means the ratio obtained by dividing the sum of (i) the Net Operating Income for a particular Operating Year, plus (ii) the potential amount of Agency Assistance available to Participant during the Operating Year in which Net Operating Income is measured, by the Debt Service payable in the Operating Year in which Net Operating Income is measured.

"*Debt Service*" means (i) the principal and interest payments on the portion of the bond debt secured by FNMA, and (ii) interest payments (excluding principal) on the portion of the Project debt secured by equity partners for a given Operating Year based upon the actual principal and interest expenses paid by the Participant.

"*Default*" means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

"*Design Review Plans*" is defined in Section 204.2 hereof.

"*Development Agreement*" means the Development Agreement for The Crossing|San Bruno Project by and between the City of San Bruno and Martin/Regis San Bruno Associates, L.P., as may be amended from time to time and as assigned by any partial assignment and assumption agreement related to the Site.

"*Effective Date*" means the operative date of this Agreement, which shall be the date upon which Participant delivers evidence of ownership of fee title to the Site to Agency, as required by Section 621 hereof.

"*Effective Gross Income*" means the actual effective gross income produced by the Project for a particular Operating Year, including (i) actual rental income from the residential units (without reduction for any assumed vacancy factor), not including any concessions or other inducements (such as any cash reductions in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (ii) laundry income, vending income, parking fees, cable television commission income, tenant utility reimbursements, storage fees, pet premiums, renter insurance commissions, retained deposits, and late fees; (iii) clubhouse

rentals and PacBell/DSL commissions, to the extent not assigned to the Meridian Apartments phase of the Crossing|San Bruno Project, prior to the Effective Date; (iv) any Operating Expense reserve account monies that become available to Participant following repayment of the Project Debt or waiver by an Approved Lender of the Operating Expense reserve account requirements set forth in the Project Debt loan documents; and (v) any "other income" permitted by Fannie Mae or its agent in underwriting the financing for construction of the Project, as those requirements may be changed from time to time.

"*Eligible Project Costs*" is defined in Section 403 hereof.

"*Existing Approvals*" mean the existing development approvals, entitlements, policies and findings adopted by City after duly noticed public hearings and other applicable procedures prior to the date of this Agreement and applied to The Crossing|San Bruno Project and the Site, which include the following:

(1) On January 9, 2001, the City certified a Final Environmental Impact Report for The Crossing|San Bruno Project (Resolution No. 2001-1) and on December 11, 2001, an Addendum to the EIR (Resolution No. 2001-82) (collectively, the "Crossing EIR").

(2) On January 9, 2001, the City approved a General Plan Amendment (Resolution No. 2001-2).

(3) On January 9, 2001, the City approved a Specific Plan (Resolution No. 2001-3), on December 11, 2001, a Specific Plan Amendment (Resolution No. 2001-82), and on September 24, 2002, a Specific Plan Addendum (Design Guidelines) (Resolution No. 2002-58) that includes the major development, circulation and infrastructure elements for The Crossing|San Bruno Project.

(4) On January 23, 2000, the City adopted an ordinance amending the San Bruno Zoning Ordinance and Zoning Map to establish the zoning for The Crossing|San Bruno Project (Ordinance No. 1635).

(5) On June 5, 2001, voters approved Initiative Measure E by majority vote at a special municipal election pursuant to Local Ordinance 1284.

(6) On January 8, 2002, the City adopted Ordinance No. 1653 approving the Development Agreement, which took effect on February 7, 2002, as amended by the First Minor Amendment to Development Agreement dated March 9, 2004 (Recorder's Document No. 2004-052559) and a Second Minor Amendment to Development Agreement of even date herewith.

(7) On August 20, 2002, the City Planning Commission approved Vesting Tentative Map No. TM 02-01 (Resolution No. 2002-01) that provides for the conditions of subdivision of The Crossing|San Bruno Project.

(8) On October 29, 2002, the City approved the Final Map for The Crossing|San Bruno Project (Resolution No. 2002-66).

(9) On February 15, 2005, the Planning Commission approved the Architectural Review Permit and Planned Development Permit for the Project.

"*Governmental Requirements*" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of San Mateo, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Participant or the Site.

"*Hazardous Materials*" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

"*Improvements*" means the 185-unit, multi-family residential rental project, including the Affordable Units, with ancillary parking uses and appurtenant on-site and off-site improvements to be constructed and installed by Participant as set forth herein and in the Scope of Development, Attachment No. 3 hereto.

"*Insurance Requirements*" means the insurance requirements for the Project, which are attached hereto as Attachment No. 10.

"*Maintenance Standards*" is defined in Section 302 hereof.

"*Memorandum of Agreement*" is defined in Section 604 hereof.

"*Net Affordable Housing Set Aside Revenues*" means the increase of the Affordable Housing Set Aside Revenues over the Base Year Affordable Housing Set Aside Revenues allocated to and received by the Agency.

"*Net Operating Income*" means Effective Gross Income, as defined herein, less Operating Expenses, as defined herein, before depreciation and mortgage interest and principal.

"*Net Unrestricted Property Tax Increment Revenues*" means the increase of the Unrestricted Property Tax Increment Revenues over the Base Year Unrestricted Property Tax Increment Revenues allocated to and received by the Agency.

"*Notice*" means a notice in the form prescribed by Section 601 hereof.

"*Operating Expenses*" shall mean the actual out-of-pocket costs and expenses paid by Participant for a given Operating Year and approved by Fannie Mae or its agent, in its discretion, in connection with the use, maintenance or operation of the Project (but without duplication) based on the actual expenses which meet all of the following requirements:

(i) All costs and expenses must be recognized as operating expenses by the Fannie Mae guidelines, as those guidelines may be changed from time to time, and by generally accepted accounting principles applicable to real estate projects and transactions;

(ii) Property management fees shall not exceed two and one-half percent (2.5%) of gross rental income;

(iii) Operating Expenses shall not include any operating expense or capital replacement reserve account payments;

(iv) Any fee paid to Participant, its members or an Affiliate of Participant, other than the property management fees stated in (ii) above, such as asset management fees and financing fees, shall not be considered an Operating Expense;

(v) Operating Expenses shall not include mortgage interest or principal payments, depreciation, amortization, or costs or expenditures that the Internal Revenue Code allows to be depreciated or amortized;

(vi) To the extent that in dealing with an Affiliate of Participant or its members, such costs and expenses shall be reasonable and at no higher than market rates and all dealings with such Affiliate(s) of Participant shall be disclosed in writing to Agency in advance;

(vii) Project expenses financed with Project Debt shall not be included within Operating Expenses; and

(viii) Operating Expenses shall not exceed 36 percent of the combined total operating expenses for the Project and the Parcel 1 Project.

"*Operating Year*" means the one-year periods commencing upon the first January 1 following the date that Participant has obtained a final certificate of occupancy for the Improvements and commenced leasing activities for the Affordable Units, and ending on



December 31 of that year; each succeeding Operating Year shall commence on January 1st and end on December 31st.

"*Parcel 1 Project*" means the 300-unit, multi-family residential rental project including sixty (60) Affordable Units and ancillary recreational and parking uses commonly known as the "Meridian Apartments," developed on that approximately 5.059-acre parcel of real property depicted as "Parcel 1" on Final Map No. 02-01.

"*Parcel 1 Owner Participation Agreement*" means the Owner Participation Agreement entered into by and between the Agency and The Crossing Apartment Associates I LLC related to Parcel 1 and effective February 2002.

"*Parcel 3 Project*" means the development project that may be developed on that approximately 3.484-acre parcel of real property depicted as "Parcel 3" on Final Map No. 02-01.

"*Parcel 4 Project*" means the development project that may be developed on that approximately 3.525-acre parcel of real property depicted as "Parcel 4" on Final Map No. 02-01.

"*Participant*" means The Crossing Apartment Associates II LLC, a Delaware limited liability company, or its permitted assignee or transferee.

"*Project*" means the Site and the Improvements to be constructed by Participant on the Site as set forth herein.

"*Project Debt*" means the total debt financing for the initial construction of the Project up to a maximum of FIFTY-TWO MILLION DOLLARS (\$52,000,000) (the "Initial Project Debt"). As of the date of execution of this Agreement, it is anticipated that the total Initial Project Debt for the Project will consist of tax-exempt bond financing in the approximate amount of FORTY-NINE MILLION SIX HUNDRED THOUSAND DOLLARS (\$49,600,000). To qualify for Project Debt, any refinancing of the Initial Project Debt must be limited to the remaining balance of the outstanding principal on the Initial Project Debt and cannot be for a period less than the remaining term of the Initial Project Debt.

"*Redevelopment Plan*" means the Redevelopment Plan for the San Bruno Redevelopment Project, adopted by Ordinance No. 1620 of the City Council of the City on July 6, 1999, and any future amendments thereto, which are incorporated herein by reference.

"*Redevelopment Project*" means the San Bruno Redevelopment Project approved and adopted by the City pursuant to the Redevelopment Plan.

"*Schedule of Performance*" means the Schedule of Performance attached hereto as Attachment No. 4 and incorporated herein, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Participant and the Agency's Executive Director, and the Agency's Executive Director is authorized to make such revisions as he or she deems reasonably necessary.

"*Scope of Development*" means the Scope of Development attached hereto as Attachment No. 3 and incorporated herein, which describes the scope, amount and quality of the work of Improvements to be constructed and installed by the Participant. The Scope of Development is subject to revision only as provided herein.

"*Site*" is defined in Recital C.

"*Site Legal Description*" means the legal description of the Site, which is attached hereto as Attachment No. 2 and incorporated herein.

"*Site Map*" means the maps of the Site, which are attached hereto as Attachment No. 1(A) and Attachment No. 1(B) and incorporated herein.

"*Subordination Agreement*" means the form of Subordination Agreement attached hereto as Attachment No. 11 and incorporated herein.

"*Tax Allocation Bonds*" means any bond, certificate of participation or other indebtedness or obligation of the Agency hereafter incurred payable in whole or in part from the proceeds of taxes allocated and paid to the Agency from within the Redevelopment Project pursuant to Health and Safety Code Section 33670(b) (as said statute may be amended from time to time and including any legislative substitutions or subventions for property tax increment revenues) that has been sold pursuant to a public debt offering or that represents the private placement of debt including any obligation of the Agency to a joint powers authority that offers bonds to the public or through a private placement.

"*Trustee*" is defined in Section 407 hereof.

"*Unrestricted Property Tax Increment Revenues*" means the property tax increment revenues allocated to and received by the Agency pursuant to Section 33670(b) of the Community Redevelopment Law, as said statute may be amended from time to time, by application of the one percent (1%) tax levied against real property as permitted by Article XIII A of the California Constitution, in an amount attributable by the San Mateo County Assessor to the Site and the improvements thereon, but specifically excluding therefrom the following: (a) charges for County administrative charges, fees, or costs; (b) the portion of tax increment revenues from the Site attributable to any special taxes or assessments or voter-approved indebtedness; (c) an amount equal to the actual and reasonable costs incurred by Agency, including staff time, in reviewing Participant's compliance with the terms of this Agreement and the Affordable Housing Covenant in the preceding Operating Year; (d) a portion of the tax increment revenues from the Site equal to the percentage of such revenue that the Agency is required to pay to any and all governmental entities as required by the Community Redevelopment Law, including payments required to be made following an amendment to the Redevelopment Plan in accordance with Section 33333.10 of the Community Redevelopment Law, as added by Senate Bill 211; (e) a portion of the tax increment revenues from the Site equal to the amount of money that City is required to pay the County of San Mateo pursuant to the County of San Mateo Letter of Understanding and Agreement or any other agreements entered into by the City and the County of San Mateo implementing the County of San Mateo Letter of Understanding and Agreement; (f) the portion of tax increment revenues from the Site equal to

the percentage of such revenues in the Redevelopment Project as a whole which payments the State may mandate that the Agency pay from time to time in the future, including, for example, any payments which the Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681, et seq., of the Community Redevelopment Law; and (g) Affordable Housing Set Aside Revenues.

## 102. Representations and Warranties.

**102.1 Agency Representations.** Agency represents and warrants to Participant as follows:

(a) **Authority.** Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health & Safety Code Section 33000, *et seq.*), which has been authorized to transact business pursuant to action of the City. Agency has full right, power and lawful authority to perform its obligations hereunder and the execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(b) **No Conflict.** To the best of Agency's knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(c) **No Superior Obligations.** There will be no bonds, notes, indebtedness, or other obligations of the Agency as of the date of this Agreement secured by a pledge of, lien on, security interest in, or payable from the portion of Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues pledged to Participant herein, which are superior or on a parity with the pledge of Agency Assistance to the Participant herein; except for (i) the financial assistance pledged by Agency to the Parcel 1 Project pursuant to the Parcel 1 Owner Participation Agreement, which is superior only as to the tax increment generated by Parcel 1, and (ii) Tax Allocation Bonds where Agency agrees to set aside the Bond Set Aside in accordance with Section 408.

Until the expiration or earlier termination of this Agreement, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.1 not to be true, immediately give written notice of such fact or condition to Participant.

**102.2 Participant's Representations.** Participant represents and warrants to Agency as follows:

(a) **Authority.** Participant is a duly organized limited liability company organized and in good standing under the laws of the State of Delaware and registered to do business in the State of California. The copies of the documents evidencing the organization of Participant delivered to Agency are true and complete copies of the originals, as amended to the Effective Date. Participant has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this

Agreement by Participant has been fully authorized by all requisite actions on the part of Participant.

(b) **No Conflict.** To the best of Participant's knowledge, Participant's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Participant is a party or by which it is bound.

(c) **No Participant Bankruptcy.** Participant is not the subject of any bankruptcy proceeding.

(d) **Leases and Other Interests.** To the best of Participant's knowledge, there are no unrecorded leases affecting the Site or any portion thereof, and no other person or entity has any unrecorded interests in or the right to possess the Site or any portion of it.

(e) **Title.** Participant, upon the Effective Date, owns fee simple title to the Site.

(f) **Litigation.** To the best of Participant's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(g) **Governmental Compliance.** Participant has not received any notice from any governmental agency or authority alleging that the Site is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Participant following the date this Agreement is signed by the Agency, Participant shall notify Agency within ten (10) days of receipt of such notice.

Until the expiration or earlier termination of this Agreement, Participant shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.2 not to be true, immediately give written notice of such fact or condition to Agency.

**102.3 Limitations on Right to Assign.** The qualifications and identity of the Participant and its managing member are of particular concern to the Agency. It is because of the demonstrated qualifications and identity that the Agency has entered into this Agreement with Participant. No voluntary or involuntary successor in interest of the Participant shall acquire any interest in the Site or the Project nor any rights or powers under this Agreement, except as expressly set forth herein. It is hereby expressly stipulated and agreed that any assignment, sale, transfer or other disposition of the Project or the Site, or any portion(s) thereof or interest(s) therein, in violation of this Section 102.3 shall be null, void and without effect, shall cause a reversion of title to Participant, and shall be ineffective to relieve Participant of its obligations under this Agreement and the Affordable Housing Covenant. For purposes of this Section 102.3, a change in the identity of the initial managing member of Participant (including the sale or transfer, in the aggregate, of the controlling stock or interest in said managing member) shall be deemed a transfer subject to the provisions of this Section. Upon any transfer

or assignment of this Agreement or sale, transfer or other disposition of the Project or the Site that complies with the requirements of this Section 102.3, Participant shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee of the Project or the Site pursuant to an assignment and assumption agreement in a form reasonably acceptable to Agency's legal counsel. The right to receive the Agency Assistance shall run with the Project and, therefore, any assignment or transfer of Participant's obligations under this Agreement to a permitted assignee or transferee shall also include an assignment of the right to receive the Agency Assistance. No later than the date the assignment becomes effective, Participant shall deliver to Agency a fully executed counterpart of the assignment and assumption agreement. Participant shall request approval by written notice at least sixty (60) days prior to any proposed transfer or assignment of this Agreement or sale, transfer or other disposition of the Project or the Site, or any portion(s) thereof or interest(s) therein.

**(a) Prior to Issuance of Certificate of Completion.** Prior to issuance of the Certificate of Completion, Participant shall not assign or transfer this Agreement, the Project or the Site, or any portion(s) thereof, or interest(s) therein, or any right(s) hereunder without the prior written approval of the Agency's Executive Director. Participant shall notify Agency of any proposed transfer, or assignment promptly upon commencement of negotiations in connection with such event. The Agency's Executive Director shall approve or disapprove any requested transfer or assignment within sixty (60) days after receipt of a written request for approval from Participant, together with such documentation as may be reasonably required by the Agency's Executive Director to evaluate the proposed transaction and the proposed assignee's/transferee's experience and qualifications. The Agency's Executive Director shall not unreasonably withhold approval of a transfer or assignment to a proposed transferee/assignee who in the reasonable opinion of the Agency's Executive Director is financially capable and has the development qualifications and experience to perform the duties and obligations of the Participant hereunder.

**(b) Following Issuance of Certificate of Completion.** Following issuance of the Certificate of Completion, Participant shall not assign or transfer this Agreement, the Project or the Site, or any portion(s) thereof, or interest(s) therein, or any right(s) hereunder without the prior written approval of the Agency's Executive Director, which approval shall not be unreasonably withheld or delayed, and shall be granted upon Agency's receipt of evidence acceptable to Agency that the following conditions have been satisfied:

**(i)** Participant is not in Default hereunder or the purchaser or assignee agrees to undertake to cure any Defaults of Participant to the reasonable satisfaction of Agency;

**(ii)** The continued operation of the Project shall comply with the provisions of this Agreement and the Affordable Housing Covenant;

**(iii)** Either (i) the purchaser or assignee or its property manager has at least three year's experience in the ownership, operation and management of similar size rental housing projects, and at least one year's experience in the ownership, operation and management of rental housing projects containing

below-market-rate units, without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local governmental requirements applicable to such projects, or (ii) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subclause (i) above, or (iii) Participant or its management company will continue to manage the Project for at least one year following such transfer and during such period will provide training to the transferee and its manager in the responsibilities relating to the Affordable Units;

(iv) The person or entity which is to acquire the Project does not have pending against it, and does not have a history of significant and material building code violations or complaints concerning the maintenance, upkeep, operation and regulatory agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; and

(v) The proposed purchaser or assignee enters into a written assignment and assumption agreement in form and content reasonably satisfactory to Agency's legal counsel, and, if requested by Agency, an opinion of such purchaser or assignee's counsel to the effect that this Agreement and the Affordable Housing Covenant are valid, binding and enforceable obligations of such purchaser or assignee, subject to bankruptcy and other standard limitations affecting creditor's rights.

(c) **Pre-Approved Transfers.** Notwithstanding any other provision of this Agreement to the contrary, Agency approval of a transfer or assignment of this Agreement, the Project, or the Site or any interest therein shall not be required in connection with any of the following:

(i) Subject to Participant submitting the assignment and assumption agreement referred to above and the approval of such agreement by the Agency, which approval shall not be unreasonably withheld, any transfer or assignment of the Project or any interest therein to an Affiliate of Participant;

(ii) Transfers resulting from the death or mental or physical incapacity of any member of Participant;

(iii) The granting of temporary or permanent easements or permits to facilitate development of the Project;

(iv) Any assignment for financing purposes (subject to such financing being considered and approved by Agency pursuant to Section 214.1 below), including the grant of a deed of trust, assignment of rents and security agreement to secure the funds necessary for construction and permanent financing of the Improvements;

(v) Any transfer by foreclosure or deed in lieu of foreclosure under approved financing or transfers by a lender subsequent to foreclosure or

deed in lieu of foreclosure (subject to the requirements of this Section 102.3 and Section 214, below);

(vi) The transfer of the limited liability company membership interests of Participant, provided such transfer does not cause a material change in the rights to manage and control Participant;

(vii) The transfer of any stock, partnership interest, membership or other beneficial interest in any non-managing member of Participant or any direct or indirect beneficial owner of any non-managing member of Participant;

(viii) The admission of any new non-managing member to Participant;

(ix) The admission of any new co-managing member to Participant, so long as the initial managing member or an Affiliate of Participant remains a co-managing member of Participant and maintains control over the operation and management of Participant;

(x) The assignment of this Agreement, or any interest in this Agreement, to an Affiliate of Participant;

(xi) The transfer of any managing member interest or non-managing member interest in Participant to an Affiliate of Participant, so long as the initial managing member or Affiliate of Participant remains a managing or co-managing member of Participant and maintains control over the operation and management of Participant;

(xii) The rental, in the ordinary course of business, of the apartment units within the Project provided, with respect to the Affordable Units, such rental shall be in accordance with the terms of this Agreement and the Affordable Housing Covenant; and

(xiii) The transfer of limited, exterior portions of the Site, such as landscaped areas or private streets, to the Homeowners' Association under the terms of the CC&Rs for the Crossing|San Bruno Project.

In the event of an assignment or transfer by Participant under the above subsections 102.3(c)1 through 102.3(c)13, inclusive, not requiring Agency's prior approval, Participant nevertheless agrees that it shall give at least fifteen (15) days' prior written Notice to Agency of such assignment or transfer. In addition, Agency shall be entitled to review such documentation as may be reasonably required by the Agency's Executive Director for the purpose of determining compliance of such assignment or transfer with the requirements of subsections 102.3(c)1 through 102.3(c)13, inclusive.

Nothing in this Section or elsewhere in this Agreement shall prohibit (i) sale or transfer of all or any portion of the Site through foreclosure of a mortgage or deed of trust permitted pursuant to Section 214, (ii) transfer to the holder of such permitted mortgage or deed of trust by

deed in lieu of foreclosure or (iii) transfer of the Site by any such holder subsequent to acquisition by foreclosure or deed in lieu, so long as such transfer complies with Section 214. Agency shall not be obligated to pay the Agency Assistance to any transferee of the Site after foreclosure or transfer in lieu of foreclosure unless such transferee assumes all of Participant's obligations under this Agreement and the Affordable Housing Covenant (excluding repayment of any portion of the Agency Assistance not actually disbursed to such transferee).

## **200. DEVELOPMENT OF THE SITE**

**201. Scope of Development.** Participant shall construct and install the Improvements in one phase in accordance with the Scope of Development, Attachment No. 3, as well as the schematic drawings, plans and documents to be submitted to and approved by Agency as provided in Section 204, below. All such work shall be performed by a licensed contractor(s).

**202. Permits and Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the Site, Participant shall, at its expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required by the City, the Architectural Review Committee and any other governmental agency affected by such construction or work to the extent consistent with the Development Agreement. Agency staff will work cooperatively with Participant to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals by the City. However, the execution of this Agreement does not constitute the granting of, or a commitment to obtain, any required land use permits, entitlements or approvals required by Agency or City.

**203. Schedule of Performance.** Participant shall commence and complete construction of the Improvements and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance, Attachment No. 4, subject to the provisions of Section 602 hereof.

## **204. Design Review.**

**204.1 Conceptual Site Plan.** Concurrently with its approval of this Agreement, Agency has approved a conceptual site plan for the Improvements, including materials, color board, elevations of all four sides of the Improvements, preliminary landscape plans, a traffic and circulation plan and a rendered perspective of the residential apartment buildings (collectively, the "Conceptual Site Plan"). For convenience of reference, individual components of the Conceptual Site Plan are listed in Attachment No. 9 attached hereto.

**204.2 Design Review Plans and Planned Development and Architectural Review Permits.** Concurrently with its approval of this Agreement, Agency has approved detailed drawings and specifications with respect to the Improvements (the "Design Review Plans"). For convenience of reference, individual components of the Design Review Plans are listed in Attachment No. 9 attached hereto.

**204.3 Construction Drawings and Related Documents.** Within the time set forth in the Schedule of Performance, Participant shall prepare and submit to the City Building Department for review and approval detailed construction plans with respect to the



Improvements, including a grading plan, which shall have been prepared by a registered civil engineer (the "Construction Drawings").

**204.4 Construction Approvals.** The Agency Board's approval of the Conceptual Site Plan and Design Review Plans shall not relieve the Participant of its obligation to submit schematic drawings and plans to the City in order to obtain the approvals required for the construction of the Improvements on the Site as provided in the Development Agreement.

**204.5 Revisions.** If Participant desires to propose any material revisions to the Agency-approved Conceptual Site Plan or Design Review Plans, it shall submit such proposed changes to the Agency, and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance. If any material change in the basic concept of the development of the Site is proposed in the Conceptual Site Plan or Design Review Plans from the basic concept set forth in the Conceptual Site Plan as originally approved by the Agency Board, then the Agency's approval of any revisions to the Conceptual Site Plan or Design Review Plans may be conditioned upon the renegotiation of all terms and conditions of this Agreement, including the economic terms of the Agreement. If, in the reasonable opinion of the Agency's Executive Director, the Conceptual Site Plan or Design Review Plans, as modified by the proposed change, generally and substantially conform to the requirements of this Section 204 and the Scope of Development, the Agency's Executive Director shall, within fifteen (15) days after submission to the Agency, approve the proposed change and authorize the City to process the change in accordance with City requirements. The Agency's Executive Director is authorized to approve changes to the Agency-approved Conceptual Site Plan and Design Review Plans provided such changes (a) do not significantly reduce the cost of the proposed development; (b) do not reduce the quality of materials to be used; and (c) do not reduce the imaginative and unique qualities of the Project design. Any and all change orders or revisions required by the City and its inspectors in accordance with the Development Agreement and under other applicable laws and regulations shall be included by Participant in its Conceptual Site Plan, Design Review Plans and Construction Drawings and completed during the construction of the Improvements.

**204.6 Consultation and Coordination.** During the preparation of the Construction Drawings, staff of Agency and Participant shall hold progress meetings on an as needed basis to coordinate the preparation, submission, and review with the City staff. The staff of Agency and Participant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the City and Agency can receive timely and thorough consideration.

**204.7 Defects in Plans.** Agency shall not be responsible either to the Participant or to any third parties in any way for any defects in the Conceptual Site Plan, the Design Review Plans or the Construction Drawings, nor for any structural or other defects in any work done according to the approved Conceptual Site Plan, Design Review Plans or Construction Drawings, nor for any delays caused by the review and approval processes established by this Section 204. Participant shall hold harmless, indemnify, pay for and defend Agency, City and its and their officers, employees, agents, representatives and volunteers from and against any claims or suits for damage to property or injury to or death of any persons arising out of or in any way relating to defects in the Conceptual Site Plan, Design Review Plans or the Construction Drawings,

including the violation of any Governmental Requirements, or for defects in any work done according to the approved Conceptual Site Plan, Design Review Plans and Construction Drawings.

**204.8 Cost of Construction.** All costs of Site preparation, planning, designing and constructing the Improvements and developing the Project on the Site shall be borne solely by Participant, except as otherwise expressly set forth herein.

**205. Insurance Requirements.** At all times during the term of this Agreement, Participant shall provide, maintain and keep in full force and effect, the insurance required under Attachment No. 10, Insurance Requirements, and shall comply with all requirements set forth therein.

**206. Rights of Access.** Prior to the issuance of a Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of the Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including the inspection of the Project and the work of Improvements so long as the Agency representatives comply with all safety rules. Agency (or its representatives) shall, except in emergency situations, notify Participant prior to exercising its rights pursuant to this Section 206. Nothing herein shall be deemed to limit the ability of the City to conduct code enforcement and other administrative inspections of the Site in accordance with applicable law.

**207. Compliance With Laws.** Participant shall carry out the work of Improvements in conformity with all applicable laws, including Public Contracts Code requirements; City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

**208. Prevailing Wages.** Participant acknowledges and agrees that the Improvements constitute construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds under California Labor Code Section 1720(b)(3). Participant shall comply with the City of San Bruno prevailing wage policy, all requirements of the Department of Industrial Relations in accordance with the California Labor Code, and all other applicable federal, state and local laws and regulations pertaining to labor standards and payment of prevailing wages (collectively, "Prevailing Wage Laws"). Participant shall (i) require its contractors and subcontractors to submit certified copies of payroll records to Participant; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to Agency and its designees for inspection and copying during regular business hours at the Site or at another location within the City of San Bruno.

Participant shall defend, indemnify and hold harmless Agency and City and its and their officers, employees, volunteers, agents and representatives from and against any and all present and future claims, demands, damages, or liability of any kind or nature, including attorneys fees and costs, arising out of or in any way connected with Participant's obligation to comply with

Prevailing Wage Laws, including all claims or demands that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781, as amended and added by Senate Bill 966.

Participant hereby waives, releases and discharges forever Agency and the City, and its and their employees, officers, volunteers, agents and representatives, from any and all present and future claims, demands, damages and liability arising out of or in any way connected with Participant's obligation to comply with all Prevailing Wage Laws in connection with the work of Improvements.

Participant is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

As such relates to this Section 208, Participant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

**209. Taxes and Assessments.** Participant shall pay prior to delinquency all *ad valorem* real estate taxes and assessments on the Site, subject to Participant's right to contest in good faith any such taxes. Participant shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within thirty (30) days following the date of attachment or levy.

**210. Project Sign.** Participant and Agency agree to cooperate in placing and maintaining on the Site, during construction, one sign indicating the respective roles of Participant and Agency in the Project. The cost of the sign shall be borne by Participant.

**211. Liens and Stop Notices.** Participant shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Project, Participant shall within thirty (30) days of such recording or service:

- a. pay and discharge the same; or
- b. affect the release thereof by recording and delivering to Agency a surety bond in sufficient form and amount; or
- c. provide the Agency with other assurance which Agency deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Agency from the effect of such lien or bonded stop notice.

**212. Submission of Evidence of Financing Commitments.** Within the time established therefor in the Schedule of Performance, Participant shall obtain and submit to Agency evidence that Participant has obtained firm letters of commitments for debt and equity financing necessary to undertake the development of the Project and the design and construction

of the Improvements in accordance with this Agreement. Agency's Executive Director shall approve or disapprove such evidence of financing commitments within the time established in the Schedule of Performance. Approval shall not be unreasonably withheld. If Agency's Executive Director shall reasonably disapprove any such evidence of financing, the Executive Director shall do so by written notice to Participant stating the reasons for such disapproval and, thereafter, Participant shall utilize good faith, diligent efforts to promptly obtain and submit to Agency new evidence of financing. Agency's Executive Director shall approve or disapprove such new evidence of financing in the same manner and within the same times established in the Schedule of Performance for the approval or disapproval of the evidence of financing as initially submitted to the Agency.

Such evidence of financing shall include a copy of the firm and binding commitment obtained by Participant for the mortgage loan or loans to finance construction through completion of the Project. The term of such construction financing shall be for not less than one (1) year. The commitment for financing shall be in a form sufficient, in the reasonable opinion of the Agency's Executive Director, to evidence a firm loan commitment subject to the construction lender's reasonable, customary and normal conditions and terms. In the event Agency disapproves Participant's evidence of financing commitments or Participant fails to obtain and deliver the evidence of financing commitments to Agency as provided above, then either party may terminate this Agreement as provided herein by Notice to the other party and, thereafter, neither party shall have any rights or obligations hereunder, except for Participant's indemnity obligations which shall survive termination of this Agreement.

Prior to issuance of a Certificate of Completion, Participant shall provide Agency's Executive Director with a written statement signed by the managing member of Participant setting forth the total amount of Project Debt, together with supporting evidence of such Project Debt reasonably satisfactory to the Executive Director.

**213. Certificate of Completion.** Following Participant's completion of the work of construction and installation of the Improvements on the Site in conformity with this Agreement, and within the time set forth in the Schedule of Performance, Agency shall furnish Participant with a "Certificate of Completion" substantially in the form attached hereto as Attachment No. 6. Agency shall not unreasonably withhold such Certificate of Completion. The Certificate of Completion shall be conclusive determination of satisfactory completion of the work of construction and installation of the Improvements on the Site and the Certificate of Completion shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in Section 306 hereof and in the Affordable Housing Covenant.

If Agency refuses or fails to furnish the Certificate of Completion, Agency shall, within thirty (30) days after Participant's written request therefor, provide the Participant with a written statement of the reasons Agency refused or failed to furnish the Certificate of Completion. The statement shall also contain Agency's opinion of the actions Participant must take to obtain the Certificate of Completion. Agency's failure to provide such a written statement within such thirty- (30-) day period shall be deemed Agency's disapproval of Participant's request for issuance of the Certificate of Completion. The Certificate of Completion shall not constitute

evidence of compliance with or satisfaction of any obligation of Participant to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the work of Improvements, or any part thereof. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

**214. Mortgage, Deed of Trust, Sale and Lease-Back Financing.**

**214.1 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development.** Mortgages and deeds of trust are permitted before completion of the construction of the Improvements, but only for the purpose of securing loans of funds to be used for financing the costs of acquiring the Site and constructing the Improvements. Participant covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing without the prior written approval of Agency's Executive Director. The beneficiary under any mortgage or deed of trust so approved by the Agency's Executive Director shall be an "Approved Lender," herein. The requirements of this Section 214.1 shall terminate effective upon issuance of the Certificate of Completion. Participant shall notify Agency in advance of any proposed mortgage or deed of trust. The words "mortgage" and "deed of trust" as used hereinafter shall include sale and lease-back financing.

**214.2 Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or Improvements provided for or authorized by this Agreement and the Affordable Housing Covenant.

**214.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** If Agency delivers any notice or demand to Participant with respect to any breach or default by Participant hereunder, including the requirements of Section 302(b), below, Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. No notice of default shall be effective as to the holder unless such notice is given. Each such holder shall (insofar as the rights of Agency are concerned) have the right, at its option, within sixty (60) days after receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. In the event possession of the Site (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Any such holder properly completing the Improvements shall be entitled, upon compliance with the requirements of Section 213 of this Agreement, to a Certificate of Completion. Agency shall be obligated to pay the Agency Assistance to a transferee of the Site after foreclosure or transfer in lieu of foreclosure only if such transferee assumes in writing all of Participant's obligations hereunder and under the Affordable Housing Covenant (excluding repayment of any portion of the Agency Assistance not actually disbursed to such transferee) and reinstates this Agreement and the Affordable Housing Covenant. Any such holder shall be responsible only to the extent necessary

to bring the Project into current compliance with Participant's obligations under this Agreement and the Affordable Housing Covenant, and not for any past uncured defaults.

**215. Condition of the Site.** Participant shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials that are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Participant shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards prevailing in the industry, to the extent such standards exceed applicable Governmental Requirements, as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. Participant shall cause each release of Hazardous Materials in, on or under the Site to be remediated in accordance with all Governmental Requirements.

Participant agrees to indemnify, defend and hold Agency and City and its and their officers, employees, volunteers, agents and representatives harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site, caused by Participant or any of Participant's predecessors in interest. This indemnity shall include any damage, liability, fine, penalty, parallel indemnity, cost or expense arising from or out of any claim, action, suit or proceeding for bodily injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic or consequential loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effects on the environment.

### **300. COVENANTS, RESTRICTIONS AND AGREEMENTS**

**301. Use and Affordable Housing Covenants.** Participant covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that Participant shall continuously maintain, use and operate the Project in accordance with the highest industry standards, utilizing its expertise and all resources available to it to provide residents of the Project, including the Affordable Units, with high-quality rental housing, amenities and services, for the period of time specified in Section 306, below. No uses other than those specified above shall be permitted without the prior written approval of the Agency, which may be granted or denied in Agency's sole discretion. All uses conducted on the Site, including all activities undertaken by Participant pursuant to this Agreement, shall conform to the Redevelopment Plan, the Development Agreement and all applicable provisions of the San Bruno Municipal Code.

**302. Maintenance Covenants.** Participant shall maintain in accordance with the Maintenance Standards, as hereinafter defined, the private improvements and public improvements and landscaping to the curblines on and abutting the Site. The improvements shall include buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping,

architectural elements identifying the Site and any and all other improvements on the Site and in the public right of way to the nearest curblin(e) abutting the Site. To accomplish the maintenance, Participant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The maintenance covenants and obligations set forth in this Section 302 shall remain in effect for the period of time specified in Section 306, below.

**(a) Maintenance Standards.** The following standards (collectively, "Maintenance Standards") shall be complied with by Participant and its maintenance staff, contractors and subcontractors, but do not require extraordinary expenditures or reconstruction after condemnation or the occurrence of a substantial casualty event:

**(i)** Landscape maintenance shall include: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

**(ii)** Clean-up maintenance shall include: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

**(iii)** All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**(iv)** Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all Governmental Requirements. Precautionary measures shall be employed recognizing that all areas are open to public access.

**(v)** The Improvements shall be maintained in conformance and in compliance with the Specific Plan and the approved Planned Development Permit and Architectural Review Permit, as the same may be amended from time to time with the approval of the City and in accordance with the custom and practice generally applicable to comparable multi-family residential projects located within San Mateo County, California. The public right-of-way improvements to the curblin(e) on and abutting the Site shall be maintained as required by this subsection a. in good condition and in accordance with the

custom and practice generally applicable to public rights-of-way within the City of San Bruno.

**(b) Failure to Maintain Improvements.** If Participant does not maintain the private and public improvements on the Site to the curblines on and abutting the Site in the manner set forth herein and in accordance with the Maintenance Standards, Agency and/or City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Participant. However, prior to taking any such action, Agency agrees to notify Participant in writing if the condition of said improvements does not conform to the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Participant to cure the deficiencies. Upon notification of any maintenance deficiency, Participant shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Participant shall have twenty-four (24) hours to rectify the problem.

In the event Participant fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after expiration of any applicable cure period, including the notice and cure provisions for any holder of record of any mortgage or deed of trust pursuant to Section 214.3, then City and/or Agency shall have the right to maintain such improvements. Participant agrees to pay Agency upon demand all charges and costs incurred by Agency or City for such maintenance. Until so paid, the Agency shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Site. Any lien in favor of the Agency created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of the Agency created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Participant acknowledges and agrees that the City and Agency may also pursue any and all other remedies available in law or equity in the event of a breach of the maintenance obligations and covenants set forth herein, subject to the limitations described in Section 502, below.

**303. Nondiscrimination Covenants.** Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant itself or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such



deeds, leases or contracts for the rental, sale or lease of the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

(b) **In leases.** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) **In contracts.** "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

**304. Minimum Project Cost.** Participant covenants and agrees that in connection with its construction of the Project, Participant shall expend not less than THIRTY-FOUR MILLION DOLLARS (\$34,000,000) in "hard" construction costs; "hard" construction costs shall consist exclusively of on-site labor and materials expenditures incurred by Participant for the work of construction and installation of the Improvements. "Hard" construction costs shall not include (i) Hazardous Materials remediation costs; (ii) costs of furniture, fixtures and equipment; or (iii) construction or project management fees, legal, engineering, financing, overhead, or any other costs or fees typically characterized by the construction/development industry as "soft" costs. Participant shall provide evidence reasonably satisfactory to Agency of all of its hard construction cost expenditures prior to submitting its requests for issuance of a Certificate of Completion. Failure to satisfy the minimum hard construction cost expenditure requirement set forth in this Section 304 shall be deemed a Default by Participant.

**305. Replacement Reserve Requirement.** Participant covenants and agrees that in each Operating Year Participant shall deposit not less than Two Hundred and No/100 Dollars

(\$200.00) per apartment unit into a special capital replacement reserve account maintained with Fannie Mae or such other Approved Lender. The capital replacement reserve account shall be used exclusively for payment of Project capital replacement expenses to the extent provided in the agreement(s) governing such reserves.

**306. Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction.** Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the Affordable Housing Covenant which runs with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the Affordable Housing Covenant which runs with the land have been provided, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site or in the Redevelopment Project. Agency shall have the right, in the Event of Default under this Agreement or Affordable Housing Covenant, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled as provided in Section 502 and the Affordable Housing Covenant. Effective upon issuance of the Certificate of Completion and recordation of the Affordable Housing Covenant, the covenants contained in this Agreement shall terminate and be superceded by those covenants set forth in the Affordable Housing Covenant, except for the following covenants which shall continue in full force and effect:

- a. Agency's and Participant's representations and warranties pursuant to Section 100; and
- b. Agency's and Participant's respective covenants and agreements set forth in Sections 204.7, 208, 209, 211, 213, 215, 400, 500 and 600.

**307. Affordable Housing Covenant.** In consideration of the Agency Assistance, Participant agrees to develop, own, operate and make available not less than thirty-seven (37) rental units within the Project to persons and households of very low income at affordable rents (the "Affordable Units"). Participant's duties are more specifically set forth in the Affordable Housing Covenant, Attachment No. 5, which shall be recorded against the Site in the Official Records of San Mateo County, California, within the time set forth in the Schedule of Performance. Upon recording, the Affordable Housing Covenant shall have priority over the liens of any and all mortgages or deeds of trust encumbering the Project, or any portion thereof, and Participant shall be required to furnish to Agency subordination agreements in a form substantially similar to the Subordination Agreement attached hereto as Attachment No. 11, subordinating the liens of any deeds of trust or mortgages existing as of such recording to the Affordable Housing Covenant.

**308. Indemnification Limitation for Approved Lenders.** Inasmuch as the covenants, reservations and restrictions of this Agreement and the Affordable Housing Covenant run with the land, the indemnification obligations of the Participant contained in this Agreement and the Affordable Housing Covenant will be deemed applicable to any successor in interest to Participant, but, it is acknowledged and agreed, notwithstanding any other provision of this Agreement or the Affordable Housing Covenant to the contrary, that neither any Approved

Lender nor its successors in interest will assume or take subject to any liability for the indemnification obligations of the Participant for acts or omissions of Participant occurring prior to transfer of title to any Approved Lender whether by foreclosure, deed in lieu of foreclosure or comparable conversion; Participant at the time of the act or omission shall remain liable under the indemnification provisions for its acts or omissions occurring prior to any transfer of title to an Approved Lender whether by foreclosure, deed in lieu of foreclosure or comparable conversion. An Approved Lender shall indemnify Agency following its acquisition of the Project or Site or any portion thereof by foreclosure, deed in lieu of foreclosure or comparable conversion during, and only during, any ensuing period that such Approved Lender owns and operates the Project, provided that the liability of any Approved Lender shall be strictly limited to its acts and omissions occurring during the period of its ownership and operation of the Site.

#### **400. FINANCIAL PROVISIONS**

**401. Agency Assistance.** In consideration of Participant's obligations under this Agreement and the Affordable Housing Covenant, including Participant's obligation to construct the Improvements and to maintain the affordability of the Affordable Units, and subject to the terms and conditions of this Agreement, including Participant's fulfillment of the Conditions Precedent to Disbursement of Agency Assistance set forth in Section 402 below, Agency shall make available to Participant the Affordable Housing Fee Grant, the Affordable Housing Fixed Subsidy, and the Affordable Housing Variable Subsidy as provided in subsections 401.1 through 401.2 below. The Affordable Housing Fee Grant, the Affordable Housing Fixed Subsidy and the Affordable Housing Variable Subsidy are referred to collectively herein as the "Agency Assistance."

**401.1 Affordable Housing Fee Grant.** Subject to the terms hereof, including the Affordable Housing Fee Grant Cap, Agency shall disburse to City, on behalf of Participant prior to issuance of a building permit, a one-time grant in an amount equal to the municipal fees payable to City and directly attributable to the Affordable Units, not to include any fees or other amounts payable by Participant to any other governmental agencies (e.g., school fees) or any portion of the Development Impact Fee (as defined in the Development Agreement) payable to City (the "Affordable Housing Fee Grant"). In no event shall the Affordable Housing Fee Grant exceed TWO HUNDRED FORTY-FIVE THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$245,125.00) (the "Affordable Housing Fee Grant Cap"). Agency intends to pay the Affordable Housing Fee Grant, to the extent possible, from Affordable Housing Fund monies. Participant, at its expense, shall pay to the City when due any and all municipal fees attributable to the Affordable Units in excess of the Affordable Housing Fee Grant Cap.

#### **401.2 Affordable Housing Subsidy.**

**(a) Amount of Affordable Housing Subsidy.** Subject to the terms hereof, including the Affordable Housing Subsidy Cap, Agency shall provide a subsidy to Participant (or to Trustee as provided in Section 407, below) for each Operating Year beginning with the first Operating Year and continuing for each of the next fourteen (14) Operating Years (through and including the fifteenth (15th) Operating Year) (the "Affordable Housing Subsidy"), which Affordable Housing Subsidy shall be disbursed to Participant in accordance with Section 401.2(c). The amount of the Affordable Housing Subsidy shall be calculated as follows:

(i) **Affordable Housing Fixed Subsidy.** Beginning with the first Operating Year and continuing for each of the next four (4) Operating Years (through and including the fifth (5th) Operating Year), the amount of the annual Affordable Housing Subsidy shall equal THREE HUNDRED SEVENTY THOUSAND DOLLARS (\$370,000.00) ("Affordable Housing Fixed Subsidy"). The Agency shall not consider the Benchmark Debt Coverage Ratio for purposes of determining Participant's eligibility for the Affordable Housing Fixed Subsidy.

(ii) **Affordable Housing Variable Subsidy.** Beginning with the sixth (6th) Operating Year and continuing for each of the next nine (9) Operating Years thereafter (through and including the fifteenth (15th) Operating Year), the amount of the annual Affordable Housing Subsidy shall equal the lesser of: (1) the amount necessary for the Project to meet (and not exceed) the Benchmark Debt Coverage Ratio, or (2) THREE HUNDRED SEVENTY THOUSAND DOLLARS (\$370,000.00) ("Affordable Housing Variable Subsidy").

(b) **Source of Affordable Housing Subsidy Payments.** Agency shall fund the Affordable Housing Subsidy from the following sources in the following order until the Affordable Housing Subsidy Cap is reached or the sources are exhausted (the "Affordable Housing Subsidy Payment Sources"): (1) up to 100 percent of the Net Affordable Housing Set Aside Revenues during each Operating Year attributable to (i) the Project, (ii) the Parcel 1 Project (but only to the extent that there is any excess after any and all payments have been made under the Parcel 1 Owner Participation Agreement), (iii) the Parcel 3 Project, and, then, (iv) the Parcel 4 Project; and then (2) up to 100 percent of the Net Unrestricted Property Tax Increment Revenues during each Operating Year attributable to (i) the Project, (ii) the Parcel 1 Project (but only to the extent that there is any excess after any and all payments have been made under the Parcel 1 Owner Participation Agreement), (iii) the Parcel 3 Project, and, then, (iv) the Parcel 4 Project. Each Operating Year, Agency shall disburse to Participant all or that portion of the Affordable Housing Subsidy that can be funded by the Affordable Housing Subsidy Payment Sources. The actual payment made to Participant is referred to herein as the "Affordable Housing Subsidy Payment."

(c) **Accrual and Payment of Unpaid Affordable Housing Subsidy.** Each Operating Year, if any, that the Affordable Housing Subsidy is not paid in full, the difference between the Affordable Housing Subsidy and the Affordable Housing Subsidy Payment (the "Affordable Housing Subsidy Payment Shortfall") shall accrue to Participant ("Affordable Housing Subsidy Accrual"). In addition, provided Parcels 3 and 4 achieve a total assessed valuation of not less than \$31.6 million by property tax fiscal year 2006/07, \$63.25 million by property tax fiscal year 2007/08, \$94.9 million by property tax fiscal year 2008/09 and \$126.5 million by property tax fiscal year 2009/10, simple interest at the rate of five percent (5%) per annum shall accrue on the Affordable Housing Subsidy Accrual. Beginning with the sixth (6th) Operating Year and continuing each Operating Year thereafter until the first to occur of (a) July 6, 2039, the current expiration date of the Redevelopment Plan, (b) termination of the Affordable Housing Covenant, or (c) payment in full to Participant of the Affordable Housing Subsidy Accrual, as may be accrued through the fifteenth (15th) Operating Year, Agency shall disburse to Participant (or to Trustee as provided in Section 407, below), to the extent available

from the Affordable Housing Subsidy Payment Sources and in the order listed in Section 401.2(b), a payment (the "Accrual Payment") up to the following maximum amounts:

(i) Beginning with the sixth (6th) Operating Year and continuing for each of the next nine (9) Operating Years thereafter (through and including the fifteenth (15th) Operating Year), the Accrual Payment shall be up to a maximum dollar amount equal to the difference between the Affordable Housing Subsidy Cap and the Affordable Housing Variable Subsidy.

(ii) In the event that the Affordable Housing Subsidy Accrual is not paid in full by the end of the fifteenth (15th) Operating Year, beginning in the sixteenth (16th) Operating Year, the Accrual Payment shall be up to a maximum of THREE HUNDRED SEVENTY THOUSAND DOLLARS (\$370,000.00).

(d) **Timing of Affordable Housing Subsidy Payments and Accrual Payments.** Agency shall pay the Affordable Housing Subsidy Payment or Accrual Payment, if any, each Operating Year within thirty (30) days following receipt by Agency of the second biannual installment of tax increment from the County of San Mateo, until the Affordable Housing Subsidy Accrual, if any, is paid in full.

(e) **Cap on Affordable Housing Subsidy Payment and Accrual Payment.** In no event shall the sum of the Affordable Housing Subsidy Payment and the Accrual Payment payable to Participant in any given Operating Year exceed THREE HUNDRED SEVENTY THOUSAND DOLLARS (\$370,000.00) (the "Affordable Housing Subsidy Cap").

**402. Conditions Precedent to Disbursement of Agency Assistance.** Agency's obligation to make each disbursement of the Agency Assistance is conditioned upon the satisfaction or waiver by the Agency of each and all of the conditions precedent described below (the "Conditions Precedent to Disbursement of Agency Assistance"), which are solely for the benefit of the Agency, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **No Default.** Participant shall not be in default of any of its obligations under the terms of this Agreement or the Affordable Housing Covenant and all representations and warranties of Participant contained herein shall be true and correct in all material respects.

(b) **Execution of Documents.** Participant shall have executed and acknowledged the Memorandum of Agreement, the Affordable Housing Covenant and any other documents required hereunder and delivered such documents to Agency.

(c) **Insurance.** Participant shall have provided proof of insurance as required by Section 205 of this Agreement.

(d) **Permits and Land Use Approvals.** Participant shall have obtained all City and governmental agency permits and land use approvals required pursuant to

Section 202 hereof and all other Project entitlements, and the period for administrative and legal challenge to such land use approvals and entitlements shall have expired.

(e) **Payment of Development Fees.** Participant shall have paid to the City, when due, all development fees required in connection with the development of the Project and installation of the Improvements, including but not limited to, all traffic mitigation and development impact fees consistent with the Development Agreement.

(f) **Payment of Property Taxes.** No ad valorem property taxes or assessments assessed with respect to the Project shall be delinquent.

(g) **Completion of Improvements.** With respect to the Affordable Housing Subsidy only, Participant shall have satisfactorily completed the construction of the Improvements, and a Certificate of Completion shall have been issued by the Agency as provided in Section 213, hereof.

(h) **Minimum Project Cost.** With respect to the Affordable Housing Subsidy only, Participant shall have provided proof reasonably satisfactory to Agency of its compliance with the minimum project cost covenants set forth in Section 304, above.

(i) **Subordination Agreements and Affordable Housing Covenant Report.** With respect to the Affordable Housing Subsidy only, Participant shall have executed, acknowledged and delivered to Agency any subordination agreements required by Section 307 and delivered to Agency the annual report(s) required under the Affordable Housing Covenant.

(j) **Financial Statements and Reports.** With respect to the Affordable Housing Subsidy only, Participant shall have delivered to the Agency the financial statements and written annual statements required under Section 406 hereof.

**403. Eligible Project Costs.** Participant may use the Agency Assistance exclusively for reimbursement of one or more of the following Project costs ("Eligible Project Costs"):

(a) twenty percent (20%) of the costs of (i) constructing and installing any on-site or off-site improvements to the extent such improvements directly benefit and are a reasonable and fundamental component of the Affordable Units and provided the reimbursement of such improvement costs is permissible under then applicable provisions of the Community Redevelopment Law, (ii) remediating any Hazardous Materials on the Site, and (iii) demolishing existing improvements on the Site; (b) one hundred percent (100%) of the costs of constructing the Affordable Units including any fees due the City or other state or federal agency in connection with the development of the Affordable Units; (c) payment of that portion of the Project Debt allocable to costs set forth in preceding clauses (a) and (b); and (d) payment of that portion of the Project's ad valorem property taxes allocable to the Affordable Units. Participant may also use the Agency Assistance to reimburse itself for the difference between the fair market rental value of the Affordable Units and the affordable rents that are required under the Affordable Housing Covenant. Any and all Eligible Project Costs in excess of the amount of Agency Assistance available to Participant under this Agreement shall be borne by Participant at its expense.

**404. Reduction in Amount of Affordable Housing Subsidy Following Reassessment.** Notwithstanding anything herein to the contrary, if (i) the assessed valuation of the Site or the improvements thereon is reduced by the County of San Mateo, whether such reduction is due to an appeal filed by the Participant in accordance with the provisions of the California Revenue and Taxation Code, or otherwise, and (ii) Participant has received one or more Affordable Housing Subsidy Payment(s) for the same period of time to which the reduced assessed valuation applies, the next Affordable Housing Subsidy Payment(s) to be made by Agency to Participant following the reduction shall be decreased by an amount equal to the difference between the amount of the Affordable Housing Subsidy Payment(s) made to Participant prior to such reduction and the amount of Affordable Housing Subsidy Payment(s) which would have been paid to Participant based upon the assessed valuation as reduced.

**405. Intentionally Omitted.**

**406. Financial Records and Auditing and Reporting Obligations.** Participant covenants and agrees, on behalf of itself and its successors and assigns, that, in connection with the construction, ownership and operation of the Project, it shall keep full and accurate books of account and records in accordance with generally accepted accounting principles applicable to real estate projects and transactions, consistently applied, including records of Effective Gross Income, Operating Expenses, Debt Service and Net Operating Income. Such books, receipts and records shall be kept for a period of three (3) years after the close of each Operating Year and shall be available for inspection and independent audit by Agency and its representatives at the Site at all times during regular business hours. Participant shall also provide Agency's Executive Director with fully audited financial statements, prepared by an independent third-party certified public accountant, within 45 days following the end of each Operating Year. The financial statements shall include the Effective Gross Income, Operating Expenses, Net Operating Income, Debt Service and Debt Coverage Ratio and verify that Participant has calculated Operating Expenses in accordance with the terms of this Agreement, including the definition of Operating Expenses set forth in Section 101. All such statements shall be prepared in accordance with generally accepted accounting principles applicable to real estate projects and transactions, consistently applied.

Beginning with the sixth Operating Year and continuing for as long as Participant's right to receive the Affordable Housing Variable Subsidy remains in effect, Participant shall also provide Agency with a written annual statement of Effective Gross Income, Operating Expenses, Net Operating Income, Debt Service and Debt Coverage Ratio, in a form reasonably acceptable to Agency, within 45 days following the end of each Operating Year. Such written statement shall be supported by the fully audited financial statements. If the audited financial statement for any Operating Year submitted after Agency has disbursed to Participant the Affordable Housing Subsidy Payment demonstrates that Agency has made a payment(s) in excess of the amount that should have been disbursed, then Participant shall repay Agency, with the submission of the audited financial statement, the sum total of all excess Affordable Housing Subsidy Payments, plus interest on such amounts calculated from the date such excess disbursements were made at a rate of ten percent (10%) per annum. If Participant fails to repay Agency the excess payments, plus interest, as provided above, then Agency, in addition to pursuing whatever other remedies it may have, may reduce the next Operating Year's Affordable Housing Subsidy Payment by the sum total of all excess Affordable Housing Subsidy Payments, plus interest on such amounts

calculated from the date such excess disbursements were made at a rate of ten percent (10%) per annum.

The receipt by Agency of any audited financial statement or statement of Effective Gross Income, Operating Expenses, Net Operating Income, Debt Service and Debt Coverage Ratio shall not bind it as to the correctness of the amount of such statements. Agency shall, within three (3) years after the receipt of any such statement, be entitled to its own audit thereof. Such audit shall be conducted by an agent of Agency during normal business hours at the Site. If it shall be determined as a result of such audit that Agency has disbursed to Participant Affordable Housing Subsidy Payment(s) in excess of the amount that should have been disbursed, then Participant shall repay Agency within ten (10) days following Agency's demand therefor, the sum total of all excess Affordable Housing Subsidy Payments, plus interest on such amounts calculated from the date such excess disbursements were made at a rate of ten percent (10%) per annum. In addition, if Participant's statement of Net Operating Income for any Operating Year shall be found to have understated Net Operating Income by more than three percent (3%), then Participant shall pay to Agency all costs incurred in performing the audit.

**407. Pledge of Agency Assistance to Bond Trustee.**

a. Participant hereby grants a security interest in and pledges to and for the benefit of the trustee in respect of the multifamily housing revenue bonds issued initially to finance the Project (the "Bonds"), its successors and assigns (the "Trustee") and for the holder of any bonds or debt subsequently issued to refinance the Bonds all right, title and interest of Participant in and to the Agency Assistance. The pledge by Participant under this Agreement is a "pledge" of "collateral" as deemed in California Health & Safety Code Section 33641.5, and as such is valid and binding from and after the Effective Date until the Bonds are no longer outstanding (the "Pledge Expiration Date"). The Net Affordable Housing Set Aside Revenues and Net Unrestricted Property Tax Increment Revenues shall immediately be subject to the lien of the pledge created under this Agreement without any physical delivery thereof or further act to maintain the validity or enforceability of the pledge created under this Agreement, including, without limitation, any actions relating to operation of the Project in any particular manner.

b. No authorization or approval or other action by, and no notice to or filing with, any federal, state or local government body, agency or authority is required for the due execution, delivery and performance by the Agency of this Agreement which has not been obtained.

c. For all disbursements of the Affordable Housing Subsidy that Agency is obligated to make to Participant hereunder prior to the Pledge Expiration Date, Agency shall disburse such payments to Trustee (as defined above) at the following address: Wells Fargo Bank, National Association, 707 Wilshire Boulevard, 17th Floor, Los Angeles, California 90017, Attention: Corporate Trust Services, MAC E2818-176. The address may be modified by Participant, with the written consent of the then-current Trustee, from time to time by Notice to Agency. On or before the commencement of each Operating Year, Participant shall designate to Agency in writing the identity and address of the Trustee to receive such disbursements of the Affordable Housing Subsidy Payment. If at any time no Bonds shall remain outstanding and there shall not be outstanding any bonds or debt secured by a mortgage or deed of trust



encumbering the Project, Participant shall notify Agency that all future payments are to be made to Participant, or such successor, provided that no modifications of the identity or address of Trustee or instructions of payment to Trustee shall be deemed effective unless consented to in writing by the then-current Trustee. If, notwithstanding this Section 407, Agency inadvertently directs to Participant one or more disbursements of the Affordable Housing Subsidy, Agency shall have no obligation to make such disbursement(s) to Trustee and Participant shall be required to reimburse Trustee the full amount of such misdirected disbursement(s).

**408. Future Tax Allocation Bonds.** From time to time following the Effective Date, Agency may issue Tax Allocation Bonds for which Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues are to be pledged or utilized in whole or in part for payment. The Tax Allocation Bonds shall have priority over the pledge of Agency Assistance made under this Agreement, provided Agency agrees to set aside a portion of the Tax Allocation Bond proceeds equal to an amount sufficient to fund payment of all future Agency Assistance that Agency is obligated to pay under the terms of this Agreement (the "Bond Set Aside"). The Bond Set Aside shall be calculated assuming annual payments at the Affordable Housing Subsidy Cap and accrual of interest at an annual rate equal to the lesser of (a) the maximum interest rate permitted by law, or (b) fifty basis points above the rate publicly announced by Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) at its "Reference Rate." Within 10 business days following Agency's request, Participant shall execute such subordination documents as may be reasonably requested by Agency or its Tax Allocation Bond underwriter confirming the subordination of the pledge of Agency Assistance hereunder to the pledge of Net Affordable Housing Set Aside Revenues and Net Unrestricted Property Tax Increment Revenues under the Tax Allocation Bonds. Nothing herein shall be deemed to limit in any way (1) Agency's ability to issue Tax Allocation Bonds for which Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues are to be pledged or utilized in whole or in part for payment, where such Tax Allocation Bonds are subordinate to the Agency's obligation hereunder to make the Agency Assistance payments available to Participant; or (2) Agency's ability to issue, or effect the priority of, any Tax Allocation Bonds issued by Agency, whose repayment is secured by a pledge of property tax increment revenues that does not include, in whole or part, the Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues.

## **500. DEFAULTS AND REMEDIES**

**501. Default Remedies.** Subject to the permitted extensions of time as provided in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and expiration of any applicable cure period, including the notice and cure provisions for any holder of record of any mortgage or deed of trust pursuant to Section 214.3, shall constitute a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days following receipt of such Notice of Default immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence.

**502. Institution of Legal Actions.** Upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California. Notwithstanding anything herein to the contrary, Participant's right to recover damages in the event of a Default by Agency shall be limited to recovery of actual damages and shall exclude consequential damages.

To protect the rights of Approved Lenders (pursuant to Section 214.1), Agency shall not have the right to file any involuntary petition seeking reorganization, arrangement, adjustment, or composition of or in respect of Participant, respectively, under any liquidation, insolvency, bankruptcy, rehabilitation, reorganization, conservation or other similar law in effect now or in the future.

The obligations of Participant under the Affordable Housing Covenant and this Agreement shall be personal to the entity or person, defined as Participant, which owned the Site at the time that an event, including, any Default or breach of this Agreement or the Affordable Housing Covenant, occurred or was alleged to have occurred and such entity or person shall remain liable for any and all obligations including damages occasioned by a Default or breach, even after such person or entity ceases to be the owner of the Site. Accordingly, no subsequent owner of the Site shall be liable or obligated for the obligation of any prior owner, including any obligation for payment, indemnification or damages, for Default or breach of this Agreement or the Affordable Housing Covenant or otherwise. The owner of the Site at the time the obligation was incurred, including any obligation arising out of a Default or breach of this Agreement or the Affordable Housing Covenant, shall remain liable for any and all payments and damages occasioned by the owner even after such person or entity ceases to be the owner of the Site.

Under no circumstances shall the Agency:

- a. interfere with or attempt to influence the exercise by any Approved Lender of any of its rights under the terms of the mortgage or deed of trust, including, without limitation, the respective remedial rights of the Approved Lenders upon the occurrence of any event of default by Participant under such mortgage or deed of trust; or
- b. upon the occurrence of an event of default under the terms of a mortgage or deed of trust of an Approved Lender, take any action to accelerate or otherwise enforce payment or seek other remedies with respect thereto.

**503. Termination by Participant.** In the event of any Default of Agency, which is not cured within the time set forth in Section 501 hereof after written demand by Participant, including notice and cure provisions for any holder of record of any mortgage or deed of trust pursuant to Section 214.3, then this Agreement may, at the option of Participant, be terminated by Notice thereof to Agency. From the date of the Notice of termination of this Agreement by Participant to Agency and thereafter, this Agreement shall be deemed terminated, and except for

Participant's indemnity obligations which shall survive termination of this Agreement, there shall be no further rights or obligations between the parties.

**504. Termination by Agency.** In the event that Participant is in Default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof, then this Agreement and any rights of Participant or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of Agency, be terminated by Agency by Notice thereof to Participant. From the date of the Notice of termination of this Agreement by Agency to Participant, this Agreement shall be deemed terminated and, except for Participant's indemnity obligations which shall survive termination of this Agreement, there shall be no further rights or obligations between the parties and, specifically, Agency shall have no obligation to make any further disbursements of the Agency Assistance.

**505. Acceptance of Service of Process.** In the event that any legal action is commenced by Participant against Agency, service of process on Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Participant, service of process on Participant shall be made by personal service upon Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, the registered agent of the Participant, or in such other manner as may be provided by law.

**506. Rights and Remedies Are Cumulative.** The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party, except as otherwise expressly provided herein.

**507. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## **600. GENERAL PROVISIONS**

**601. Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means, including, but not limited to, via facsimile or via overnight courier, to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency:                   Redevelopment Agency of the  
  City of San Bruno  
  567 El Camino Real  
  San Bruno, California 94066  
  Attention: Executive Director  
  Telephone:   (650) 616-7070  
  Facsimile:   (650) 873-6749

With a copy to:               McDonough, Holland & Allen  
  1901 Harrison Street, 9th floor  
  Oakland, California 94612  
  Attention: Gerald J. Ramiza, Esq.  
  Telephone:   (510) 273-8780  
  Facsimile:   (510) 839-9104

and:                               City of San Bruno  
  City Attorney  
  567 El Camino Real  
  San Bruno, California 94066  
  Telephone:   (650) 616-7003  
  Facsimile:   (650) 742-6515

To Participant:               The Crossing Apartment Associates II LLC  
  REGIS Homes of Northern California  
  901 Mariners Island Boulevard, Suite 700  
  San Mateo, California 94404  
  Attention: Mark Kroll  
  Telephone:   (650) 378-2800  
  Facsimile:   (650) 570-2233

With a copy to:               TMG Partners  
  100 Bush Street, 26th Floor  
  San Francisco, California 94104  
  Attention: David Cropper  
  Telephone:   (415) 772-5900  
  Facsimile:   (415) 772-5911

and:                               Beveridge & Diamond, P.C.  
  465 Montgomery Street, 18th Floor  
  San Francisco, California 94104  
  Attention: Tamsen Plume  
  Telephone:   (415) 262-4012  
  Facsimile:   (415) 262-4040

Any written notice, demand or communication shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, postage prepaid, upon receipt of verification of transmission if sent via facsimile provided a copy

is sent the same day via first-class mail, and on the next business day if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

**602. Enforced Delay; Extension of Times of Performance.** Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, (but shall in no event exceed a cumulative total of 120 days) if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Participant. Participant expressly agrees that adverse changes in economic conditions, either of Participant specifically or the economy generally, changes in market conditions or demand, and/or Participant's inability to obtain financing or other lack of funding to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section 602. Participant expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the Effective Date.

**603. Successors and Assigns.** Subject to the prohibitions against changes in the ownership, management and control of Participant set forth in Section 102.3 above, all of the terms, covenants and conditions of this Agreement shall be binding upon the Participant and its permitted successors and assigns. Whenever the term "Participant" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**604. Memorandum of Agreement.** A "Memorandum of Owner Participation Agreement" in the form attached hereto as Attachment No. 7, shall be recorded against the Site immediately following full execution of this Agreement.

**605. Relationship Between Agency and Participant.** It is hereby acknowledged that the relationship between Agency and Participant is not that of a partnership or joint venture and that Agency and Participant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site or the Project. Participant agrees to indemnify, hold harmless and defend Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between Agency and Participant with respect to the development, operation, maintenance or management of the Site or the Project.

**606. Agency Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Agency, the Executive Director of the Agency or his or

her designee is authorized to act on behalf of Agency unless specifically provided otherwise or the context should require otherwise.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

**608. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement, including the Attachments, constitutes the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

**609. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**610. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

**611. No Waiver.** A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**612. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. Agency and Participant acknowledge that no modifications that may affect the rights or interests of any Approved Lender may be made without prior approval of such Approved Lender.

**613. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**614. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day

is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**615. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**616. Time of Essence.** Time is expressly made of the essence with respect to the performance by the Agency and the Participant of each and every obligation and condition of this Agreement.

**617. Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

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

**619. Time for Acceptance of Agreement by Agency.** This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by the Participant or this Agreement shall be void, except to the extent that the Participant shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. Within five (5) business days after the later of (i) approval by the Agency Board or (ii) execution of all original counterparts by Participant, the Agency shall execute and deliver to Participant one (1) fully executed original of this Agreement.

**620. Participant's Indemnity.** Participant shall defend, indemnify, assume all responsibility for, and hold Agency and City, and its and their officers, employees, volunteers, agents and representatives, harmless from, all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any of Participant's activities under this Agreement, whether such activities or performance thereof be by Participant or by anyone directly or indirectly employed or contracted with by Participant and whether such damage shall accrue or be discovered before or after termination of this

Agreement. Participant shall not be liable for property damage or bodily injury occasioned by the sole negligence or willful misconduct of Agency or City, or its or their designated agents or employees.

**621. Effective Date.** This Agreement shall not be effective until the date Participant obtains fee title to the Site and delivers evidence of the transfer to Agency ("Effective Date"). For the purpose of this Section, the evidence of transfer shall be a duly recorded deed and a title report. If Participant fails to take title and deliver evidence of transfer to Agency by the time set forth in the Schedule of Performance, this Agreement shall automatically terminate and there shall be no further obligations between the parties.

**622. Nonliability of Officials and Employees of the Agency and Participant.**

**(a) Agency.** No member, official or employee of Agency or City shall be personally liable to Participant, or any successor in interest, in the event of any Default or breach by the Agency (or the City) or for any amount which may become due to Participant or its successors, or on any obligations under the terms of this Agreement. Participant hereby waives and releases any claim it may have against the members, officials or employees of the Agency and the City with respect to any Default or breach by the Agency (or the City) or for any amount which may become due to the Participant or its successors, or on any obligations under the terms of this Agreement.


**(b) Participant.** No constituent limited partner or member in Participant, nor any advisor, trustee, director, officer, employee, beneficiary, shareholder, member, limited partner, participant, representative or agent of any partnership, limited liability company, corporation, trust or other entity that has or acquires a direct or indirect interest in Participant, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Agency and its successors and assigns shall look solely to the assets of Participant or its successors or assigns for the payment of any claim or for any performance, and Agency, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability. Neither the negative capital account, deficit restoration obligation nor contribution obligation of any constituent limited partner or member in Participant shall at any time be deemed to be the property or an asset of Participant (and neither Agency nor any of its successors or assigns shall have any right to collect, enforce or proceed against or with respect to any such negative capital account or a member's or limited partner's obligation to restore or contribute).

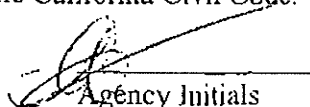
Participant and Agency are aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."



As such relates to this Section 622, Participant and Agency hereby waive and relinquish all rights and benefits under Section 1542 of the California Civil Code.

  
Participant Initials

  
Agency Initials

**623. Assignment by Agency.** Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Participant, which approval shall not be unreasonably withheld; provided, however, that the Agency may assign or transfer any of its interests hereunder to the City or any public or private entity controlled by the City at any time without the consent of Participant.

**624. Applicable Law.** The laws of the State of California, without regard to any principles of choice of law, shall govern the interpretation and enforcement of this Agreement.

**625. Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the current, actual knowledge of the certifying party: (a) this Agreement is in full force and effect and a binding obligation of the parties; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the requesting party is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and extent of any such Defaults. The requesting party may designate a reasonable form of certificate (including a lender's form) and the party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The Executive Director shall be authorized to execute any certificate requested by Participant hereunder. Participant and Agency acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and "Mortgagees" (defined in Section 214). The request shall clearly indicate that failure of the receiving party to respond within the thirty- (30-) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of Participant to execute an estoppel certificate shall not be deemed a default, provided that in the event Participant does not respond within the required thirty- (30-) day period, Agency may send a second and final request to Participant, and failure of Participant to respond within fifteen (15) days from receipt thereof (but only if Agency's request contains a clear statement that failure of Participant to respond within this fifteen- (15-) day period shall constitute an approval) shall be deemed approval by Participant of the estoppel certificate and may be relied upon as such by Agency, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of Agency to execute an estoppel certificate shall not be deemed a Default, provided that in the event Agency fails to respond within the required thirty- (30-) day period, Participant may send a second and final request to Agency, with a copy to the Executive Director and City Attorney, and failure of Agency to respond within fifteen (15) days from receipt thereof (but only if Participant's request contains a clear statement that failure of Agency to respond within this fifteen- (15-) day period shall constitute an approval) shall be deemed approval by Agency of the estoppel certificate and may be relied upon as such by Participant, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees.

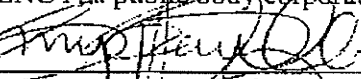

626. **Third-Party Beneficiary.** Participant and Agency recognize and agree that the terms of this Agreement and the Affordable Housing Covenant and the enforcement of those terms are essential to the security of any Approved Lender pursuant to Section 214.1 and are entered into for the benefit of various parties, including such Approved Lenders. Accordingly, such Approved Lenders may provide written notice to Agency requesting that Agency cure any failure to enforce the terms of this Agreement and Affordable Housing Covenant. If Agency fails to commence to cure the failure within thirty (30) days following such written notice and to thereafter diligently pursue such cure to completion, then the Approved Lenders shall be entitled (but not obligated) to enforce, separately or jointly with Agency, or to cause Agency to enforce the terms of this Agreement and the Affordable Housing Covenant. In addition, the Approved Lenders are each intended to be and shall be third-party beneficiaries of this Agreement and the Affordable Housing Covenant.

IN WITNESS WHEREOF, Agency and Participant have executed this Agreement on the respective dates set forth below.

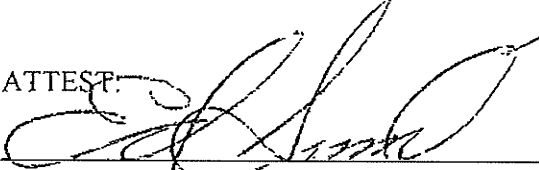
**AGENCY:**

CITY OF SAN BRUNO REDEVELOPMENT  
AGENCY, a public body corporate and politic

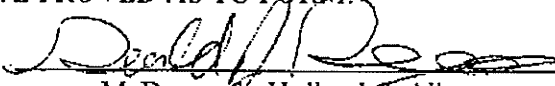
Dated: March 9, 2005

By:   
Its: 

ATTEST:

  
Agency Secretary

APPROVED AS TO FORM:

  
McDonough, Holland & Allen  
Agency Counsel

**PARTICIPANT:**

THE CROSSING APARTMENT  
ASSOCIATES II LLC, a Delaware limited  
liability company

By: TMG-REGIS APARTMENT  
ASSOCIATES II LLC, a California limited  
liability company, Its Co-Managing  
Member

By: RHNC SB APARTMENT TEAM II  
LLC, a California limited liability  
company, Its Managing Member

By: REGIS HOMES OF NORTHERN  
CALIFORNIA, INC., a California  
corporation, Its Non-Member  
Manager

Dated: March 4, 2005

By: Mark R. Kroll

Name: Mark R. Kroll

Its: President

By: Robert Wagner

Name: Robert Wagner

Its: Chairman

APPROVED AS TO FORM:

[Signature]  
Beveridge & Diamond, P.C.  
Counsel for Participant

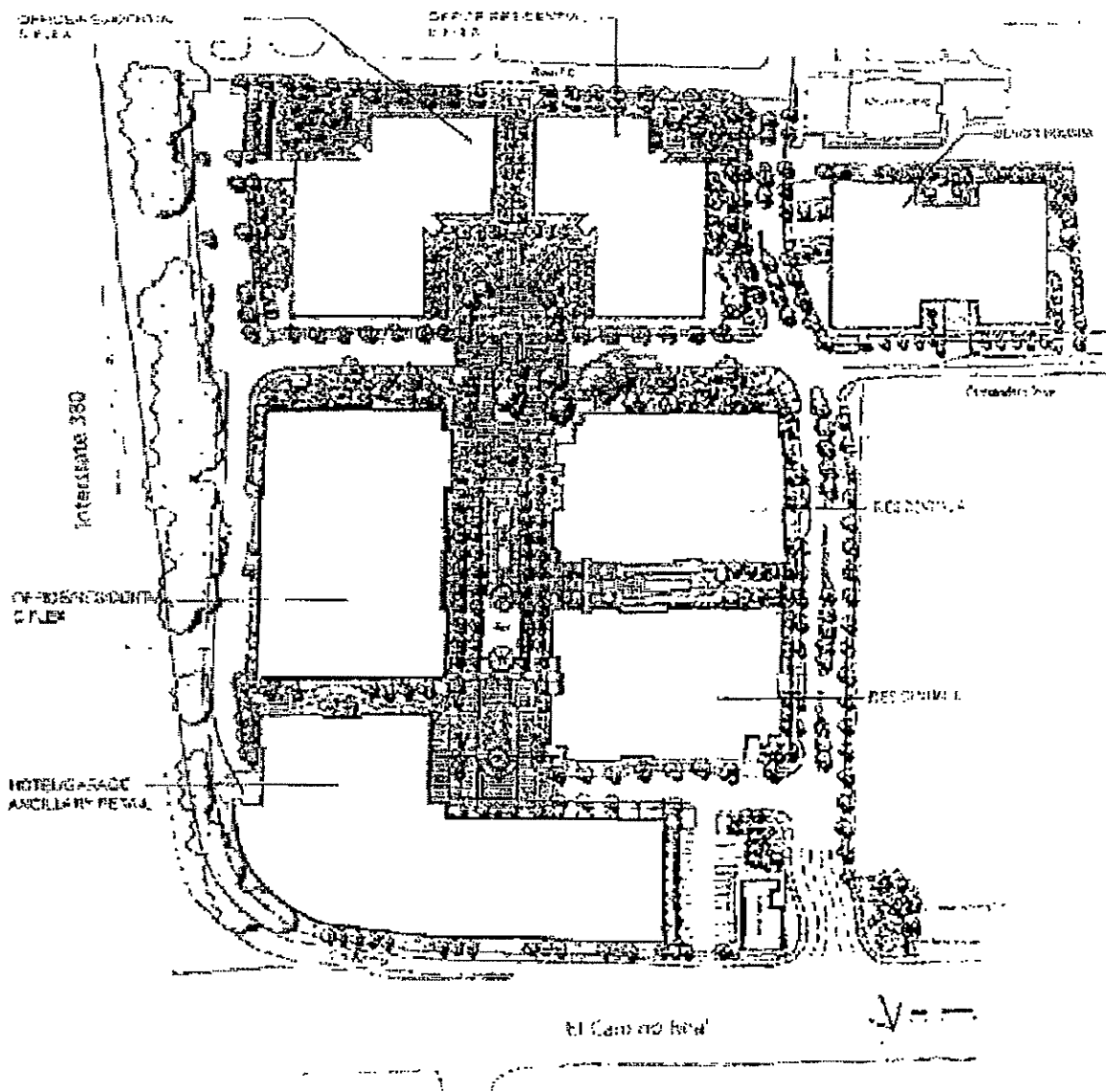




ATTACHMENT NO. 1(B)

SITE MAP

(Development Agreement Exhibit A-1, "Office/Residential C Flex Component")



**OWNER PARTICIPATION AGREEMENT**

**By and Between**

**CITY OF SAN BRUNO  
REDEVELOPMENT AGENCY**

**and**

**THE CROSSING APARTMENT ASSOCIATES I LLC**

**for**

**THE CROSSING | SAN BRUNO APARTMENTS, PHASE 1 PROJECT**

---

**EFFECTIVE DATE**

**San Bruno Redevelopment Project  
San Bruno, California**

## TABLE OF CONTENTS

	<u>Page</u>
100. DEFINITIONS; REPRESENTATIONS AND WARRANTIES .....	3
101. Definitions .....	3
102. Representations and Warranties.....	11
102.1 Agency Representations .....	11
(a) Authority .....	11
(b) No Conflict .....	11
(c) No Superior Obligations .....	11
102.2 Participant's Representations .....	12
(a) Authority .....	12
(b) No Conflict .....	12
(c) No Participant Bankruptcy .....	12
(d) Leases and Other Interests .....	12
(e) Title .....	12
(f) Litigation.....	12
(g) Governmental Compliance .....	12
102.3 Limitations on Right to Assign.....	13
(a) Prior to Issuance of Certificate of Completion .....	13
(b) Following Issuance of Certificate of Completion .....	13
(c) Pre-Approved Transfers.....	14
200. DEVELOPMENT OF THE SITE .....	16
201. Scope of Development.....	16
202. Permits and Approvals.....	16
203. Schedule of Performance.....	16
204. Design Review.....	17
204.1 Conceptual Site Plan. ....	17
204.2 Design Review Plans and Planned Development and Architectural Review Permits. ....	17
204.3 Construction Drawings and Related Documents.....	17
204.4 Construction Approvals. ....	17
204.5 Revisions. ....	17
204.6 Consultation and Coordination. ....	18
204.7 Defects in Plans.....	18
204.8 Cost of Construction .....	18
205. Insurance Requirements.....	18
206. Rights of Access .....	18
207. Compliance with Laws; Indemnity; Waiver.....	19
208. Taxes and Assessments .....	19
209. Project Sign .....	20
210. Liens and Stop Notices .....	20
211. Submission of Evidence of Financing Commitments .....	20
212. Certificate of Completion .....	21
213. Mortgage, Deed of Trust, Sale and Lease-Back Financing .....	21
213.1 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development .....	21
213.2 Holder Not Obligated to Construct Improvements .....	22



**TABLE OF CONTENTS**  
**(Continued)**

		<u>Page</u>
	213.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.....	22
	214. Condition of the Site .....	22
300.	COVENANTS, RESTRICTIONS AND AGREEMENTS.....	23
	301. Use and Affordable Housing Covenants.....	23
	302. Maintenance Covenants .....	23
	a. Maintenance Standards.....	24
	b. Failure to Maintain Improvements .....	24
	303. Nondiscrimination Covenants.....	25
	a. In deeds .....	26
	b. In leases .....	26
	c. In contracts.....	26
	304. Minimum Project Cost.....	26
	305. Replacement Reserve Requirement.....	27
	306. Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction.....	27
	307. Affordable Housing Covenant.....	27
	308. Indemnification Limitation for Approved Lenders .....	28
400.	FINANCIAL PROVISIONS .....	28
	401. Agency Assistance .....	28
	401.1 Affordable Housing Fee Grant.....	28
	401.2 Affordable Housing Grant to Participant.....	29
	401.3 Affordable Housing Subsidies .....	29
	(a) Affordable Housing Set Aside Subsidy .....	29
	(b) Unrestricted Tax Increment Subsidy.....	30
	(c) Affordable Housing Subsidies Cap.....	30
	(d) Benchmark Debt Coverage Ratio .....	30
	402. Conditions Precedent to Disbursement of Agency Assistance .....	31
	(a) No Default .....	31
	(b) Execution of Documents .....	31
	(c) Insurance .....	31
	(d) Permits and Land Use Approvals .....	31
	(e) Payment of Development Fees .....	31
	(f) Payment of Property Taxes .....	31
	(g) Completion of Improvements.....	31
	(h) Minimum Project Cost.....	31
	(i) Affordable Housing Covenant and Report .....	32
	(j) Financial Statements and Reports .....	32
	403. Eligible Project Costs .....	32
	404. Reduction in Amount of Affordable Housing Subsidies Following Reassessment.....	32
	405. Intentionally Omitted.....	33
	406. Financial Records and Reporting Obligations.....	34

**TABLE OF CONTENTS**  
**(Continued)**

		<u>Page</u>
	407. Pledge of Agency Assistance to Bond Trustee. ....	35
	408. Future Tax Allocation Bonds. ....	36
500.	DEFAULTS AND REMEDIES .....	36
	501. Default Remedies .....	36
	502. Institution of Legal Actions.....	36
	503. Termination by Participant .....	37
	504. Termination by Agency .....	37
	505. Acceptance of Service of Process .....	37
	506. Rights and Remedies Are Cumulative.....	38
	507. Inaction Not a Waiver of Default.....	38
600.	GENERAL PROVISIONS.....	38
	601. Notices, Demands and Communications Between the Parties .....	38
	602. Enforced Delay; Extension of Times of Performance.....	39
	603. Successors and Assigns .....	40
	604. Memorandum of Agreement .....	40
	605. Relationship Between Agency and Participant .....	40
	606. Agency Approvals and Actions.....	40
	607. Counterparts.....	41
	608. Integration .....	41
	609. Titles and Captions .....	41
	610. Interpretation.....	41
	611. No Waiver.....	41
	612. Modifications.....	41
	613. Severability .....	41
	614. Computation of Time .....	42
	615. Legal Advice.....	42
	616. Time of Essence .....	42
	617. Cooperation .....	42
	618. Conflicts of Interest.....	42
	619. Time for Acceptance of Agreement by Agency.....	42
	620. Participant's Indemnity .....	42
	621. Effective Date .....	43
	622. Nonliability of Officials and Employees of the Agency and Participant.....	43
	(a) Agency.....	43
	(b) Participant.....	43
	623. Assignment by Agency.....	44
	624. Applicable Law .....	44
	625. Estoppel Certificate.....	44
	626. Third-Party Beneficiary .....	45

**ATTACHMENTS**

Attachment No. 1(A)	Site Map (Final Map No. 02-01, "Parcel 1")
Attachment No. 1(B)	Site Map (Development Agreement Exhibit A-1, "Residential A&B Component")
Attachment No. 2	Site Legal Description
Attachment No. 3	Scope of Development
Attachment No. 4	Schedule of Performance
Attachment No. 5	Affordable Housing Covenant
Attachment No. 6	Certificate of Completion
Attachment No. 7	Memorandum of Owner Participation Agreement
Attachment No. 8	Resolution 2002-68 Authorizing Execution of this Agreement
Attachment No. 9	Conceptual Site Plans and Design Review Plans
Attachment No. 10	Insurance Requirements
Attachment No. 11	Subordination Agreement

## OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (this "Agreement") dated as of this 11 day of Dec, 2002, the date of last execution of this Agreement by each of the parties indicated on the signature page hereof, is entered into by and between the CITY OF SAN BRUNO REDEVELOPMENT AGENCY, a public body existing and organized under the Community Redevelopment Law (the "Agency"), and THE CROSSING APARTMENT ASSOCIATES I LLC, a Delaware limited liability company (the "Participant") pursuant to the authority of the Community Redevelopment Law, the Redevelopment Plan, and the Agency Rules.

### RECITALS

The following recitals are a substantive part of this Agreement (capitalized terms used herein and not otherwise defined are defined in Section 100 of this Agreement):

A. The purpose of this Agreement is to effectuate the Redevelopment Plan for the San Bruno Redevelopment Project which was approved and adopted by the City Council of the City on July 6, 1999 by Ordinance No. 1620 ("Redevelopment Plan") by providing for the redevelopment of the first phase of The Crossing | San Bruno Project.

B. The Crossing | San Bruno Project is located on the approximately 20.1-acre former U. S. Navy Site within the City of San Bruno, County of San Mateo, State of California. The Crossing | San Bruno Project is a compact, interactive, and pedestrian-friendly community based on the principles of transit-oriented development offering a mix of multi-family, senior, and affordable housing, hotel, meeting space, restaurant space, neighborhood-serving retail, office space, recreational opportunities, and parking facilities, in the manner described in the Specific Plan for the U. S. Navy Site and its Environs ("Specific Plan") and Development Agreement.

C. For the purposes of this Agreement, the first phase of The Crossing | San Bruno Project is an approximately five (5) acre parcel of real property depicted as "Parcel 1" on Vesting Tentative Map No. TM-02-01, attached hereto as Attachment No. 1(A) and depicted as "Residential A&B Component" on Exhibit A-1 of the Development Agreement, attached hereto as Attachment No. 1(B), and more particularly described in the Site Legal Description attached hereto as Attachment No. 2 (the "Site").

D. Prior to the Effective Date of this Agreement, as defined herein, Participant will own the Site in fee and qualify as an "owner participant" as that term is defined in the Redevelopment Plan, the Community Redevelopment Law, and Agency Rules. Participant desires to participate in the redevelopment of the Site in accordance with the Community Redevelopment Law, the Redevelopment Plan, the Agency Rules, and the terms of this Agreement.

E. Consistent with the terms of this Agreement, including the Affordable Housing Covenant, attached hereto as Attachment No. 5, and the Existing Approvals,

Participant intends to develop on the Site a 300-unit, multi-family residential rental project with ancillary recreational, commercial, and parking uses, including sixty (60) (twenty percent (20%)) Affordable Units available to Very Low Income Households. The Improvements are further defined in the Scope of Development, Attachment No. 3, and depicted in the Conceptual Site Plan, Attachment No. 9.

F. Agency is authorized and empowered under the Community Redevelopment Law and the Redevelopment Plan to enter into agreements for the acquisition, disposition and development of real property and otherwise to assist in the redevelopment of real property within the Redevelopment Project Area in conformity with the Redevelopment Plan; to acquire real and personal property in the Redevelopment Project Area; to receive consideration for the provision by the Agency of redevelopment assistance; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to incur indebtedness to finance or refinance the Redevelopment Project.

G. Agency and Participant desire to enter into this Agreement to set forth the terms and conditions relating to: (i) Participant's development, use, operation and maintenance of the Project, including the sixty (60) Affordable Units; and (ii) the provision of the Agency Assistance to the Participant related to the provision of those Affordable Units.

H. Agency further desires to enter into this Agreement because the Project will aid in the first phase of the redevelopment of a former military site to accommodate a high quality, planned mixed-use residential community, upgrade site infrastructure, provide public and private recreational facilities, improve site aesthetics, and provide much needed multi-family and affordable housing opportunities. The Project will also provide substantial economic benefits to the Agency, the Redevelopment Project Area, and the City, its residents and surrounding communities. Specifically, the Project will increase employment opportunities in the Redevelopment Project Area both during and after construction, increase the property values of the community by removing blighted conditions, and generate available tax increment.

I. Agency anticipates that separate owner participation agreement(s), generally consistent with the terms and format of this Agreement, may be entered into to provide certain public agency participation and/or assistance in connection with both the development of additional affordable housing units consistent with the Affordable Housing Plan and the development of parking facilities to encourage the development of the Hotel Component (as defined in the Development Agreement). The parties acknowledge that Agency is under no obligation to enter into these agreements and, should Agency opt to do so, it will require quality assurance and a demonstration of financial need and determine on a case-by-case basis the terms and extent of Agency assistance, if any.

J. The fulfillment of this Agreement is consistent with the General Plan and Redevelopment Plan, in the vital and best interests of the City, and the health, safety and welfare of its residents, and in accord with the provisions of applicable federal, state and local law.

K. The terms and conditions of this Agreement have undergone extensive review by Agency and its staff, and by Resolution No. 2002-68, attached hereto as Attachment No. 8 and incorporated herein by reference, Agency has found the Agreement just and reasonable and in conformance with the Community Redevelopment Law, Redevelopment Plan, and Agency Rules.

## A G R E E M E N T

NOW, THEREFORE, Agency and Participant hereby agree as follows:

### 100. DEFINITIONS; REPRESENTATIONS AND WARRANTIES

#### 101. Definitions.

*"Affiliate of Participant"* means an entity or entities in which one or more of Participant, Martin/Regis San Bruno Associates, L.P., TMG Partners, or REGIS Homes of Northern California collectively retains more than fifty percent (50%) in the aggregate, directly or indirectly, of the ownership or beneficial interest and retains full management and control of the transferee entity or entities, either directly or indirectly through another entity, subject only to certain major events requiring the consent or approval of the other owners of such entity.

*"Affordable Housing Covenant"* means the Affordable Housing Covenant to be recorded against the Site as provided in Section 307 in the form attached hereto as Attachment No. 5.

*"Affordable Housing Fee Grant"* is defined in Section 401.1 hereof.

*"Affordable Housing Fee Grant Cap"* is defined in Section 401.1 hereof.

*"Affordable Housing Fund"* means the low and moderate income housing fund established by the Agency pursuant to Section 33334.3 of the Community Redevelopment Law, into which Agency must deposit a portion of the property tax increment from the Redevelopment Project [currently twenty percent (20%)] to be used for the purposes of increasing, improving and preserving the supply of low- and moderate-income housing within the territorial jurisdiction of the Agency.

*"Affordable Housing Grant to Participant"* is defined in Section 401.2 hereof.

*"Affordable Housing Plan"* means the Affordable Housing Plan attached as Exhibit E to the Development Agreement, which establishes the minimum affordability requirements for The Crossing | San Bruno Project.

*"Affordable Housing Set Aside Revenues"* means that portion of the property tax increment revenues allocated to and received by Agency attributable by the San Mateo County Assessor to the Site and the improvements thereon (currently twenty percent [20%] of the gross property increment revenues), which Agency is required by law to

set-aside in the Agency's Low and Moderate Income Housing Fund pursuant to the Community Redevelopment Law.

*"Affordable Housing Set Aside Subsidy"* is defined in Section 401.3(a) hereof.

*"Affordable Housing Subsidies"* is defined in Section 401 hereof.

*"Affordable Housing Subsidies Cap"* is defined in Section 401.3(d) hereof.

*"Affordable Units"* is defined in Section 307 hereof.

*"Agency"* means the City of San Bruno Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

*"Agency Assistance"* is defined in Section 401 hereof.

*"Agency Rules"* means the Agency Owner Participation and Business Reentry Rules, adopted by Resolution A99-4.

*"Agreement"* means this Owner Participation Agreement between Agency and Participant.

*"Approved Lender"* is defined in Section 213.1 hereof.

*"Architectural Review Board"* means the City's Architectural Review Board.

*"Base Year Affordable Housing Set Aside Revenues"* means the Affordable Housing Set Aside Revenues attributable to the Site and the improvements thereon, allocated to and received by the Agency in the property tax fiscal year 1999/2000.

*"Base Year Unrestricted Property Tax Increment Revenues"* means the Unrestricted Property Tax Increment Revenues attributable to the Site and the improvements thereon, allocated to and received by the Agency in the property tax fiscal year 1999/2000.

*"Benchmark Debt Coverage Ratio"* means a Debt Coverage Ratio equal to 1.75000, or 175.00%.

*"Bonds"* is defined in Section 407 hereof.

*"Certificate of Completion"* means the document evidencing Participant's satisfactory completion of construction and installation of the Improvements, as set forth in Section 212 hereof, in the form of Attachment No. 6 hereto.

*"City"* means the City of San Bruno, a California municipal corporation.

*"Community Redevelopment Law"* means the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, *et seq.*).

*"Conceptual Site Plan"* is defined in Section 204.1 hereof.

*"Conditions Precedent to Disbursement of Agency Assistance"* is defined in Section 402 hereof.

*"Construction Drawings"* is defined in Section 204.3 hereof.

*"County of San Mateo Letter of Understanding and Agreement"* means the letter of understanding and agreement dated November 12, 1999, between City and the County of San Mateo providing for City to pay to the County of San Mateo an amount equal to a portion of the annual property taxes attributable to the Navy Property (Assessors Parcel Nos. 020-010-580, 020-013-050, and 020-013-060, consisting of approximately 26.806 acres as more particularly described therein) that would have otherwise accrued to the County of San Mateo had the Navy Property not been included within the Redevelopment Project. Participant acknowledges having received a copy of the County of San Mateo Letter of Understanding and Agreement.

*"Debt Coverage Ratio"* means the ratio obtained by dividing the sum of (i) the Net Operating Income for a particular Operating Year, plus (ii) the potential amount of Agency Assistance available to Participant during the Operating Year in which Net Operating Income is measured, by the Debt Service payable in the Operating Year in which Net Operating Income is measured.

*"Debt Service"* means the principal and interest payments payable on the Project Debt for a given Operating Year based upon the actual principal and interest paid by Participant.

*"Default"* means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

*"Design Review Plans"* is defined in Section 204.2 hereof.

*"Development Agreement"* means the Development Agreement for The Crossing | San Bruno Project by and between the City of San Bruno and Martin/Regis San Bruno Associates, L.P., as assigned by any partial assignment and assumption agreement related to the Site.

*"Effective Date"* means the operative date of this Agreement, which shall be the date upon which Participant delivers evidence of ownership of fee title to the Site to Agency, as required by Section 621 hereof.

*"Effective Gross Income"* means the actual effective gross income produced by the Project for a particular Operating Year, including (i) actual rental income from the residential units (without reduction for any assumed vacancy factor), not including any concessions or other inducements (such as any cash reductions in monthly rent during



the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (ii) laundry income, vending income, parking fees, cable television commission income, tenant utility reimbursements, storage fees, pet premiums, renter insurance commissions, retained deposits, and late fees; (iii) clubhouse rentals and PacBell/DSL commissions, to the extent not assigned to Martin/Regis San Bruno Associates, L.P., pursuant to the Private Infrastructure Agreement and/or Common Facilities Agreement to be entered into by Participant and Martin/Regis San Bruno Associates, L.P., prior to the Effective Date; (iv) any Operating Expense reserve account monies that become available to Participant following repayment of the Project Debt or waiver by an Approved Lender of the Operating Expense reserve account requirements set forth in the Project Debt loan documents; and (v) any "other income" permitted by Fannie Mae or its agent in underwriting the financing for construction of the Project, as those requirements may be changed from time to time.

*"Eligible Project Costs"* is defined in Section 403 hereof.

*"Existing Approvals"* mean the existing development approvals, entitlements, policies and findings adopted by City after duly noticed public hearings and other applicable procedures prior to the date of this Agreement and applied to The Crossing | San Bruno Project and the Site, which include the following:

(1) On January 9, 2001, the City certified a Final Environmental Impact Report for The Crossing | San Bruno Project (Resolution No. 2001-1) and on December 11, 2001, an Addendum to the EIR (Resolution No. 2001-82) (collectively, the "Crossing EIR").

(2) On January 9, 2001, the City approved a General Plan Amendment (Resolution No. 2001-2).

(3) On January 9, 2001, the City approved a Specific Plan (Resolution No. 2001-3), on December 11, 2001, a Specific Plan Amendment (Resolution No. 2001-82), and on September 24, 2002, a Specific Plan Addendum (Design Guidelines) (Resolution No. 2002-58) that includes the major development, circulation and infrastructure elements for The Crossing | San Bruno Project.

(4) On January 23, 2000, the City adopted an ordinance amending the San Bruno Zoning Ordinance and Zoning Map to establish the zoning for The Crossing | San Bruno Project (Ordinance No. 1635).

(5) On June 5, 2001, voters approved Initiative Measure E by majority vote at a special municipal election pursuant to Local Ordinance 1284.

(6) On January 8, 2002, the City adopted Ordinance No. 1653 approving the Development Agreement, which took effect on February 7, 2002.

(7) On August 20, 2002, the City Planning Commission approved Vesting Tentative Map No. TM 02-01 (Resolution No. 2002-01) that provides for the conditions of subdivision of The Crossing | San Bruno Project.

(8) On October 29, 2002, the City approved the Final Map for The Crossing | San Bruno Project (Resolution No. 2002-66).

(9) On October 29, 2002, the City Council approved the Architectural Review Permit and Planned Development Permit (Resolution No. 2002-67) for the Project.

*"Governmental Requirements"* means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of San Mateo, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Participant or the Site.

*"Hazardous Materials"* means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

*"Improvements"* means the 300-unit, multi-family residential rental project, including the Affordable Units, with ancillary recreational, commercial and parking uses and appurtenant on-site and off-site improvements to be constructed and installed by Participant as set forth herein and in the Scope of Development, Attachment No. 3 hereto.

*"Insurance Requirements"* means the insurance requirements for the Project, which are attached hereto as Attachment No. 10.

*"Maintenance Standards"* is defined in Section 302 hereof.

*"Memorandum of Agreement"* is defined in Section 604 hereof.

*"Net Affordable Housing Set Aside Revenues"* means the increase of the Affordable Housing Set Aside Revenues over the Base Year Affordable Housing Set Aside Revenues allocated to and received by the Agency.

*"Net Operating Income"* means Effective Gross Income, as defined herein, less Operating Expenses, as defined herein, before depreciation and mortgage interest and principal.

*"Net Unrestricted Property Tax Increment Revenues"* means the increase of the Unrestricted Property Tax Increment Revenues over the Base Year Unrestricted Property Tax Increment Revenues allocated to and received by the Agency.

*"Notice"* means a notice in the form prescribed by Section 601 hereof.

*"Operating Expenses"* shall mean the actual out-of-pocket costs and expenses paid by Participant for a given Operating Year and approved by Fannie Mae or its agent, in its discretion, in connection with the use, maintenance or operation of the Project (but without duplication) based on the actual expenses which meet all of the following requirements:

(i) All costs and expenses must be recognized as operating expenses by the Fannie Mae guidelines, as those guidelines may be changed from time to time, and by generally accepted accounting principles applicable to real estate projects and transactions;

(ii) To the extent Project management fees are paid to Participant, its members or an Affiliate of Participant, such management fees shall not exceed three and one-half percent (3.5%) of gross rental income;

(iii) Reserve payments for Operating Expenses may be included only to the extent such reserve payments are required by Fannie Mae or CalPers to be set aside in a separately ear-marked reserve account. Upon the earlier of full repayment of the Project Debt or Fannie Mae's or CalPers' waiver of such Operating Expense reserve account requirements, all amounts remaining in the reserve account shall be included within Effective Gross Income for the Operating Year in which the Project Debt is repaid or the reserve account requirement waived;

(iv) Fees paid to Participant, its members or an Affiliate of Participant, other than the Project management fees stated in (ii) above, such as asset management fees and financing fees, shall not be considered an Operating Expense;

(v) Operating Expenses shall not include mortgage interest or principal payments, depreciation, amortization, or costs or expenditures that the Internal Revenue Code allows to be depreciated or amortized;

(vi) To the extent that in dealing with an Affiliate of Participant or its members, such costs and expenses shall be reasonable and at no higher than market rates and all dealings with such Affiliate(s) of Participant shall be disclosed in writing to Agency in advance; and

(vii) Project expenses financed with Project Debt shall not be included within Operating Expenses.

*"Operating Year"* means the one-year periods commencing upon the first January 1 following the date that Participant has obtained a final certificate of occupancy for the Improvements and commenced leasing activities for the Affordable Units, and ending on December 31 of that year; each succeeding Operating Year shall commence on January 1st and end on December 31st.

*"Partial Operating Year"* means the period of time commencing on the date that Participant has obtained a temporary or final certificate of occupancy for the Improvements and commenced leasing activities for the Affordable Units, and ending upon the December 31st immediately prior to the first (1st) Operating Year.

*"Participant"* means The Crossing Apartment Associates I LLC, a Delaware limited liability company, or its permitted assignee or transferee.

*"Project"* means the Site and the Improvements to be constructed by Participant on the Site as set forth herein.

*"Project Debt"* means the total debt financing for the initial construction of the Project up to a maximum of Seventy Million Dollars (\$70,000,000) (the "Initial Project Debt"). As of the date of execution of this Agreement, it is anticipated that the total Initial Project Debt for the Project will consist of tax-exempt bond financing in the approximate amount of \$65,500,000, and taxable bond financing in the approximate amount of \$3,000,000. To qualify for Project Debt, any refinancing of the Initial Project Debt must be limited to the remaining balance of the outstanding principal on the Initial Project Debt and cannot be for a period less than the remaining term of the Initial Project Debt.

*"Redevelopment Plan"* means the Redevelopment Plan for the San Bruno Redevelopment Project, adopted by Ordinance No. 1620 of the City Council of the City on July 6, 1999, and any future amendments thereto, which are incorporated herein by reference.

*"Redevelopment Project"* means the San Bruno Redevelopment Project approved and adopted by the City pursuant to the Redevelopment Plan.

*"Schedule of Performance"* means the Schedule of Performance attached hereto as Attachment No. 4 and incorporated herein, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Participant and the Agency's Executive Director, and the

Agency's Executive Director is authorized to make such revisions as he or she deems reasonably necessary.

*"Scope of Development"* means the Scope of Development attached hereto as Attachment No. 3 and incorporated herein, which describes the scope, amount and quality of the work of Improvements to be constructed and installed by the Participant. The Scope of Development is subject to revision only as provided herein.

*"Site"* is defined in Recital C.

*"Site Legal Description"* means the legal description of the Site, which is attached hereto as Attachment No. 2 and incorporated herein.

*"Site Map"* means the maps of the Site, which are attached hereto as Attachment No. 1(A) and Attachment No. 1(B) and incorporated herein.

*"Subordination Agreement"* means the form of Subordination Agreement attached hereto as Attachment No. 11 and incorporated herein.

*"Tax Allocation Bonds"* means any bond, certificate of participation or other indebtedness or obligation of the Agency hereafter incurred payable in whole or in part from the proceeds of taxes allocated and paid to the Agency from within the Redevelopment Project pursuant to Health and Safety Code Section 33670(b) (as said statute may be amended from time to time and including any legislative substitutions or subventions for property tax increment revenues) that has been sold pursuant to a public debt offering or that represents the private placement of debt including any obligation of the Agency to a joint powers authority that offers bonds to the public or through a private placement.

*"Trustee"* is defined in Section 407 hereof.

*"Unrestricted Property Tax Increment Revenues"* means the property tax increment revenues allocated to and received by the Agency pursuant to Section 33670(b) of the Community Redevelopment Law, as said statute may be amended from time to time, by application of the one percent (1%) tax levied against real property as permitted by Article XIII A of the California Constitution, in an amount attributable by the San Mateo County Assessor to the Site and the improvements thereon, but specifically excluding therefrom the following: (a) charges for County administrative charges, fees, or costs; (b) the portion of tax increment revenues from the Site attributable to any special taxes or assessments or voter-approved indebtedness; (c) an amount equal to the actual and reasonable costs incurred by Agency, including staff time, in reviewing Participant's compliance with the terms of this Agreement and the Affordable Housing Covenant in the preceding Operating Year; (d) a portion of the tax increment revenues from the Site equal to the percentage of such revenue that the Agency is required to pay to any and all governmental entities as required by the Community Redevelopment Law, including payments required to be made following an amendment to the Redevelopment Plan in accordance with Section 33333.10 of the Community Redevelopment Law, as added by Senate Bill 211; (e) a portion of the tax increment revenues from the Site equal to the amount of money that City is required to pay the

County of San Mateo pursuant to the County of San Mateo Letter of Understanding and Agreement or any other agreements entered into by the City and the County of San Mateo implementing the County of San Mateo Letter of Understanding and Agreement; (f) the portion of tax increment revenues from the Site equal to the percentage of such revenues in the Redevelopment Project as a whole which payments the State may mandate that the Agency pay from time to time in the future, including, for example, any payments which the Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681, et seq., of the Community Redevelopment Law; and (g) Affordable Housing Set Aside Revenues.

*"Unrestricted Tax Increment Subsidy"* is defined in Section 401.3(b) hereof.

## **102. Representations and Warranties.**

**102.1 Agency Representations.** Agency represents and warrants to Participant as follows:

(a) **Authority.** Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health & Safety Code Section 33000, *et seq.*), which has been authorized to transact business pursuant to action of the City. Agency has full right, power and lawful authority to perform its obligations hereunder and the execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(b) **No Conflict.** To the best of Agency's knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(c) **No Superior Obligations.** There will be no bonds, notes, indebtedness, or other obligations of the Agency as of the date of this Agreement secured by a pledge of, lien on, security interest in, or payable from the portion of Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues pledged to Participant herein, which is superior or on a parity with the pledge of Agency Assistance to the Participant herein. As provided in Section 408 below, Agency's obligation hereunder to make the Agency Assistance payments available to Participant and the pledge of Agency Assistance by Participant to the Trustee as provided in Section 407(a) below, shall be superior to Agency's obligations to make debt service payments on any Tax Allocation Bonds issued by Agency after the Effective Date for which Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues are to be pledged or utilized in whole or in part for payment.

Until the expiration or earlier termination of this Agreement, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.1 not to be true, immediately give written notice of such fact or condition to Participant.

**102.2 Participant's Representations.** Participant represents and warrants to Agency as follows:

(a) **Authority.** Participant is a duly organized limited liability company organized and in good standing under the laws of the State of Delaware and registered to do business in the State of California. The copies of the documents evidencing the organization of Participant delivered to Agency are true and complete copies of the originals, as amended to the Effective Date. Participant has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Participant has been fully authorized by all requisite actions on the part of Participant.

(b) **No Conflict.** To the best of Participant's knowledge, Participant's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Participant is a party or by which it is bound.

(c) **No Participant Bankruptcy.** Participant is not the subject of any bankruptcy proceeding.

(d) **Leases and Other Interests.** To the best of Participant's knowledge, there are no unrecorded leases affecting the Site or any portion thereof, and no other person or entity has any unrecorded interests in or the right to possess the Site or any portion of it.

(e) **Title.** Participant, upon the Effective Date, owns fee simple title to the Site.

(f) **Litigation.** To the best of Participant's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(g) **Governmental Compliance.** Participant has not received any notice from any governmental agency or authority alleging that the Site is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Participant following the date this Agreement is signed by the Agency, Participant shall notify Agency within ten (10) days of receipt of such notice.

Until the expiration or earlier termination of this Agreement, Participant shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.2 not to be true, immediately give written notice of such fact or condition to Agency.

**102.3 Limitations on Right to Assign.** The qualifications and identity of the Participant and its managing member are of particular concern to the Agency. It is because of the demonstrated qualifications and identity that the Agency has entered into this Agreement with Participant. No voluntary or involuntary successor in interest

of the Participant shall acquire any interest in the Site or the Project nor any rights or powers under this Agreement, except as expressly set forth herein. It is hereby expressly stipulated and agreed that any assignment, sale, transfer or other disposition of the Project or the Site, or any portion(s) thereof or interest(s) therein, in violation of this Section 102.3 shall be null, void and without effect, shall cause a reversion of title to Participant, and shall be ineffective to relieve Participant of its obligations under this Agreement and the Affordable Housing Covenant. For purposes of this Section 102.3, a change in the identity of the initial managing member of Participant (including the sale or transfer, in the aggregate, of the controlling stock or interest in said managing member) shall be deemed a transfer subject to the provisions of this Section. Upon any transfer or assignment of this Agreement or sale, transfer or other disposition of the Project or the Site that complies with the requirements of this Section 102.3, Participant shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee of the Project or the Site pursuant to an assignment and assumption agreement in a form reasonably acceptable to Agency's legal counsel. The right to receive the Agency Assistance shall run with the Project and, therefore, any assignment or transfer of Participant's obligations under this Agreement to a permitted assignee or transferee shall also include an assignment of the right to receive the Agency Assistance. No later than the date the assignment becomes effective, Participant shall deliver to Agency a fully executed counterpart of the assignment and assumption agreement. Participant shall request approval by written notice at least sixty (60) days prior to any proposed transfer or assignment of this Agreement or sale, transfer or other disposition of the Project or the Site, or any portion(s) thereof or interest(s) therein.

**(a) Prior to Issuance of Certificate of Completion.** Prior to issuance of the Certificate of Completion, Participant shall not assign or transfer this Agreement, the Project or the Site, or any portion(s) thereof, or interest(s) therein, or any right(s) hereunder without the prior written approval of the Agency's Executive Director. Participant shall notify Agency of any proposed transfer, or assignment promptly upon commencement of negotiations in connection with such event. The Agency's Executive Director shall approve or disapprove any requested transfer or assignment within sixty (60) days after receipt of a written request for approval from Participant, together with such documentation as may be reasonably required by the Agency's Executive Director to evaluate the proposed transaction and the proposed assignee's/transferee's experience and qualifications. The Agency's Executive Director shall not unreasonably withhold approval of a transfer or assignment to a proposed transferee/assignee who in the reasonable opinion of the Agency's Executive Director is financially capable and has the development qualifications and experience to perform the duties and obligations of the Participant hereunder.

**(b) Following Issuance of Certificate of Completion.** Following issuance of the Certificate of Completion, Participant shall not assign or transfer this Agreement, the Project or the Site, or any portion(s) thereof, or interest(s) therein, or any right(s) hereunder without the prior written approval of the Agency's Executive Director, which approval shall not be unreasonably withheld or delayed, and shall be granted upon Agency's receipt of evidence acceptable to Agency that the following conditions have been satisfied:



1. Participant is not in Default hereunder or the purchaser or assignee agrees to undertake to cure any Defaults of Participant to the reasonable satisfaction of Agency;
2. The continued operation of the Project shall comply with the provisions of this Agreement and the Affordable Housing Covenant;
3. Either (i) the purchaser or assignee or its property manager has at least three year's experience in the ownership, operation and management of similar size rental housing projects, and at least one year's experience in the ownership, operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local governmental requirements applicable to such projects, or (ii) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subclause (i) above, or (iii) Participant or its management company will continue to manage the Project for at least one year following such transfer and during such period will provide training to the transferee and its manager in the responsibilities relating to the Affordable Units;
4. The person or entity which is to acquire the Project does not have pending against it, and does not have a history of significant and material building code violations or complaints concerning the maintenance, upkeep, operation and regulatory agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; and
5. The proposed purchaser or assignee enters into a written assignment and assumption agreement in form and content reasonably satisfactory to Agency's legal counsel, and, if requested by Agency, an opinion of such purchaser or assignee's counsel to the effect that this Agreement and the Affordable Housing Covenant are valid, binding and enforceable obligations of such purchaser or assignee, subject to bankruptcy and other standard limitations affecting creditor's rights.

**(c) Pre-Approved Transfers.** Notwithstanding any other provision of this Agreement to the contrary, Agency approval of a transfer or assignment of this Agreement, the Project, or the Site or any interest therein shall not be required in connection with any of the following:

1. Subject to Participant submitting the assignment and assumption agreement referred to above and the approval of such agreement by the Agency, which approval shall not be unreasonably withheld, any transfer or assignment of the Project or any interest therein to an Affiliate of Participant;
2. Transfers resulting from the death or mental or physical incapacity of any member of Participant;
3. The granting of temporary or permanent easements or permits to facilitate development of the Project;

4. Any assignment for financing purposes (subject to such financing being considered and approved by Agency pursuant to Section 213.1 below), including the grant of a deed of trust, assignment of rents and security agreement to secure the funds necessary for construction and permanent financing of the Improvements;

5. Any transfer by foreclosure or deed in lieu of foreclosure under approved financing or transfers by a lender subsequent to foreclosure or deed in lieu of foreclosure (subject to the requirements of this Section 102.3 and Section 213, below);

6. The transfer of the limited liability company membership interests of Participant, provided such transfer does not cause a material change in the rights to manage and control Participant;

7. The transfer of any stock, partnership interest, membership or other beneficial interest in any non-managing member of Participant or any direct or indirect beneficial owner of any non-managing member of Participant;

8. The admission of any new non-managing member to Participant;

9. The admission of any new co-managing member to Participant, so long as the initial managing member or an Affiliate of Participant remains a co-managing member of Participant and maintains control over the operation and management of Participant;

10. The assignment of this Agreement, or any interest in this Agreement, to an Affiliate of Participant;

11. The transfer of any managing member interest or non-managing member interest in Participant to an Affiliate of Participant, so long as the initial managing member or Affiliate of Participant remains a managing or co-managing member of Participant and maintains control over the operation and management of Participant;

12. The rental, in the ordinary course of business, of the apartment units within the Project provided, with respect to the Affordable Units, such rental shall be in accordance with the terms of this Agreement and the Affordable Housing Covenant; and

13. The transfer of limited, exterior portions of the Site, such as landscaped areas or private streets, to the Homeowners' Association under the terms of the CC&Rs for the Crossing | San Bruno Project.

In the event of an assignment or transfer by Participant under the above subsections 102.3(c)1 through 102.3(c)13, inclusive, not requiring Agency's prior

approval, Participant nevertheless agrees that it shall give at least fifteen (15) days' prior written Notice to Agency of such assignment or transfer. In addition, Agency shall be entitled to review such documentation as may be reasonably required by the Agency's Executive Director for the purpose of determining compliance of such assignment or transfer with the requirements of subsections 102.3(c)1 through 102.3(c)13, inclusive.

Nothing in this Section or elsewhere in this Agreement shall prohibit (i) sale or transfer of all or any portion of the Site through foreclosure of a mortgage or deed of trust permitted pursuant to Section 213, (ii) transfer to the holder of such permitted mortgage or deed of trust by deed in lieu of foreclosure or (iii) transfer of the Site by any such holder subsequent to acquisition by foreclosure or deed in lieu, so long as such transfer complies with Section 213. Agency shall not be obligated to pay the Agency Assistance to any transferee of the Site after foreclosure or transfer in lieu of foreclosure unless such transferee assumes all of Participant's obligations under this Agreement and the Affordable Housing Covenant (excluding repayment of any portion of the Agency Assistance not actually disbursed to such transferee).

## **200. DEVELOPMENT OF THE SITE**

**201. Scope of Development.** Participant shall construct and install the Improvements in one phase in accordance with the Scope of Development, Attachment No. 3, as well as the schematic drawings, plans and documents to be submitted to and approved by Agency as provided in Section 204, below. All such work shall be performed by a licensed contractor(s).

**202. Permits and Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the Site, Participant shall, at its expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required by the City, the Architectural Review Board and any other governmental agency affected by such construction or work to the extent consistent with the Development Agreement. Agency staff will work cooperatively with Participant to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals by the City. However, the execution of this Agreement does not constitute the granting of, or a commitment to obtain, any required land use permits, entitlements or approvals required by Agency or City.

**203. Schedule of Performance.** Participant shall commence and complete construction of the Improvements and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance, Attachment No. 4, subject to the provisions of Section 602 hereof.

## **204. Design Review.**

**204.1 Conceptual Site Plan.** Concurrently with its approval of this Agreement, Agency has approved a conceptual site plan for the Improvements, including materials, color board, elevations of all four sides of the Improvements, preliminary landscape plans, a traffic and circulation plan and a rendered perspective of the residential apartment buildings (collectively, the "Conceptual Site Plan"). For

convenience of reference, individual components of the Conceptual Site Plan are listed in Attachment No. 9 attached hereto.

**204.2 Design Review Plans and Planned Development and Architectural Review Permits.** Concurrently with its approval of this Agreement, Agency has approved detailed drawings and specifications with respect to the Improvements (the "Design Review Plans"). For convenience of reference, individual components of the Design Review Plans are listed in Attachment No. 9 attached hereto.

**204.3 Construction Drawings and Related Documents.** Within the time set forth in the Schedule of Performance, Participant shall prepare and submit to the City Building Department for review and approval detailed construction plans with respect to the Improvements, including a grading plan, which shall have been prepared by a registered civil engineer (the "Construction Drawings").

**204.4 Construction Approvals.** The Agency Board's approval of the Conceptual Site Plan and Design Review Plans shall not relieve the Participant of its obligation to submit schematic drawings and plans to the City in order to obtain the approvals required for the construction of the Improvements on the Site as provided in the Development Agreement.

**204.5 Revisions.** If Participant desires to propose any material revisions to the Agency-approved Conceptual Site Plan or Design Review Plans, it shall submit such proposed changes to the Agency, and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance. If any material change in the basic concept of the development of the Site is proposed in the Conceptual Site Plan or Design Review Plans from the basic concept set forth in the Conceptual Site Plan as originally approved by the Agency Board, then the Agency's approval of any revisions to the Conceptual Site Plan or Design Review Plans may be conditioned upon the renegotiation of all terms and conditions of this Agreement, including the economic terms of the Agreement. If, in the reasonable opinion of the Agency's Executive Director, the Conceptual Site Plan or Design Review Plans, as modified by the proposed change, generally and substantially conform to the requirements of this Section 204 and the Scope of Development, the Agency's Executive Director shall, within fifteen (15) days after submission to the Agency, approve the proposed change and authorize the City to process the change in accordance with City requirements. The Agency's Executive Director is authorized to approve changes to the Agency-approved Conceptual Site Plan and Design Review Plans provided such changes (a) do not significantly reduce the cost of the proposed development; (b) do not reduce the quality of materials to be used; and (c) do not reduce the imaginative and unique qualities of the Project design. Any and all change orders or revisions required by the City and its inspectors in accordance with the Development Agreement and under other applicable laws and regulations shall be included by Participant in its Conceptual Site Plan, Design Review Plans and Construction Drawings and completed during the construction of the Improvements.

**204.6 Consultation and Coordination.** During the preparation of the Construction Drawings, staff of Agency and Participant shall hold progress meetings on

an as needed basis to coordinate the preparation, submission, and review with the City staff. The staff of Agency and Participant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the City and Agency can receive timely and thorough consideration.

**204.7 Defects in Plans.** Agency shall not be responsible either to the Participant or to any third parties in any way for any defects in the Conceptual Site Plan, the Design Review Plans or the Construction Drawings, nor for any structural or other defects in any work done according to the approved Conceptual Site Plan, Design Review Plans or Construction Drawings, nor for any delays caused by the review and approval processes established by this Section 204. Participant shall hold harmless, indemnify, pay for and defend Agency, City and its and their officers, employees, agents, representatives and volunteers from and against any claims or suits for damage to property or injury to or death of any persons arising out of or in any way relating to defects in the Conceptual Site Plan, Design Review Plans or the Construction Drawings, including the violation of any Governmental Requirements, or for defects in any work done according to the approved Conceptual Site Plan, Design Review Plans and Construction Drawings.

**204.8 Cost of Construction.** All costs of Site preparation, planning, designing and constructing the Improvements and developing the Project on the Site shall be borne solely by Participant, except as otherwise expressly set forth herein.

**205. Insurance Requirements.** At all times during the term of this Agreement, Participant shall provide, maintain and keep in full force and effect, the insurance required under Attachment No. 10, Insurance Requirements, and shall comply with all requirements set forth therein.

**206. Rights of Access.** Prior to the issuance of a Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of the Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including the inspection of the Project and the work of Improvements so long as the Agency representatives comply with all safety rules. Agency (or its representatives) shall, except in emergency situations, notify Participant prior to exercising its rights pursuant to this Section 206. Nothing herein shall be deemed to limit the ability of the City to conduct code enforcement and other administrative inspections of the Site in accordance with applicable law.

**207. Compliance with Laws; Indemnity; Waiver.** Participant shall carry out the work of Improvements in conformity with the Development Agreement and all applicable laws, to the extent consistent with the Development Agreement, including all applicable state labor laws and standards; all applicable Public Contracts Code requirements; the City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of San Bruno Municipal Code; the City of San Bruno prevailing wage policy; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

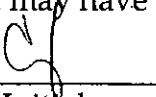
Participant shall defend, indemnify and hold harmless Agency and City and its and their officers, employees, volunteers, agents and representatives from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "Claims"), arising out of or in any way connected with Participant's obligation to comply with all laws with respect to the work of Improvements.

Participant hereby waives, releases and discharges forever Agency and City, and its and their employees, officers, volunteers, agents and representatives, from any and all present and future Claims arising out of or in any way connected with Participant's obligation to comply with all laws with respect to the work of Improvements.

Participant is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

As such relates to this Section 207, Participant hereby waives and relinquishes all rights and benefits that it may have under Section 1542 of the California Civil Code.

  
Participant Initials

**208. Taxes and Assessments.** Participant shall pay prior to delinquency all *ad valorem* real estate taxes and assessments on the Site, subject to Participant's right to contest in good faith any such taxes. Participant shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within thirty (30) days following the date of attachment or levy.

**209. Project Sign.** Participant and Agency agree to cooperate in placing and maintaining on the Site, during construction, one sign indicating the respective roles of Participant and Agency in the Project. The cost of the sign shall be borne by Participant.

**210. Liens and Stop Notices.** Participant shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Project, Participant shall within thirty (30) days of such recording or service:

- a. pay and discharge the same; or
- b. affect the release thereof by recording and delivering to Agency a surety bond in sufficient form and amount; or
- c. provide the Agency with other assurance which Agency deems, in its sole discretion, to be satisfactory for the payment of such lien or

bonded stop notice and for the full and continuous protection of Agency from the effect of such lien or bonded stop notice.

**211. Submission of Evidence of Financing Commitments.** Within the time established therefor in the Schedule of Performance, Participant shall obtain and submit to Agency evidence that Participant has obtained firm letters of commitments for debt and equity financing necessary to undertake the development of the Project and the design and construction of the Improvements in accordance with this Agreement. Agency's Executive Director shall approve or disapprove such evidence of financing commitments within the time established in the Schedule of Performance. Approval shall not be unreasonably withheld. If Agency's Executive Director shall reasonably disapprove any such evidence of financing, the Executive Director shall do so by written notice to Participant stating the reasons for such disapproval and, thereafter, Participant shall utilize good faith, diligent efforts to promptly obtain and submit to Agency new evidence of financing. Agency's Executive Director shall approve or disapprove such new evidence of financing in the same manner and within the same times established in the Schedule of Performance for the approval or disapproval of the evidence of financing as initially submitted to the Agency.

Such evidence of financing shall include a copy of the firm and binding commitment obtained by Participant for the mortgage loan or loans to finance construction through completion of the Project. The term of such construction financing shall be for not less than one (1) year. The commitment for financing shall be in a form sufficient, in the reasonable opinion of the Agency's Executive Director, to evidence a firm loan commitment subject to the construction lender's reasonable, customary and normal conditions and terms. In the event Agency disapproves Participant's evidence of financing commitments or Participant fails to obtain and deliver the evidence of financing commitments to Agency as provided above, then either party may terminate this Agreement as provided herein by Notice to the other party and, thereafter, neither party shall have any rights or obligations hereunder, except for Participant's indemnity obligations which shall survive termination of this Agreement.

Prior to issuance of a Certificate of Completion, Participant shall provide Agency's Executive Director with a written statement signed by the managing member of Participant setting forth the total amount of Project Debt, together with supporting evidence of such Project Debt reasonably satisfactory to the Executive Director.

**212. Certificate of Completion.** Following Participant's completion of the work of construction and installation of the Improvements on the Site in conformity with this Agreement, and within the time set forth in the Schedule of Performance, Agency shall furnish Participant with a "Certificate of Completion" substantially in the form attached hereto as Attachment No. 6. Agency shall not unreasonably withhold such Certificate of Completion. The Certificate of Completion shall be conclusive determination of satisfactory completion of the work of construction and installation of the Improvements on the Site and the Certificate of Completion shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in Section 306 hereof and in the Affordable Housing Covenant.

If Agency refuses or fails to furnish the Certificate of Completion, Agency shall, within thirty (30) days after Participant's written request therefor, provide the Participant with a written statement of the reasons Agency refused or failed to furnish the Certificate of Completion. The statement shall also contain Agency's opinion of the actions Participant must take to obtain the Certificate of Completion. Agency's failure to provide such a written statement within such thirty- (30-) day period shall be deemed Agency's disapproval of Participant's request for issuance of the Certificate of Completion. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Participant to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the work of Improvements, or any part thereof. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

### **213. Mortgage, Deed of Trust, Sale and Lease-Back Financing.**

**213.1 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development.** Mortgages and deeds of trust are permitted before completion of the construction of the Improvements, but only for the purpose of securing loans of funds to be used for financing the costs of acquiring the Site and constructing the Improvements. Participant covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing without the prior written approval of Agency's Executive Director. The beneficiary under any mortgage or deed of trust so approved by the Agency's Executive Director shall be an "Approved Lender," herein. The requirements of this Section 213.1 shall terminate effective upon issuance of the Certificate of Completion. Participant shall notify Agency in advance of any proposed mortgage or deed of trust. The words "mortgage" and "deed of trust" as used hereinafter shall include sale and lease-back financing.

**213.2 Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or Improvements provided for or authorized by this Agreement and the Affordable Housing Covenant.

**213.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** If Agency delivers any notice or demand to Participant with respect to any breach or default by Participant hereunder, including the requirements of Section 302(b), below, Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. No notice of default shall be effective as to the holder unless such notice is given. Each such holder shall (insofar as the rights of Agency are concerned) have the right, at its option, within sixty (60) days after receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. In the event possession of the Site (or portion thereof) is required to effectuate such cure or remedy, the holder shall be



deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Any such holder properly completing the Improvements shall be entitled, upon compliance with the requirements of Section 212 of this Agreement, to a Certificate of Completion. Agency shall be obligated to pay the Agency Assistance to a transferee of the Site after foreclosure or transfer in lieu of foreclosure only if such transferee assumes in writing all of Participant's obligations hereunder and under the Affordable Housing Covenant (excluding repayment of any portion of the Agency Assistance not actually disbursed to such transferee) and reinstates this Agreement and the Affordable Housing Covenant. Any such holder shall be responsible only to the extent necessary to bring the Project into current compliance with Participant's obligations under this Agreement and the Affordable Housing Covenant, and not for any past uncured defaults.

**214. Condition of the Site.** Participant shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials that are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Participant shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards prevailing in the industry, to the extent such standards exceed applicable Governmental Requirements, as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. Participant shall cause each release of Hazardous Materials in, on or under the Site to be remediated in accordance with all Governmental Requirements.

Participant agrees to indemnify, defend and hold Agency and City and its and their officers, employees, volunteers, agents and representatives harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site, caused by Participant or any of Participant's predecessors in interest. This indemnity shall include any damage, liability, fine, penalty, parallel indemnity, cost or expense arising from or out of any claim, action, suit or proceeding for bodily injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic or consequential loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effects on the environment.

### **300. COVENANTS, RESTRICTIONS AND AGREEMENTS**

**301. Use and Affordable Housing Covenants.** Participant covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that Participant shall continuously maintain, use and operate the Project in

accordance with the highest industry standards, utilizing its expertise and all resources available to it to provide residents of the Project, including the Affordable Units, with high-quality rental housing, amenities and services, for the period of time specified in Section 306, below. No uses other than those specified above shall be permitted without the prior written approval of the Agency, which may be granted or denied in Agency's sole discretion. All uses conducted on the Site, including all activities undertaken by Participant pursuant to this Agreement, shall conform to the Redevelopment Plan, the Development Agreement and all applicable provisions of the San Bruno Municipal Code.

**302. Maintenance Covenants.** Participant shall maintain in accordance with the Maintenance Standards, as hereinafter defined, the private improvements and public improvements and landscaping to the curblin(e)s on and abutting the Site. The improvements shall include buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and in the public right of way to the nearest curblin(e)s abutting the Site. To accomplish the maintenance, Participant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The maintenance covenants and obligations set forth in this Section 302 shall remain in effect for the period of time specified in Section 306, below.

**a. Maintenance Standards.** The following standards (collectively, "Maintenance Standards") shall be complied with by Participant and its maintenance staff, contractors and subcontractors, but do not require extraordinary expenditures or reconstruction after condemnation or the occurrence of a substantial casualty event:

(i) Landscape maintenance shall include: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(ii) Clean-up maintenance shall include: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(iii) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(iv) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all Governmental Requirements. Precautionary measures shall be employed recognizing that all areas are open to public access.

(v) The Improvements shall be maintained in conformance and in compliance with the Specific Plan and the approved Planned Development Permit and Architectural Review Permit, as the same may be amended from time to time with the approval of the City and in accordance with the custom and practice generally applicable to comparable multi-family residential projects located within San Mateo County, California. The public right-of-way improvements to the curblin(e)s on and abutting the Site shall be maintained as required by this subsection a. in good condition and in accordance with the custom and practice generally applicable to public rights-of-way within the City of San Bruno.

**b. Failure to Maintain Improvements.** If Participant does not maintain the private and public improvements on the Site to the curblin(e)s on and abutting the Site in the manner set forth herein and in accordance with the Maintenance Standards, Agency and/or City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Participant. However, prior to taking any such action, Agency agrees to notify Participant in writing if the condition of said improvements does not conform to the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Participant to cure the deficiencies. Upon notification of any maintenance deficiency, Participant shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Participant shall have twenty-four (24) hours to rectify the problem.

In the event Participant fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after expiration of any applicable cure period, including the notice and cure provisions for any holder of record of any mortgage or deed of trust pursuant to Section 213.3, then City and/or Agency shall have the right to maintain such improvements. Participant agrees to pay Agency upon demand all charges and costs incurred by Agency or City for such maintenance. Until so paid, the Agency shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Site. Any lien in favor of the Agency created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of the Agency created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Participant acknowledges and agrees that the City and Agency may also pursue any and all other remedies available in law or equity in the event of a breach of the

maintenance obligations and covenants set forth herein, subject to the limitations described in Section 502, below.

**303. Nondiscrimination Covenants.** Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant itself or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts for the rental, sale or lease of the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

**b. In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

**c. In contracts:** "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the

selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

**304. Minimum Project Cost.** Participant covenants and agrees that in connection with its construction of the Project, Participant shall expend not less than FORTY FIVE MILLION DOLLARS (\$45,000,000) in "hard" construction costs; "hard" construction costs shall consist exclusively of on-site labor and materials expenditures incurred by Participant for the work of construction and installation of the Improvements. "Hard" construction costs shall not include (i) Hazardous Materials remediation costs; (ii) costs of furniture, fixtures and equipment; or (iii) construction or project management fees, legal, engineering, financing, overhead, or any other costs or fees typically characterized by the construction/development industry as "soft" costs. Participant shall provide evidence reasonably satisfactory to Agency of all of its hard construction cost expenditures prior to submitting its requests for issuance of a Certificate of Completion. Failure to satisfy the minimum hard construction cost expenditure requirement set forth in this Section 304 shall be deemed a Default by Participant.

**305. Replacement Reserve Requirement.** Participant covenants and agrees that in each Operating Year Participant shall deposit not less than Two Hundred and No/100 Dollars (\$200.00) per apartment unit into a special capital replacement reserve account maintained with Fannie Mae or such other Approved Lender. The capital replacement reserve account shall be used exclusively for payment of Project capital replacement expenses to the extent provided in the agreement(s) governing such reserves.

**306. Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction.** Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the Affordable Housing Covenant which runs with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the Affordable Housing Covenant which runs with the land have been provided, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site or in the Redevelopment Project. Agency shall have the right, in the Event of Default under this Agreement or Affordable Housing Covenant, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled as provided in Section 502 and the Affordable Housing Covenant. Effective upon issuance of the Certificate of Completion and recordation of the Affordable Housing Covenant, the covenants contained in this Agreement shall terminate and be superceded by those covenants set forth in the Affordable Housing Covenant, except for the following covenants which shall continue in full force and effect:

a. Agency's and Participant's representations and warranties pursuant to Section 100; and

b. Agency's and Participant's respective covenants and agreements set forth in Sections 204.7, 207, 208, 210, 213, 214, 400, 500 and 600.

**307. Affordable Housing Covenant.** In consideration of the Agency Assistance, Participant agrees to develop, own, operate and make available not less than sixty (60) rental units within the Project to persons and households of very low income at affordable rents (the "Affordable Units"). Participant's duties are more specifically set forth in the Affordable Housing Covenant, Attachment No. 5, which shall be recorded against the Site in the Official Records of San Mateo County, California, within the time set forth in the Section 402 and the Schedule of Performance. Upon recording, the Affordable Housing Covenant shall have priority over the liens of any and all mortgages or deeds of trust encumbering the Project, or any portion thereof, and Participant shall be required to furnish to Agency subordination agreements in a form substantially similar to the Subordination Agreement attached hereto as Attachment No. 11, subordinating the liens of any deeds of trust or mortgages existing as of such recording to the Affordable Housing Covenant.

**308. Indemnification Limitation for Approved Lenders.** Inasmuch as the covenants, reservations and restrictions of this Agreement and the Affordable Housing Covenant run with the land, the indemnification obligations of the Participant contained in this Agreement and the Affordable Housing Covenant will be deemed applicable to any successor in interest to Participant, but, it is acknowledged and agreed, notwithstanding any other provision of this Agreement or the Affordable Housing Covenant to the contrary, that neither any Approved Lender nor its successors in interest will assume or take subject to any liability for the indemnification obligations of the Participant for acts or omissions of Participant occurring prior to transfer of title to any Approved Lender whether by foreclosure, deed in lieu of foreclosure or comparable conversion; Participant at the time of the act or omission shall remain liable under the indemnification provisions for its acts or omissions occurring prior to any transfer of title to an Approved Lender whether by foreclosure, deed in lieu of foreclosure or comparable conversion. An Approved Lender shall indemnify Agency following its acquisition of the Project or Site or any portion thereof by foreclosure, deed in lieu of foreclosure or comparable conversion during, and only during, any ensuing period that such Approved Lender owns and operates the Project, provided that the liability of any Approved Lender shall be strictly limited to its acts and omissions occurring during the period of its ownership and operation of the Site.

#### **400. FINANCIAL PROVISIONS**

**401. Agency Assistance.** In consideration of Participant's obligations under this Agreement and the Affordable Housing Covenant, including Participant's obligation to construct the Improvements and to maintain the affordability of the Affordable Units, and subject to the terms and conditions of this Agreement, including Participant's fulfillment of the Conditions Precedent to Disbursement of Agency Assistance set forth in Section 402 below, Agency shall make available to Participant the Affordable Housing Fee Grant, the Affordable Housing Grant to Participant, the Affordable Housing Set Aside Subsidy, and the Unrestricted Tax Increment Subsidy as provided in subsections 401.1 through 401.3 below. The Affordable Housing Fee Grant, the Affordable Housing Grant to Participant, the Affordable Housing Set Aside Subsidy and the Unrestricted Tax Increment Subsidy are referred to collectively herein as the "Agency Assistance." The Affordable Housing Set Aside Subsidy and the Unrestricted

Tax Increment Subsidy are sometimes referred to collectively herein as the "Affordable Housing Subsidies."

**401.1 Affordable Housing Fee Grant.** Subject to the Affordable Housing Fee Grant Cap, Agency shall disburse to City, on behalf of Participant prior to issuance of a building permit, a one-time grant in an amount equal to the municipal fees payable to City and directly attributable to the Affordable Units, not to include any fees or other amounts payable by Participant to any other governmental agencies (e.g., school fees) or any portion of the Development Impact Fee (as defined in the Development Agreement) payable to City (the "Affordable Housing Fee Grant"). In no event shall the Affordable Housing Fee Grant exceed FOUR HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$420,000.00) (the "Affordable Housing Fee Grant Cap"). Agency intends to pay the Affordable Housing Fee Grant, to the extent possible, from Affordable Housing Fund monies. Participant, at its expense, shall pay to the City any and all municipal fees attributable to the Affordable Units in excess of the Affordable Housing Fee Grant Cap.

**401.2 Affordable Housing Grant to Participant.** After commencement of the Partial Operating Year and within sixty (60) days following receipt by Agency of the second biannual installment of tax increment from the County of San Mateo, Agency shall disburse to Participant (or to Trustee as provided in Section 407, below) an amount equal to one hundred percent (100%) of the Net Affordable Housing Set Aside Revenues attributable to the Site and the improvements thereon for the period between the Effective Date of this Agreement and the date immediately prior to the commencement of the Partial Operating Year (the "Affordable Housing Grant to Participant").

**401.3 Affordable Housing Subsidies.**

(a) **Affordable Housing Set Aside Subsidy.** Beginning with the Partial Operating Year and continuing each Operating Year thereafter until the first to occur of (a) the thirtieth (30th) Operating Year, (b) July 6, 2039, the current expiration date of the Redevelopment Plan, or (c) termination of the Affordable Housing Covenant, Attachment No. 5, and subject to the Affordable Housing Subsidies Cap, Agency shall disburse to Participant (or to Trustee as provided in Section 407, below) an amount equal to one hundred percent (100%) of the Net Affordable Housing Set Aside Revenues attributable to the Project during each such Operating Year (or, in the case of the Partial Operating Year, a prorated percentage of such Net Affordable Housing Set Aside Revenues based upon the number of calendar days in the Partial Operating Year) (the "Affordable Housing Set Aside Subsidy"). The Affordable Housing Set Aside Subsidy shall be payable after the end of the Partial Operating Year and each Operating Year thereafter and within thirty (30) days following receipt by Agency of the second biannual installment of tax increment from the County of San Mateo. During the first thirty (30) Operating Years, Agency shall not consider the Benchmark Debt Coverage Ratio for purposes of determining Participant's eligibility for the Affordable Housing Set Aside Subsidy. Beginning with the thirty-first (31st) Operating Year and continuing each Operating Year thereafter until the first to occur of (a) July 6, 2039, the current expiration date of the Redevelopment Plan, or (b) termination of the Affordable Housing Covenant, Attachment No. 5, and subject to the Affordable Housing Subsidies



Cap, Agency shall disburse to Participant (or to Trustee as provided in Section 407, below) an amount equal to one hundred percent (100%) of the Net Affordable Housing Set Aside Revenues attributable to the Project during each such Operating Year, but only to the extent that the Project's Debt Coverage Ratio does not meet the Benchmark Debt Coverage Ratio .

**(b) Unrestricted Tax Increment Subsidy.** Beginning with the Partial Operating Year and continuing each Operating Year thereafter until the first to occur of (a) July 6, 2039, the current expiration date of the Redevelopment Plan, or (b) termination of the Affordable Housing Covenant, Attachment No. 5, and subject to the Affordable Housing Subsidies Cap, Agency shall disburse to Participant (or to Trustee as provided in Section 407, below) an amount equal to one hundred percent (100%) of the Net Unrestricted Property Tax Increment Revenues attributable to the Project during each such Operating Year (or, in the case of the Partial Operating Year, a prorated percentage of such Net Unrestricted Property Tax Increment Revenues based upon the number of calendar days in the Partial Operating Year), but only to the extent that the Project's Debt Coverage Ratio does not meet the Benchmark Debt Coverage Ratio (the "Unrestricted Tax Increment Subsidy"). The Unrestricted Tax Increment Subsidy shall be payable after the end of the Partial Operating Year and each Operating Year thereafter and within thirty (30) days following receipt by Agency of the second biannual installment of tax increment from the County of San Mateo. To the extent sufficient Affordable Housing Fund monies are available, Agency, at its option, may use such Affordable Housing Fund monies to pay all or a portion of the Unrestricted Tax Increment Subsidy.

**(c) Affordable Housing Subsidies Cap.** The sum total of the Affordable Housing Subsidies (i.e., the Affordable Housing Set Aside Subsidy and the Unrestricted Tax Increment Subsidy) payable to Participant in any given Operating Year, other than the Partial Operating Year, shall in no event exceed **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)** ("Affordable Housing Subsidies Cap"). The Affordable Housing Subsidies Cap for the Partial Operating Year shall be equal to the product of the Affordable Housing Subsidies Cap multiplied by a fraction, the numerator of which is the number of calendar days in the Partial Operating Year and the denominator of which is 365.

**(d) Benchmark Debt Coverage Ratio.** Beginning with the Partial Operating Year and continuing each Operating Year thereafter, the Unrestricted Tax Increment Subsidy shall be subject to reduction if, in the Operating Year in question, the Debt Coverage Ratio exceeds the Benchmark Debt Coverage Ratio. If the Debt Coverage Ratio exceeds the Benchmark Debt Coverage Ratio in any such Operating Year, the Unrestricted Tax Increment Subsidy for that Operating Year shall be reduced to the amount necessary to ensure that the Project's Debt Coverage Ratio meets, but does not exceed, the Benchmark Debt Coverage Ratio. Beginning with the thirty-first (31<sup>st</sup>) Operating Year and continuing each Operating Year thereafter, the Affordable Housing Set Aside Subsidy shall also be subject to reduction if, in the Operating Year in question, the Debt Coverage Ratio exceeds the Benchmark Debt Coverage Ratio. Accordingly, if the Debt Coverage Ratio exceeds the Benchmark Debt Coverage Ratio in the thirty-first (31<sup>st</sup>) Operating Year or any Operating Year thereafter, the Affordable Housing Subsidies for such Operating Year shall be reduced to the



amount necessary to ensure that the Project's Debt Coverage Ratio meets, but does not exceed, the Benchmark Debt Coverage Ratio.

**402. Conditions Precedent to Disbursement of Agency Assistance.** Agency's obligation to make each disbursement of the Agency Assistance is conditioned upon the satisfaction or waiver by the Agency of each and all of the conditions precedent described below (the "Conditions Precedent to Disbursement of Agency Assistance"), which are solely for the benefit of the Agency, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **No Default.** Participant shall not be in default of any of its obligations under the terms of this Agreement and all representations and warranties of Participant contained herein shall be true and correct in all material respects.

(b) **Execution of Documents.** Participant shall have executed and acknowledged the Memorandum of Agreement and the Affordable Housing Covenant (as provided in Section 402(i), below) and any other documents required hereunder and delivered such documents to Agency.

(c) **Insurance.** Participant shall have provided proof of insurance as required by Section 205 of this Agreement.

(d) **Permits and Land Use Approvals.** Participant shall have obtained all City and governmental agency permits and land use approvals required pursuant to Section 202 hereof and all other Project entitlements, and the period for administrative and legal challenge to such land use approvals and entitlements shall have expired.

(e) **Payment of Development Fees.** Participant shall have paid to the City, when due, all development fees required in connection with the development of the Project and installation of the Improvements, including but not limited to, all traffic mitigation and development impact fees consistent with the Development Agreement.

(f) **Payment of Property Taxes.** No ad valorem property taxes or assessments assessed with respect to the Project shall be delinquent.

(g) **Completion of Improvements.** With respect to the Affordable Housing Grant to Participant, the Affordable Housing Set Aside Subsidy and the Unrestricted Tax Increment Subsidy only, Participant shall have satisfactorily completed the construction of the Improvements, and a Certificate of Completion shall have been issued by the Agency as provided in Section 212, hereof.

(h) **Minimum Project Cost.** With respect to the Affordable Housing Grant to Participant, the Affordable Housing Set Aside Subsidy and the Unrestricted Tax Increment Subsidy only, Participant shall have provided proof reasonably satisfactory to Agency of its compliance with the minimum project cost covenants set forth in Section 304, above.

(i) **Affordable Housing Covenant and Report.** With respect to the Affordable Housing Grant to Participant, the Affordable Housing Set Aside Subsidy

and the Unrestricted Tax Increment Subsidy only, Participant has executed, acknowledged and delivered to Agency the Affordable Housing Covenant and any subordination agreements required by Section 307 and delivered to Agency the annual report(s) required under the Affordable Housing Covenant.

(j) **Financial Statements and Reports.** With respect to the Affordable Housing Set Aside Subsidy and the Unrestricted Tax Increment Subsidy only, Participant shall have delivered to the Agency the financial statements and written annual statements required under Section 406 hereof.

**403. Eligible Project Costs.** Participant may use the Agency Assistance exclusively for reimbursement of one or more of the following Project costs ("Eligible Project Costs"): (a) twenty percent (20%) of the costs of (i) constructing and installing any on-site or off-site improvements to the extent such improvements directly benefit and are a reasonable and fundamental component of the Affordable Units and provided the reimbursement of such improvement costs is permissible under then applicable provisions of the Community Redevelopment Law, (ii) remediating any Hazardous Materials on the Site, and (iii) demolishing existing improvements on the Site; (b) one hundred percent (100%) of the costs of constructing the Affordable Units including any fees due the City or other state or federal agency in connection with the development of the Affordable Units; (c) payment of that portion of the Project Debt allocable to costs set forth in preceding clauses (a) and (b); and (d) payment of that portion of the Project's ad valorem property taxes allocable to the Affordable Units. Participant may also use the Agency Assistance to reimburse itself for the difference between the fair market rental value of the Affordable Units and the affordable rents that are required under the Affordable Housing Covenant. Any and all Eligible Project Costs in excess of the amount of Agency Assistance available to Participant under this Agreement shall be borne by Participant at its expense.

**404. Reduction in Amount of Affordable Housing Subsidies Following Reassessment.** Notwithstanding anything herein to the contrary, if (i) the assessed valuation of the Site or the improvements thereon is reduced by the County of San Mateo, whether such reduction is due to an appeal filed by the Participant in accordance with the provisions of the California Revenue and Taxation Code, or otherwise, and (ii) Participant has received one or more Affordable Housing Subsidies payment(s) for the same period of time to which the reduced assessed valuation applies, the next Affordable Housing Subsidies payment(s) to be made by Agency to Participant following the reduction shall be decreased by an amount equal to the difference between the amount of the Affordable Housing Subsidies payment(s) made to Participant prior to such reduction and the amount of Affordable Housing Subsidies payment(s) which would have been paid to Participant based upon the assessed valuation as reduced.

**405. Intentionally Omitted.**

**406. Financial Records and Reporting Obligations.** Participant covenants and agrees, on behalf of itself and its successors and assigns, that, in connection with the construction, ownership and operation of the Project, it shall keep full and accurate books of account and records in accordance with generally accepted accounting principles applicable to real estate projects and transactions, consistently applied, including records of Effective Gross Income, Operating Expenses, Debt Service and Net Operating Income. Such books, receipts and records shall be kept for a period of three (3) years after the close of each Operating Year and shall be available for inspection and audit by Agency and its representatives at the Site at all times during regular business hours.

In addition, beginning with the Partial Operating Year and continuing for as long as Participant's right to receive the Affordable Housing Subsidies remains in effect, Participant shall provide Agency's Executive Director with (a) annual financial statements for the Project, in order to allow the Agency's Executive Director to verify the amount of Effective Gross Income, Operating Expenses, Debt Service, Net Operating Income and Debt Coverage Ratio; and (b) a written annual statement of Effective Gross Income, Operating Expenses, Net Operating Income, Debt Service and Debt Coverage Ratio, in a form reasonably acceptable to Agency, within one hundred twenty (120) days after the close of each Operating Year. All such statements shall be prepared in accordance with generally accepted accounting principles applicable to real estate projects and transactions, consistently applied. If the annual financial statement for any Operating Year submitted after Agency has disbursed to Participant the Affordable Housing Subsidies payment demonstrates that Agency has made a payment(s) in excess of the amount that should have been disbursed, then Participant shall repay Agency, with the submission of the annual financial statement, the sum total of all excess Affordable Housing Subsidies payments, plus interest on such amounts calculated from the date such excess disbursements were made at a rate of ten percent (10%) per annum. If Participant fails to repay Agency the excess payments, plus interest, as provided above, then Agency, in addition to pursuing whatever other remedies it may have, may reduce the next Operating Year's Affordable Housing Subsidies payment by the sum total of all excess Affordable Housing Subsidies payments, plus interest on such amounts calculated from the date such excess disbursements were made at a rate of ten percent (10%) per annum.

The receipt by Agency of any annual financial statements or statement of Effective Gross Income, Operating Expenses, Net Operating Income, Debt Service and Debt Coverage Ratio shall not bind it as to the correctness of the amount of such statements. Agency shall, within three (3) years after the receipt of any such statement, be entitled to an audit thereof. Such audit shall be conducted by an agent of Agency during normal business hours at the Site. If it shall be determined as a result of such audit that Agency has disbursed to Participant Affordable Housing Subsidies payment(s) in excess of the amount that should have been disbursed, then Participant shall repay Agency within ten (10) days following Agency's demand therefor, the sum total of all excess Affordable Housing Subsidies payments, plus interest on such amounts calculated from the date such excess disbursements were made at a rate of ten percent (10%) per annum. In addition, if Participant's statement of Net Operating Income for any Operating Year shall be found to have understated Net Operating

Income by more than three percent (3%), then Participant shall pay to Agency all costs incurred in performing the audit.

**407. Pledge of Agency Assistance to Bond Trustee.**

(a) Participant hereby grants a security interest in and pledges to and for the benefit of the trustee in respect of the multifamily housing revenue bonds issued initially to finance the Project (the "Bonds"), its successors and assigns (the "Trustee") and for the holder of any bonds or debt subsequently issued to refinance the Bonds all right, title and interest of Participant in and to the Agency Assistance. The pledge by Participant under this Agreement is a "pledge" of "collateral" as deemed in California Health & Safety Code Section 33641.5, and as such is valid and binding from and after the Effective Date until the Bonds are no longer outstanding (the "Pledge Expiration Date"). The Net Affordable Housing Set Aside Revenues and Net Unrestricted Property Tax Increment Revenues shall immediately be subject to the lien of the pledge created under this Agreement without any physical delivery thereof or further act to maintain the validity or enforceability of the pledge created under this Agreement, including, without limitation, any actions relating to operation of the Project in any particular manner.

(b) No authorization or approval or other action by, and no notice to or filing with, any federal, state or local government body, agency or authority is required for the due execution, delivery and performance by the Agency of this Agreement which has not been obtained.

(c) For all disbursements of the Affordable Housing Grant to Participant and the Affordable Housing Subsidies that Agency is obligated to make to Participant hereunder prior to the Pledge Expiration Date, Agency shall disburse such payments to Trustee (as defined above) at the following address: Wells Fargo Bank, National Association, 707 Wilshire Boulevard, 17th Floor, Los Angeles, California 90017, Attention: Corporate Trust Services, MAC E2818-176. The address may be modified by Participant, with the written consent of the then-current Trustee, from time to time by Notice to Agency. On or before the commencement of each Operating Year, Participant shall designate to Agency in writing the identity and address of the Trustee to receive such disbursements of the Affordable Housing Grant to Participant and the Affordable Housing Subsidies. If at any time no Bonds shall remain outstanding and there shall not be outstanding any bonds or debt secured by a mortgage or deed of trust encumbering the Project, Participant shall notify Agency that all future payments are to be made to Participant, or such successor, provided that no modifications of the identity or address of Trustee or instructions of payment to Trustee shall be deemed effective unless consented to in writing by the then-current Trustee. If, notwithstanding this Section 407, Agency inadvertently directs to Participant one or more disbursements of the Affordable Housing Grant to Participant and/or the Affordable Housing Subsidies, Agency shall have no obligation to make such disbursement(s) to Trustee and Participant shall be required to reimburse Trustee the full amount of such misdirected disbursement(s).

**408. Future Tax Allocation Bonds.** From time to time following the Effective Date, Agency may issue Tax Allocation Bonds for which Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues are to be pledged or utilized in whole or in part for payment; provided, however, such Tax Allocation Bonds shall be subordinate to the Agency's obligation hereunder to make the Agency Assistance payments available to Participant. Nothing herein shall be deemed to limit Agency's ability to issue, or effect the priority of, any Tax Allocation Bonds issued by Agency, whose repayment is secured by a pledge of property tax increment revenues that does not include, in whole or part, the Net Affordable Housing Set Aside Revenues or Net Unrestricted Property Tax Increment Revenues.

## **500. DEFAULTS AND REMEDIES**

**501. Default Remedies.** Subject to the permitted extensions of time as provided in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and expiration of any applicable cure period, including the notice and cure provisions for any holder of record of any mortgage or deed of trust pursuant to Section 213.3, shall constitute a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days following receipt of such Notice of Default immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence.

**502. Institution of Legal Actions.** Upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California. Notwithstanding anything herein to the contrary, Participant's right to recover damages in the event of a Default by Agency shall be limited to recovery of actual damages and shall exclude consequential damages.

To protect the rights of Approved Lenders (pursuant to Section 213.1), Agency shall not have the right to file any involuntary petition seeking reorganization, arrangement, adjustment, or composition of or in respect of Participant, respectively, under any liquidation, insolvency, bankruptcy, rehabilitation, reorganization, conservation or other similar law in effect now or in the future.

The obligations of Participant under the Affordable Housing Covenant and this Agreement shall be personal to the entity or person, defined as Participant, which owned the Site at the time that an event, including, any Default or breach of this Agreement or the Affordable Housing Covenant, occurred or was alleged to have occurred and such entity or person shall remain liable for any and all obligations

including damages occasioned by a Default or breach, even after such person or entity ceases to be the owner of the Site. Accordingly, no subsequent owner of the Site shall be liable or obligated for the obligation of any prior owner, including any obligation for payment, indemnification or damages, for Default or breach of this Agreement or the Affordable Housing Covenant or otherwise. The owner of the Site at the time the obligation was incurred, including any obligation arising out of a Default or breach of this Agreement or the Affordable Housing Covenant, shall remain liable for any and all payments and damages occasioned by the owner even after such person or entity ceases to be the owner of the Site.

Under no circumstances shall the Agency:

(a) interfere with or attempt to influence the exercise by any Approved Lender of any of its rights under the terms of the mortgage or deed of trust, including, without limitation, the respective remedial rights of the Approved Lenders upon the occurrence of any event of default by Participant under such mortgage or deed of trust; or

(b) upon the occurrence of an event of default under the terms of a mortgage or deed of trust of an Approved Lender, take any action to accelerate or otherwise enforce payment or seek other remedies with respect thereto.

**503. Termination by Participant.** In the event of any Default of Agency, which is not cured within the time set forth in Section 501 hereof after written demand by Participant, including notice and cure provisions for any holder of record of any mortgage or deed of trust pursuant to Section 213.3, then this Agreement may, at the option of Participant, be terminated by Notice thereof to Agency. From the date of the Notice of termination of this Agreement by Participant to Agency and thereafter, this Agreement shall be deemed terminated, and except for Participant's indemnity obligations which shall survive termination of this Agreement, there shall be no further rights or obligations between the parties.

**504. Termination by Agency.** In the event that Participant is in Default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof, then this Agreement and any rights of Participant or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of Agency, be terminated by Agency by Notice thereof to Participant. From the date of the Notice of termination of this Agreement by Agency to Participant, this Agreement shall be deemed terminated and, except for Participant's indemnity obligations which shall survive termination of this Agreement, there shall be no further rights or obligations between the parties and, specifically, Agency shall have no obligation to make any further disbursements of the Agency Assistance.

**505. Acceptance of Service of Process.** In the event that any legal action is commenced by Participant against Agency, service of process on Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Participant, service of process on Participant shall be made by personal service upon Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington,

Delaware, 19808, the registered agent of the Participant, or in such other manner as may be provided by law.

**506. Rights and Remedies Are Cumulative.** The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party, except as otherwise expressly provided herein.

**507. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## 600. GENERAL PROVISIONS

**601. Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means, including, but not limited to, via facsimile or via overnight courier, to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency: Redevelopment Agency of the  
City of San Bruno  
567 El Camino Real  
San Bruno, California 94066  
Attention: Executive Director  
Telephone: (650) 616-7070  
Facsimile: (650) 873-6749

With a copy to: McDonough, Holland & Allen  
1999 Harrison Street, Suite 1300  
Oakland, California 94612  
Attention: Gerald J. Ramiza, Esq.  
Telephone: (510) 273-8780  
Facsimile: (510) 839-9104

and: City of San Bruno  
City Attorney  
567 El Camino Real  
San Bruno, California 94066  
Telephone: (650) 616-7003  
Facsimile: (650) 742-6515

To Participant: The Crossing Apartment Associates I LLC  
c/o TMG Partners  
100 Bush Street, 26th Floor  
San Francisco, CA 94104  
Attention: David Cropper  
Telephone: (415) 772-5900  
Facsimile: (415) 772-5911

With a copy to: David Cropper  
TMG Partners  
2685 Bay Road  
Redwood City, CA 94063  
Telephone: (650) 569-4989  
Facsimile: (650) 569-3648

and: Mark Kroll  
REGIS Homes of Northern  
California  
393 Vintage Park Dr., Ste. 100  
Foster City, CA 94404-1134  
Telephone: (650) 378-2800  
Facsimile: (650) 570-2233

and: Beveridge & Diamond, P.C.  
465 Montgomery St., 18th Fl.  
San Francisco, CA 94104  
Attention: Tamsen Plume  
Telephone: (415) 262-4012  
Facsimile: (415) 262-4040

Any written notice, demand or communication shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, postage prepaid, upon receipt of verification of transmission if sent via facsimile provided a copy is sent the same day via first-class mail, and on the next business day if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

**602. Enforced Delay; Extension of Times of Performance.** Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the



cause, (but shall in no event exceed a cumulative total of 120 days) if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Participant. Participant expressly agrees that adverse changes in economic conditions, either of Participant specifically or the economy generally, changes in market conditions or demand, and/or Participant's inability to obtain financing or other lack of funding to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section 602. Participant expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the Effective Date.

**603. Successors and Assigns.** Subject to the prohibitions against changes in the ownership, management and control of Participant set forth in Section 102.3 above, all of the terms, covenants and conditions of this Agreement shall be binding upon the Participant and its permitted successors and assigns. Whenever the term "Participant" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**604. Memorandum of Agreement.** A "Memorandum of Owner Participation Agreement" in the form attached hereto as Attachment No. 7, shall be recorded against the Site immediately following full execution of this Agreement.

**605. Relationship Between Agency and Participant.** It is hereby acknowledged that the relationship between Agency and Participant is not that of a partnership or joint venture and that Agency and Participant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site or the Project. Participant agrees to indemnify, hold harmless and defend Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between Agency and Participant with respect to the development, operation, maintenance or management of the Site or the Project.

**606. Agency Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Agency, the Executive Director of the Agency or his or her designee is authorized to act on behalf of Agency unless specifically provided otherwise or the context should require otherwise.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

**608. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein

and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 44 and Attachment Nos. 1 through 11, which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

**609. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**610. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

**611. No Waiver.** A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**612. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. Agency and Participant acknowledge that no modifications that may affect the rights or interests of any Approved Lender may be made without prior approval of such Approved Lender.

**613. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**614. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**615. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or

on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**616. Time of Essence.** Time is expressly made of the essence with respect to the performance by the Agency and the Participant of each and every obligation and condition of this Agreement.

**617. Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

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

**619. Time for Acceptance of Agreement by Agency.** This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by the Participant or this Agreement shall be void, except to the extent that the Participant shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. Within five (5) business days after the later of (i) approval by the Agency Board or (ii) execution of all original counterparts by Participant, the Agency shall execute and deliver to Participant one (1) fully executed original of this Agreement.

**620. Participant's Indemnity.** Participant shall defend, indemnify, assume all responsibility for, and hold Agency and City, and its and their officers, employees, volunteers, agents and representatives, harmless from, all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any of Participant's activities under this Agreement, whether such activities or performance thereof be by Participant or by anyone directly or indirectly employed or contracted with by Participant and whether such damage shall accrue or be discovered before or after termination of this Agreement. Participant shall not be liable for property damage or bodily injury occasioned by the sole negligence or willful misconduct of Agency or City, or its or their designated agents or employees.

**621. Effective Date.** This Agreement shall not be effective until the date Participant obtains fee title to the Site and delivers evidence of the transfer to Agency ("Effective Date"). For the purpose of this Section, the evidence of transfer shall be a duly recorded deed and a title report. If Participant fails to take title and deliver evidence of transfer to Agency by the time set forth in the Schedule of Performance, this Agreement shall automatically terminate and there shall be no further obligations between the parties.

**622. Nonliability of Officials and Employees of the Agency and Participant.**


(a) **Agency.** No member, official or employee of Agency or City shall be personally liable to Participant, or any successor in interest, in the event of any Default or breach by the Agency (or the City) or for any amount which may become due to Participant or its successors, or on any obligations under the terms of this Agreement. Participant hereby waives and releases any claim it may have against the members, officials or employees of the Agency and the City with respect to any Default or breach by the Agency (or the City) or for any amount which may become due to the Participant or its successors, or on any obligations under the terms of this Agreement.

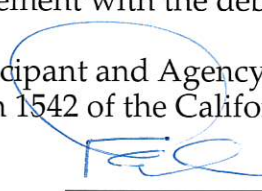
(b) **Participant.** No constituent limited partner or member in Participant, nor any advisor, trustee, director, officer, employee, beneficiary, shareholder, member, limited partner, participant, representative or agent of any partnership, limited liability company, corporation, trust or other entity that has or acquires a direct or indirect interest in Participant, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Agency and its successors and assigns shall look solely to the assets of Participant or its successors or assigns for the payment of any claim or for any performance, and Agency, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability. Neither the negative capital account, deficit restoration obligation nor contribution obligation of any constituent limited partner or member in Participant shall at any time be deemed to be the property or an asset of Participant (and neither Agency nor any of its successors or assigns shall have any right to collect, enforce or proceed against or with respect to any such negative capital account or a member's or limited partner's obligation to restore or contribute).

Participant and Agency are aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

As such relates to this Section 622, Participant and Agency hereby waive and relinquish all rights and benefits under Section 1542 of the California Civil Code.

  
\_\_\_\_\_  
Participant Initials

  
\_\_\_\_\_  
Agency Initials

**623. Assignment by Agency.** Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Participant, which approval shall not be unreasonably withheld; provided, however, that the Agency may assign or transfer any of its interests hereunder to the City or any public or private entity controlled by the City at any time without the consent of Participant.

**624. Applicable Law.** The laws of the State of California, without regard to any principles of choice of law, shall govern the interpretation and enforcement of this Agreement.

**625. Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the current, actual knowledge of the certifying party: (a) this Agreement is in full force and effect and a binding obligation of the parties; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the requesting party is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and extent of any such Defaults. The requesting party may designate a reasonable form of certificate (including a lender's form) and the party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The Executive Director shall be authorized to execute any certificate requested by Participant hereunder. Participant and Agency acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and "Mortgagees" (defined in Section 213). The request shall clearly indicate that failure of the receiving party to respond within the thirty- (30-) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of Participant to execute an estoppel certificate shall not be deemed a default, provided that in the event Participant does not respond within the required thirty- (30-) day period, Agency may send a second and final request to Participant, and failure of Participant to respond within fifteen (15) days from receipt thereof (but only if Agency's request contains a clear statement that failure of Participant to respond within this fifteen- (15-) day period shall constitute an approval) shall be deemed approval by Participant of the estoppel certificate and may be relied upon as such by Agency, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of Agency to execute an estoppel certificate shall not be deemed a Default, provided that in the event Agency fails to respond within the required thirty- (30-) day period, Participant may send a second and final request to Agency, with a copy to the Executive Director and City Attorney, and failure of Agency to respond within fifteen (15) days from receipt thereof (but only if Participant's request contains a clear statement that failure of Agency to respond within this fifteen- (15-) day period shall constitute an approval) shall be deemed approval by Agency of the estoppel certificate and may be relied upon as such by Participant, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees.

**626. Third-Party Beneficiary.** Participant and Agency recognize and agree that the terms of this Agreement and the Affordable Housing Covenant and the enforcement of those terms are essential to the security of any Approved Lender pursuant to Section 213.1 and are entered into for the benefit of various parties, including such Approved Lenders. Accordingly, such Approved Lenders may provide written notice to Agency requesting that Agency cure any failure to enforce the terms of this Agreement and Affordable Housing Covenant. If Agency fails to commence to cure the failure within thirty (30) days following such written notice and to thereafter



diligently pursue such cure to completion, then the Approved Lenders shall be entitled (but not obligated) to enforce, separately or jointly with Agency, or to cause Agency to enforce the terms of this Agreement and the Affordable Housing Covenant. In addition, the Approved Lenders are each intended to be and shall be third-party beneficiaries of this Agreement and the Affordable Housing Covenant.

IN WITNESS WHEREOF, Agency and Participant have executed this Agreement on the respective dates set forth below.

AGENCY:

CITY OF SAN BRUNO REDEVELOPMENT AGENCY, a public body, corporate and politic

*[Handwritten signature]*  
By: Chair Ex. Director

Dated: 12-11, 2002

ATTEST:

*[Handwritten signature]*  
Secretary  
Vicki S. Ascher Deputy City Clerk, Agency Secretary



APPROVED AS TO FORM:

*[Handwritten signature]*  
McDonough, Holland & Allen  
Agency Co-Counsel

[Signatures continued on next page]

PARTICIPANT:

THE CROSSING APARTMENT ASSOCIATES I LLC, a Delaware limited liability company

By: TMG-REGIS Apartment Associates I LLC, a Delaware limited liability company

Its: Managing Member

By: TMG SB Apartment Team I LLC, a Delaware limited liability company

Its: Co-Managing Member

By: TMG Partners, a California corporation

Its: Managing Member

By: 

Cathy Greenwold

Its: Executive Vice President

By: 

Its: CEO

Dated: 12/10/02, 2002

APPROVED AS TO FORM:

  
Beveridge & Diamond, P. C.  
Counsel for Participant

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of San Bruno Redevelopment )  
 Agency )  
 567 El Camino Real )  
 San Bruno, California 94066 )  
 Attention: Executive Director )  
 )

(Space Above This Line for Recorder's Use Only)  
 Exempt from recording fee per Gov. Code §27383

**FIRST AMENDMENT TO  
 OWNER PARTICIPATION AGREEMENT**

This First Amendment to Owner Participation Agreement (the "First Amendment") dated for reference purposes March 9, 2004, is entered into by and between THE CROSSING APARTMENT ASSOCIATES I LLC, a Delaware limited liability company, having offices at 100 Bush Street, 26th Floor, San Francisco, California 94104 ("Participant"), and the CITY OF SAN BRUNO REDEVELOPMENT AGENCY, a public body, existing and organized under the California Community Redevelopment Law, having offices at 567 El Camino Real, San Bruno, California 94066 ("Agency").

**RECITALS**

Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Original OPA (defined below).

A. Agency and Participant entered into that certain Owner Participation Agreement dated December 11, 2002 (the "Original OPA"). The Original OPA is available for public inspection and copying at the office of the City Clerk, City of San Bruno, City Hall, 567 El Camino, San Bruno, California 94066.

B. The Original OPA provides for the development of a 300-unit multi-family residential rental project with ancillary recreational, commercial and parking uses (the "Housing Project"), including 60 below-market rate units restricted to households of very low income (the "Affordable Units") on that certain real property (the "Site") located in the City of San Bruno, County of San Mateo, State of California, legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

C. In consideration of the Participant's obligations under the Original OPA, including the obligation to provide and maintain the Affordable Units, Agency



provided to Participant certain Affordable Housing Subsidies up to a maximum amount (the "Affordable Housing Subsidies Cap"). The amount of the Affordable Housing Subsidies Cap was determined based on the amount of assistance the Participant required in order to make the development and maintenance of the Affordable Units economically feasible, taking into consideration certain financial assumptions, including Participant's projected revenues from the granting of certain cable access rights to the Site.

D. Due to clarifications made pertaining to the Participant's granting of cable access rights to the Site, the cable access rights revenues anticipated by Participant will be less than projected and, therefore, the Participant has requested the Agency to increase the annual Affordable Housing Subsidies Cap by an amount equal to the difference between the Participant's projected cable access rights revenues and the revised projected cable access rights revenues.

E. In order for Participant and Commission to protect their respective investments and continue to ensure the economic viability of the Affordable Units, Participant and Agency desire to amend the Original OPA to increase the amount of the Affordable Housing Subsidies Cap.

### AGREEMENTS

NOW THEREFORE, in consideration of the foregoing recitals, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Participant and Agency hereby agree as follows:

1. Amendment to Section 401.3(c). Section 401.3(c) of the Original OPA is hereby revised to read as follows:

"(c) **Affordable Housing Subsidies Cap.** The sum total of the Affordable Housing Subsidies (i.e., the Affordable Housing Set Aside Subsidy and the Unrestricted Tax Increment Subsidy) payable to Participant in any given Operating Year, shall in no event exceed THREE HUNDRED ELEVEN THOUSAND AND FORTY DOLLARS (\$311,040.00) ("Affordable Housing Subsidies Cap"). The Affordable Housing Subsidies Cap for the Partial Operating Year shall be equal to the product of the Affordable Housing Subsidies Cap Multiplied by a fraction, the numerator of which is the number of calendar days in the Partial Operating Year and the denominator of which is 365."

2. No Other Amendment. Except as amended hereby, the Original OPA remains unmodified and in full force and effect.

3. Date of First Amendment. The date of this First Amendment shall be the date when it shall have been signed by the Agency.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the respective dates set forth below.

AGENCY:

CITY OF SAN BRUNO REDEVELOPMENT AGENCY, a public body, corporate and politic

Dated: March 10, 2004

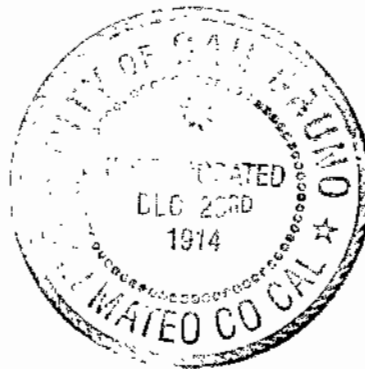
By: *Courance Adams*  
Executive Director

ATTEST:

*[Signature]*  
Secretary

APPROVED AS TO FORM:

*[Signature]*  
McDonough, Holland & Allen  
Agency Co-Counsel



[Signatures continued on next page]

PARTICIPANT:

THE CROSSING APARTMENT  
ASSOCIATES I LLC, a Delaware limited  
liability company

By: TMG-REGIS APARTMENT  
ASSOCIATES I LLC, a California  
limited liability company

Its: Co-Managing Member

By: RHNC SB APARTMENT TEAM I  
LLC, a California limited liability  
company

Its: Managing Member

By: REGIS HOMES OF  
NORTHERN CALIFORNIA,  
INC., a California  
corporation

Its: Manager

By: Mark R. Kroll  
Mark R. Kroll

Title: President

By: Robert W. Wagner  
Robert W. Wagner

Its: Chairman

Dated: 2/6, 2004

APPROVED AS TO FORM:

[Signature]  
Beveridge & Diamond, P. C.  
Counsel for Participant

STATE OF CALIFORNIA )  
COUNTY OF San Mateo ) ss.

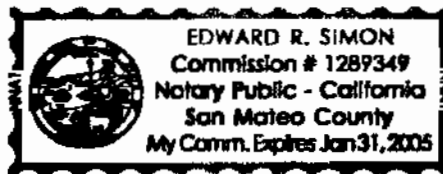
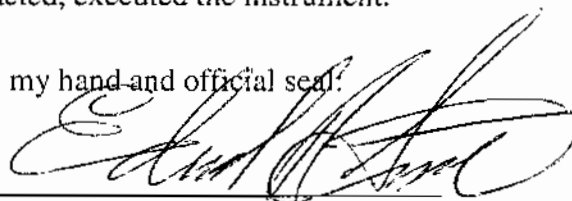
On March 10, 2004, before me, Edward R. Simon, Notary, the undersigned, personally appeared Constance Jackson,

- personally known to me
- proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal:

Signature



STATE OF CALIFORNIA )  
 )  
COUNTY OF San Mateo ) ss.

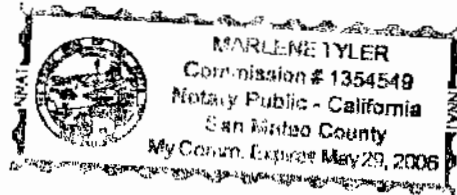
On February 3, 2004, before me, Marlene Tyler, Notary Public, the undersigned, personally appeared Mark R. Koll,

- personally known to me
- proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal:

Signature Marlene Tyler



STATE OF CALIFORNIA )  
 )  
COUNTY OF San Mateo ) ss.

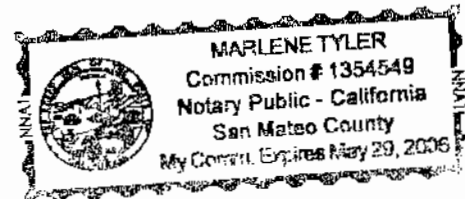
On February 3, 2004, before me, Marlene Tyler, Notary Public, the undersigned, personally appeared Robert W. Wagner,

- personally known to me
- proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal:

Signature Marlene Tyler



## EXHIBIT "A"

### LEGAL DESCRIPTION MARTIN/REGIS PARCEL ONE

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN BRUNO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A PORTION OF THE PARCEL DEEDED TO THE RUSSO FAMILY TRUST, AS RECORDED ON DECEMBER 17, 1999, AS SERIES 1999-204453, OFFICIAL RECORDS OF SAN MATEO COUNTY AND A PORTION OF THE PARCEL DEEDED TO MARTIN/REGIS SAN BRUNO ASSOCIATES, L.P., AS RECORDED ON MARCH 27, 2001, AS SERIES 2001-040281, OFFICIAL RECORDS OF SAN MATEO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID RUSSO FAMILY TRUST PARCEL;

THENCE ALONG NORTHWESTERLY LINE OF LANDS OF RUSSO FAMILY TRUST SOUTH 66°12'52" WEST, 2.28 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 24°11'22" EAST, A DISTANCE OF 10.68 FEET;

THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 31.34 FEET, THROUGH A CENTRAL ANGLE OF 90°20'58" FOR A DISTANCE OF 49.42 FEET;

THENCE SOUTH 66°09'36" WEST, A DISTANCE OF 13.07 FEET;

THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 220.12 FEET, THROUGH A CENTRAL ANGLE OF 07°39'42" FOR A DISTANCE OF 29.43 FEET;

THENCE SOUTH 24°42'02" EAST, A DISTANCE OF 75.09 FEET;

THENCE ALONG THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST, WHOSE RADIAL BEARS SOUTH 30°22'03" EAST, HAVING A RADIUS OF 144.00 FEET, THROUGH A CENTRAL ANGLE OF 06°31'39" FOR A DISTANCE OF 29.43 FEET;

THENCE NORTH 66°09'36" EAST, A DISTANCE OF 37.02 FEET;

THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO SOUTHEAST, HAVING A RADIUS OF 19.85 FEET, THROUGH A CENTRAL ANGLE OF 89°43'33" FOR A DISTANCE OF 31.09 FEET;

THENCE NORTH 65°51'28" EAST, A DISTANCE OF 2.30 FEET;

THENCE ALONG SOUTHEASTERLY LINE OF LANDS OF RUSSO FAMILY TRUST SOUTH 24°07'54" EAST, A DISTANCE OF 1.00 FOOT;

THENCE SOUTH 65°51'28" WEST, A DISTANCE OF 4.29 FEET;

THENCE NORTH 23°37'16" WEST, A DISTANCE OF 7.12 FEET;

THENCE NORTH 68°37'16" WEST, A DISTANCE OF 7.02 FEET;

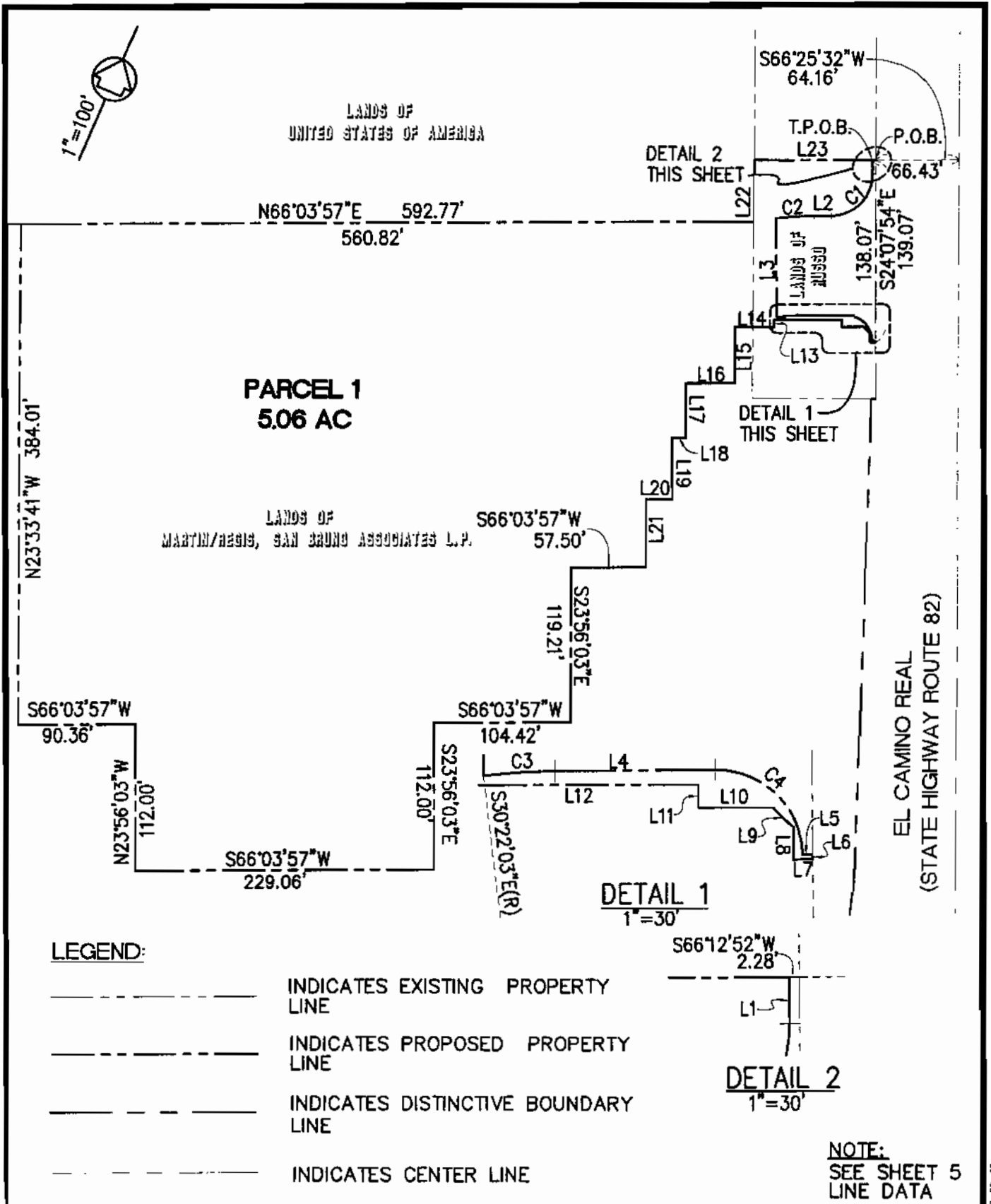
THENCE SOUTH 66°22'44" WEST, A DISTANCE OF 16.92 FEET;

THENCE NORTH 23°37'16" WEST, A DISTANCE OF 5.32 FEET;  
THENCE SOUTH 66°22'44" WEST, A DISTANCE OF 51.34 FEET;  
THENCE SOUTH 23°37'16" EAST, A DISTANCE OF 5.66 FEET;  
THENCE SOUTH 66°22'44" WEST, A DISTANCE OF 29.55 FEET;  
THENCE SOUTH 23°56'03" EAST, A DISTANCE OF 43.27 FEET;  
THENCE SOUTH 66°05'33" WEST, A DISTANCE OF 37.65 FEET;  
THENCE SOUTH 23°56'03" EAST, A DISTANCE OF 41.49 FEET;  
THENCE SOUTH 66°03'57" WEST, A DISTANCE OF 10.49 FEET;  
THENCE SOUTH 23°56'03" EAST, A DISTANCE OF 47.50 FEET;  
THENCE SOUTH 66°03'57" WEST, A DISTANCE OF 20.17 FEET;  
THENCE SOUTH 23°56'03" EAST, A DISTANCE OF 52.00 FEET;  
THENCE SOUTH 66°03'57" WEST, A DISTANCE OF 57.50 FEET;  
THENCE SOUTH 23°56'03" EAST, A DISTANCE OF 119.21 FEET;  
THENCE SOUTH 66°03'57" WEST, A DISTANCE OF 104.42 FEET;  
THENCE SOUTH 23°56'03" EAST, A DISTANCE OF 112.00 FEET;  
THENCE SOUTH 66°03'57" WEST, A DISTANCE OF 229.06 FEET;  
THENCE NORTH 23°56'03" WEST, A DISTANCE OF 112.00 FEET;  
THENCE SOUTH 66°03'57" WEST, A DISTANCE OF 90.36 FEET;  
THENCE NORTH 23°33'41" WEST, A DISTANCE OF 384.01 FEET;  
THENCE NORTH 66°03'57" EAST, A DISTANCE OF 560.82 FEET TO AN INTERSECTION WITH THE  
SOUTHWESTERLY LINE OF THE AFOREMENTIONED PARCEL DEEDED TO THE RUSSO FAMILY TRUST;  
THENCE NORTH 23°47'08" WEST, ALONG SAID SOUTHWESTERLY LINE A DISTANCE OF 46.48 FEET TO  
AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE AFOREMENTIONED PARCEL DEEDED TO  
THE RUSSO FAMILY TRUST;  
THENCE NORTH 66°12'52" EAST, A DISTANCE OF 90.43 FEET ALONG SAID NORTHEASTERLY LINE TO  
THE TRUE POINT OF BEGINNING.

CONTAINING A TOTAL AREA OF 220,434 SQUARE FEET, OR 5.06 ACRES, MORE OR LESS.

THE BEARING NORTH 39°23'52" EAST OF THE CENTERLINE OF SNEATH LANE BETWEEN SEA BISCUIT AVENUE AND HUNTINGTON AVENUE, AS FOUND MONUMENTED, AND SHOWN ON THAT CERTAIN MAP ENTITLED TANFORAN PARK UNIT No. 1 FILED FOR RECORD IN VOLUME 66 OF SUBDIVISION MAPS, AT PAGES 1-4 SAN MATEO COUNTY RECORDS WAS TAKEN AS BASIS OF BEARINGS FOR THIS PLAT.





**LEGEND:**

- INDICATES EXISTING PROPERTY LINE
- INDICATES PROPOSED PROPERTY LINE
- INDICATES DISTINCTIVE BOUNDARY LINE
- INDICATES CENTER LINE

**NOTE:**  
 SEE SHEET 5  
 LINE DATA

605 Castro Street  
 Mountain View CA  
 94041-2011  
 Tel. 650.969-6900  
 Fax 650.969-6472

**SANDIS HUMBER JONES**  
 CIVIL ENGINEERS SURVEYORS PLANNERS

DATE: 07-22-02  
 SCALE: 1"=100'  
 DRAWN BY: RCC  
 APPROVED BY: JML  
 DRAWING NO. 200231

**EXHIBIT B**  
**THE CROSSING**  
 SAN BRUNO CALIFORNIA

SHEET  
**4**  
 OF 5 SHEETS

LINE TABLE		
LINE	BEARING	LENGTH
L1	S24°11'22"E	10.68'
L2	S66°09'36"W	13.07'
L3	S24°42'02"E	75.09'
L4	N66°09'36"E	37.02'
L5	N65°51'28"E	2.30'
L6	S24°07'54"E	1.00'
L7	S65°51'28"W	4.29'
L8	N23°37'16"W	7.12'
L9	N68°37'16"W	7.02'
L10	S66°22'44"W	16.92'
L11	N23°37'16"W	5.32'
L12	S66°22'44"W	51.34'
L13	S23°37'16"E	5.66'
L14	S66°22'44"W	29.55'
L15	S23°56'03"E	43.27'
L16	S66°05'33"W	37.65'
L17	S23°56'03"E	41.49'
L18	S66°03'57"W	10.49'
L19	S23°56'03"E	47.50'
L20	S66°03'57"W	20.17'
L21	S23°56'03"E	52.00'
L22	N23°47'08"W	46.48'
L23	N66°12'52"E	90.43'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	90°20'58"	31.34	49.42
C2	7°39'42"	220.12	29.43
C3	6°31'39"	144.00	16.41
C4	89°43'33"	19.85	31.09

805 Lastra Street  
 Mountain View, CA  
 94041-2011  
 Tel: 650 952-6900  
 Fax: 650 954-0472

**SANDIS HUMBER JONES**  
 CIVIL ENGINEERS SURVEYORS PLANNERS

DATE 07-22-02  
 SCALE 1"=100'  
 DRAWN BY RCC  
 APPROVED BY J.M.  
 DRAWING NO.  
 200231

**EXHIBIT B**  
**THE CROSSING**

SAN BRUNO, CALIFORNIA

SHEET

**5**

OF 5 SHEETS

07 22 02

## **San Mateo County Countywide Oversight Board**

Date: January 18, 2019 Agenda Item No. 8

To: San Mateo County Countywide Oversight Board

From: Shirley Tourel, Assistant Controller

Subject: East Palo Alto Successor Agency (SA) Recognized Obligation Payment Schedule (ROPS) 19-20

### **Background**

California Health and Safety Section Code (HSC) 34180(g) requires all ROPS to be approved by the Oversight Board (the "Board").

### **Discussion**

The Annual ROPS 19-20 contains all the obligations of the former Redevelopment Agency (RDA) for fiscal year 2019-20.

The East Palo Alto SA presented their ROPS and Administrative Budget for fiscal year 2019-20 to the Board on January 14, 2019 for approval. The Board requested the SA revise the payments for City loans from \$1,366,630 to \$2,214,700.

Enclosed is the East Palo Alto SA's revised ROPS and Administrative Budget for fiscal year 2019-20 on which they are requesting approval by the Board to spend \$3,911,750 on outstanding obligations and administrative expenses.

### **CAC Exhibits**

A. East Palo Alto SA's Annual ROPS 19-20

Date: January 16, 2019

To: San Mateo County Countywide Oversight Board

From: **Brenda Cooley-Olwin, Treasurer/Finance Director, City of East Palo Alto**

Subject: Approval of the Recognized Obligation Payment Schedule (ROPS) 19-20 and Administrative Budget of the East Palo Alto Successor Agency (SA)

Former RDA: **City of East Palo Alto**

### **Recommendation**

Adopt resolutions approving the City of East Palo Alto SA's ROPS 19-20 and FY 2019-20 Administrative Budget.

### **Background**

SAs who either do not qualify for, or are not currently on, a Last and Final ROPS must submit annually a ROPS listing the SA's enforceable obligations and expenses to the State Department of Finance (DOF) pursuant to Health & Safety Section Codes (H&S) 34177(m) and (o). The ROPS shall include an amount for the SA's Administrative Cost Allowance as authorized under the Dissolution Act which is subject to a cap as set forth under H&S 34171. The ROPS and the Budget for the SA's Administrative Cost Allowance must be approved by the Oversight Board.

### **Discussion**

Submitted for the Oversight Board's approval is the ROPS 19-20 (Exhibit A). While the DOF's ROPS template requires all enforceable obligations to be listed, the Oversight Board approval is for the funding of those items to be paid in fiscal year 2019-20. Exhibit C summarizes those items and provides supporting documentation.

### **Financial Impact**

No funds are involved with the approval of the ROPS.

### **Attachments:**

1. Resolution Approving East Palo Alto SA's ROPS 19-20 and FY 2019-20 Administrative Budget
2. Exhibit A - East Palo Alto SA's ROPS 19-20
3. Exhibit B - East Palo Alto SA's FY 2019-20 Administrative Budget
4. Exhibit C - Summary of Obligations and Supporting Documents

**RESOLUTION NO. 2019-\_\_\_\_\_**

**RESOLUTION OF THE SAN MATEO COUNTY COUNTYWIDE OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE 19-20 (“ROPS 19-20”) AND FISCAL YEAR 2019-20 ADMINISTRATIVE BUDGET OF THE SUCCESSOR AGENCY TO THE FORMER EAST PALO ALTO REDEVELOPMENT AGENCY (RDA)**

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare a Recognized Obligation Payment Schedule (“ROPS”) for each 12-month fiscal period, which lists the outstanding obligations of the former RDA and states the sources of funds for required payments; and

**WHEREAS**, the Successor Agency to the Former East Palo Alto Redevelopment Agency has prepared a draft ROPS for the period July 1, 2019 to June 30, 2020, referred to as “ROPS 19-20”, claiming a total enforceable obligation amount of \$3,911,750, as set forth in the attached Exhibit A; and

**WHEREAS**, pursuant to HSC 34180(g) the Oversight Board must approve the establishment of each ROPS; and

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare an administrative budget for Oversight Board approval; and

**WHEREAS**, the Successor Agency to the Former East Palo Alto Redevelopment Agency has prepared an administrative budget for the period July 1, 2019 to June 30, 2020, for \$50,000, as set forth in the attached Exhibit B; and

**WHEREAS**, California Health and Safety Code Section (HSC) 34179(e) requires all action items of Countywide Oversight Boards, including the San Mateo County Countywide Oversight Board, be accomplished by resolution.

**NOW, THEREFORE, BE IT RESOLVED**, the San Mateo County Countywide Oversight Board hereby approves the East Palo Alto Successor Agency ROPS 19-20 and the East Palo Alto Successor Agency Fiscal Year 19-20 Administrative Budget, attached hereto as Exhibits A and B and incorporated herein by this reference;

**BE IT FURTHER RESOLVED**, that the Oversight Board directs the Successor Agency to submit the ROPS 19-20 to the State Department of Finance upon approval by the Oversight Board.

\* \* \*

Exhibit A – East Palo Alto Successor Agency’s Recognized Obligation Payment Schedule 19-20  
Exhibit B – East Palo Alto Successor Agency’s FY 2019-20 Administrative Budget

**Recognized Obligation Payment Schedule (ROPS 19-20) - Summary**  
**Filed for the July 1, 2019 through June 30, 2020 Period**

**Successor Agency:** East Palo Alto  
**County:** San Mateo

<b>Current Period Requested Funding for Enforceable Obligations (ROPS Detail)</b>	<b>19-20A Total (July - December)</b>	<b>19-20B Total (January - June)</b>	<b>ROPS 19-20 Total</b>
<b>A Enforceable Obligations Funded as Follows (B+C+D):</b>	<b>\$ 57,915</b>	<b>\$ -</b>	<b>\$ 57,915</b>
B Bond Proceeds	-	-	-
C Reserve Balance	-	-	-
D Other Funds	57,915	-	57,915
<b>E Redevelopment Property Tax Trust Fund (RPTTF) (F+G):</b>	<b>\$ 1,648,650</b>	<b>\$ 2,205,185</b>	<b>\$ 3,853,835</b>
F RPTTF	1,623,650	2,180,185	3,803,835
G Administrative RPTTF	25,000	25,000	50,000
<b>H Current Period Enforceable Obligations (A+E):</b>	<b>\$ 1,706,565</b>	<b>\$ 2,205,185</b>	<b>\$ 3,911,750</b>

Certification of Oversight Board Chairman:  
Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named successor agency.

\_\_\_\_\_  
Name Title  
/s/ \_\_\_\_\_  
Signature Date

East Palo Alto Recognized Obligation Payment Schedule (ROPS 19-20) - ROPS Detail

July 1, 2019 through June 30, 2020

(Report Amounts in Whole Dollars)

A	B	C	D	E	F	G	H	I	J	K	19-20A (July - December)					19-20B (January - June)					W	
											Fund Sources					Fund Sources						
											L	M	N	O	P	Q	R	S	T	U		V
Item #	Project Name/Debt Obligation	Obligation Type	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Retired	ROPS 19-20 Total	Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	19-20A Total	Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	19-20B Total
								\$ 36,333,195		\$ 3,911,750	\$ 0	\$ 0	\$ 57,915	\$ 1,623,650	\$ 25,000	\$ 1,706,565	\$ 0	\$ 0	\$ 0	\$ 2,180,185	\$ 25,000	\$ 2,205,185
1	Repayment Agreement (06/1989)	City/County Loan (Prior 06/28/11), Cash exchange	6/19/1989	1/18/2045	City of East Palo Alto	Loan for Operation Advances	R	6,496,000	N	\$ 2,214,700			57,915	1,292,375		\$ 1,350,290				864,410		\$ 864,410
3	Repayment Agreement (02/1995)	City/County Loan (Prior 06/28/11), Property transaction	2/21/1995	1/18/2045	City of East Palo Alto	Debt for Land Sold to Agency	G	5,266,630	N	\$ -						\$ -						\$ -
8	Post Audit of Financial Transactions	Dissolution Audits	1/1/2012	6/30/2016	Badawi and Associates	post audit of financial transactions as required under AB 1484 section 34177 (n)	G, UC		Y	\$ -						\$ -						\$ -
11	Operating Subsidy Loan	Business Incentive Agreements	5/4/2004	1/1/2026	Bay Road Housing LP	Courtyard Affordable Housing	G, UC	480,000	N	\$ 60,000						\$ -				60,000		\$ 60,000
12	Bank Charges for Bond Fiscal Agent Management	Fees	10/28/1999	1/1/2032	Wells Fargo Bank Trust	Trustee administrative charges	G, UC	147,000	N	\$ 10,500				10,500		\$ 10,500						\$ -
15	Administrative Costs	Admin Costs	2/1/2012	6/30/2045	City of East Palo Alto and 3rd Party Vendors	Administrative Allowance	G, UC, R	675,000	N	\$ 50,000					25,000	\$ 25,000					25,000	\$ 25,000
20	2015 Tax Allocation Refunding Bonds, Series A	Bonds Issued After 12/31/10	10/28/1999	10/1/2032	Wells Fargo Bank Trust	Refunding of 1999 and 2003 Series A TABS	G, UC	23,268,565	N	\$ 1,576,550				320,775		\$ 320,775				1,255,775		\$ 1,255,775

**East Palo Alto Recognized Obligation Payment Schedule (ROPS 19-20) - Report of Cash Balances  
July 1, 2016 through June 30, 2017  
(Report Amounts in Whole Dollars)**

Pursuant to Health and Safety Code section 34177 (l), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. For tips on how to complete the Report of Cash Balances Form, see [Cash Balance Tips Sheet](#).

A	B	C	D	E	F	G	H
		<b>Fund Sources</b>					
		<b>Bond Proceeds</b>		<b>Reserve Balance</b>	<b>Other Funds</b>	<b>RPTTF</b>	
	<b>ROPS 16-17 Cash Balances (07/01/16 - 06/30/17)</b>	Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, Grants, Interest, etc.	Non-Admin and Admin	<b>Comments</b>
<b>1</b>	<b>Beginning Available Cash Balance (Actual 07/01/16)</b> RPTTF amount should exclude "A" period distribution amount		27,748	772,444		129,928	
<b>2</b>	<b>Revenue/Income (Actual 06/30/17)</b> RPTTF amount should tie to the ROPS 16-17 total distribution from the County Auditor-Controller				45,060	993,998	
<b>3</b>	<b>Expenditures for ROPS 16-17 Enforceable Obligations (Actual 06/30/17)</b>		27,748	753,960		993,998	
<b>4</b>	<b>Retention of Available Cash Balance (Actual 06/30/17)</b> RPTTF amount retained should only include the amounts distributed as reserve for future period(s)			5,984		129,573	
<b>5</b>	<b>ROPS 16-17 RPTTF Prior Period Adjustment</b> RPTTF amount should tie to the Agency's ROPS 16-17 PPA form submitted to the CAC	<b>No entry required</b>					
<b>6</b>	<b>Ending Actual Available Cash Balance (06/30/17)</b> <b>C to F = (1 + 2 - 3 - 4), G = (1 + 2 - 3 - 4 - 5)</b>	\$ 0	\$ 0	\$ 12,500	\$ 45,060	\$ 355	





**Successor Agency to the Former City of East Palo Alto Redevelopment Agency  
ROPS 19-20 Administrative Cost Allowance Budget  
Period: 7/1/19 to 6/30/20**

<b>Description of Cost/Expense</b>	<b>Amount</b>
<b>Staff Time Estimates:</b>	
Finance Director/Treasurer 60 hours (\$115 per hour)	\$ 6,900
Finance Manager - 80 hours (\$80 per hour)	\$ 6,400
IT Website Improvement 4 hours (\$177.5 per hour)	\$ 710
SA Secretary 60 hours (\$60 per hour)	\$ 3,600
	<b>\$ 17,610</b>
Legal and Audit Fees	\$ 8,000
RPTTF/AV Projections Consultant	\$ 6,500
Administrative Cost Allocation O/H PLAN 56%	\$ 17,982
	<i>Round</i> \$ (92)
<b>Total</b>	<b>\$ 50,000</b>

Staff effort includes: ; bond payment processing; bond covenant reporting; SA annual budget preparation; general accounting reconciliation; management of annual financial transactions audit. On-going project to organize website and permanent files. Forecasting and informational requests from the County. Last and Final ROPS.

## SUMMARY OF OBLIGATIONS AND SUPPORTING DOCUMENTS

ROPS Item No.	ROPS Category	Description of Obligation	Payee	ROPS 19-20 Funding Request	Supporting Documentation
1	Repayment Agreement (06/1989)	Loan for Operation Advances	City of East Palo Alto	\$ 2,214,700	Exhibit C Page 2 - Loan Repayment Amount Calculation & Loan Agreement - Ravenswood
11	Operating Subsidy Loan	Courtyard Affordable Housing	Bay Road Housing LP	60,000	Exhibit C Page 24- Loan Agreement/ Promissory Note
12	Bank Charges for Bond Fiscal Agent Management	Trustee administrative charges	Wells Fargo Bank Trust	10,500	Exhibit C Page 48 - Trustee Statement
15	Administrative Costs	Administrative Allowance	City of East Palo Alto and 3rd Party Vendors	50,000	Admin Support - Refer to Exhibit B of the Resolution
20	2015 Tax Allocation Refunding Bonds, Series A	Refunding of 1999 and 2003 Series A TABS	Wells Fargo Bank Trust	1,576,550	Exhibit C Page 49 - Debt Service Schedule
<b>TOTAL</b>				<b>\$ 3,911,750</b>	

**COUNTY OF SAN MATEO****EAST PALO ALTO****LIMITATIONS ON REPAYMENT OF SERAF AND CITY LOANS Per 34176 (e)(6)(B) and 34191.4 (b)(2)**

Payments are limited to no more than half the increase in residual above a FY 2012-13 base year.

Payments of housing fund loan or deferral amounts are first in priority.

**Maximum Allowable Repayment for FY 2019-20****Residual in FY 2012-13**

ROPS II Residual	713,587	<i>June 2012 Distribution</i>
ROPS III Residual	<u>2,948,396</u>	<i>January 2013 Distribution</i>
(A)	<u>\$ 3,661,983</u>	

**Residual in FY 2018-19**

ROPS 18-19A Residual	2,812,324	<i>June 2018 Distribution</i>
ROPS 18-19B Residual	<u>5,279,061</u>	<i>January 2019 Distribution</i>
(B)	<u>\$ 8,091,385</u>	

**Increase in Residual over FY 2012-13**

(C) \$ 4,429,403

**Not To Exceed Amount (50% of Increase)**(D) \$ 2,214,701**Reported Loan Repayments**

ROPS 19-20A - (July to December) ROPS	864,410
19-20B - (January to June)	<u>1,350,290</u>
(E)	<u>\$ 2,214,700</u>

**Amount Exceeded, (E) - (D)**

\$ -

# Ravenswood Loan Agreement and Resolution

REPAYMENT AGREEMENT BY AND BETWEEN  
THE CITY OF EAST PALO ALTO AND  
THE EAST PALO ALTO REDEVELOPMENT AGENCY FOR  
THE RAVENSWOOD INDUSTRIAL AREA

This Repayment Agreement ("Agreement") is entered into this 19 day of June, 1989, by and between the City of East Palo Alto ("City") and the East Palo Alto Redevelopment Agency ("Agency") with reference to the following facts, intentions, and purposes, and according to the following terms.

RECITALS

WHEREAS, the City has determined that it is in the interest of the City to pursue preparation of the Ravenswood Industrial Area Redevelopment Plan (the "Plan"); and

WHEREAS, the Agency is vested with the responsibility for formulating and carrying out the Plan; and

WHEREAS, the City has agreed to provide ongoing financial assistance and services to the Agency in accordance with the terms of this Agreement for implementation of the Plan with the expectation that the costs for such services will be repaid by the Agency out of tax increment funds generated within the Ravenswood Industrial Redevelopment Project Area to be designated by the City Planning Commission (the "Project Area"); and

WHEREAS, the City and the Agency are each ready and willing to assume the relationship described herein.

AGREEMENT

NOW, THEREFORE, pursuant to the California Health and Safety Code and in consideration of the benefits which will accrue to the City, the community and the citizens thereof from the Plan, and the mutual promises set forth below, the City and Agency agree as follows:

Section 1. PRINCIPAL SUM.

The Agency shall repay to the City, with interest, the Principal Sum (defined below) in the manner provided in Section 2. The Principal Sum consists of:

(a) The amount(s) of (i) any advance(s) hereafter made by the City to the Agency, (ii) any funds expended by the City on the Agency's behalf below, or (iii) the cost of any services provided by the City to the Agency, which amount(s) shall become part of the Principal Sum as of the date and in the manner described in Section 4 below; plus

(b) The amount of any interest accrued on the Principal Sum pursuant to Section 2(a) below which remains unpaid after June 30th in any fiscal year, as provided in the last sentence of Section 2(b) below.

Section 2. PAYMENT OBLIGATIONS.

Principal Sum Payments. Subject to the provisions of Section 3, the Agency shall make payments to the City of principal and interest on the Principal Sum as follows:

(a) Commencing on the July 1 immediately following the first advance of funds by the City to the Agency or the first incurrence by the City of costs on behalf of the Agency (such July 1 is hereafter referred to as the "Initial Payment Date"), the Principal Sum in existence from time to time shall bear simple interest of twelve percent (12%) per annum, not to exceed the maximum interest permitted by law.

(b) The Agency shall, commencing on the June 30 following the Initial Payment Date, and on each June 30th thereafter, pay to the City for credit against the unpaid balance of the Principal Sum and any accrued interest thereon an amount equal to the amount of Project Area tax increment revenues allocated to and received by the Agency during the fiscal year then ending, less the following amounts paid, deposited or secured by the Agency from such tax increment revenues during the fiscal year then ending: (i) any debt service payments or other payments made by the Agency from such revenues on bonds, notes or other Agency indebtedness, including indebtedness pursuant to tax sharing agreements, owner participation agreements, disposition and development agreements and other agreements; (ii) any amount required by statute to be paid or deposited for prescribed purposes (including, without limitation, any amount required to be deposited in the Agency's Low and Moderate Income Housing Fund pursuant to Health and Safety Code Sections 33334.2 and 33334.3); and (iii) any Agency operating expenses paid in accordance with the approved Agency budget. All payments made by the Agency



pursuant to this Section 2(b) shall first be credited toward any accrued interest owing, and then toward reduction of the Principal Sum. In the event that the payments made by the Agency in any fiscal year are not sufficient to pay the full amount of interest owed for that fiscal year, the unpaid interest shall be added to the Principal Sum pursuant to Section 1(b) above.

(c) Payments of principal and interest shall be made annually by the Agency in accordance with subparagraphs (a) and (b) above until the full amount of the Principal Sum plus accrued interest is repaid.

(d) In addition to the payments against principal to be made in accordance with subparagraph (b) above, the Agency may at any time and from any of its funds, and at its sole discretion, make additional payments in any amount to the City for credit against the unpaid balance of the Principal Sum.

### Section 3. SUBORDINATION OF PAYMENT OBLIGATIONS.

It is expressly agreed and understood that any and all rights and claims by the City for repayment of amounts due under this Agreement from tax increment revenues are subordinate to the making of debt service payments or other payments on any bonds, notes or other indebtedness of the Agency (including indebtedness pursuant to tax sharing agreements, owner participation agreements, disposition and development agreements and other agreements) which are secured in whole or in part, directly or indirectly, by tax increment

revenues allocated from the Project Area pursuant to Section 33670 of the Health and Safety Code. An Agency obligation to make payments, pursuant to a reimbursement agreement or similar agreement, to reimburse or otherwise compensate a person or entity who has or is obligated to make payments of principal, interest or other amounts on bonds, notes or other indebtedness issued by the Agency to finance the implementation of the Plan shall be deemed to be a debt service payment obligation of the Agency in connection with such bonds, notes or other indebtedness for purposes of this Agreement. The Agency shall be required to make the payments set forth in this Agreement only to the extent that Project Area tax increment revenues have been received by the Agency and are available for that purpose.

Section 4. CITY ADVANCES.

The Agency may request and the City may, but is not required, to make such advances to the Agency or expend funds on behalf of the Agency as may be necessary and appropriate for the timely adoption and implementation of the Plan. Any advances to the Agency or funds expended by the City on behalf of the Agency shall be set forth in the adopted Agency and/or City budget, as applicable. The date and amount of each such advance or expenditure shall be memorialized by the parties on the attached Exhibit A, which is incorporated in this Agreement by this reference. Any advance or expenditure made pursuant to this Section 4 shall become part of the Principal

Sum as of the date of receipt of such advance by the Agency or the date of expenditure of such funds by the City, as further set forth in Section 1(a) above.

Section 5. INDEBTEDNESS.

The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency within the meaning of Section 33670 et seq. of the Health and Safety Code.

Section 6. SEVERABILITY.

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of the Health and Safety Code of the State of California or any other applicable State or Federal law.

Section 7. EXECUTION.

This Agreement shall be executed in four counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its behalf and its seal to be hereunto affixed and attested, and the Agency has caused the same to be duly executed in its behalf and its seal to be hereunto affixed and attested, all as of the date first above written.

CITY OF EAST PALO ALTO

By: William Vines  
William Vines  
Mayor

ATTEST:

Stanley H. Hall  
Stanley H. Hall, City Clerk

EAST PALO ALTO  
REDEVELOPMENT AGENCY

By: Stanley H. Hall  
Stanley H. Hall  
Executive Director

By: John Bostic  
John Bostic, Chair

06/06/89  
#B006/B55102

RESOLUTION NO. 55

A RESOLUTION OF THE EAST PALO ALTO REDEVELOPMENT AGENCY AUTHORIZING THE REPAYMENT OF COSTS AND SERVICES FROM THE CITY OF EAST PALO ALTO FOR THE RAVENSWOOD INDUSTRIAL AREA PROJECT AND THE EXECUTION OF AN AGREEMENT TO REPAY SUCH ADVANCES AND REIMBURSE THE CITY FOR COSTS INCURRED ON BEHALF OF REDEVELOPMENT EFFORTS

WHEREAS, by Resolution No. \_\_\_\_\_ dated May 16, 1989, the City Council of the City of East Palo Alto (the "City") designated a survey area for the Ravenswood Industrial Area pursuant to Health and Safety Code Section 33310 et seq., commencing the planning process for the adoption of a redevelopment plan for that area; and

WHEREAS, the East Palo Alto Redevelopment Agency (the "Agency") has determined that in order to carry out its redevelopment activities prior to adoption of a redevelopment plan for the Ravenswood Industrial Area and to fund the activities of the Agency until such time that tax increments are available for the support of the redevelopment function, it is necessary that the City provide the Agency with financial assistance and services (the "City Advances"); and

WHEREAS, it is the understanding of the Agency that the City Advances will be repaid out of tax increment funds, as such funds become available to the Agency, pursuant to the terms and conditions set forth in that certain Repayment Agreement by and between the City of East Palo Alto and the East Palo Alto Redevelopment Agency for the Ravenswood Industrial Area (the "Repayment Agreement"), attached and incorporated herein as Exhibit A; and

WHEREAS, it is the understanding of the Agency that it will reimburse the City out of tax increment funds for all costs incurred for the benefit of the Agency, pursuant to the terms of the Repayment Agreement.

NOW THEREFORE, BE IT RESOLVED that the Agency hereby approves the Repayment Agreement and authorizes the Executive Director and the Chair of the Agency to execute and deliver the Repayment Agreement, substantially in the form of the attached Exhibit A, on behalf of the Agency.

PASSED AND ADOPTED at a Regular Meeting of the East  
Palo Alto Redevelopment Agency, duly held on the 19 day  
of June, 1989, by the following vote:


AYES: Bostic, Coats, Mouton and Vines

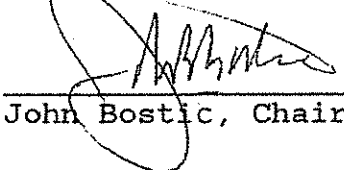
NOES: Johnson

ABSENT: None

ABSTAIN: None

APPROVED:

  
\_\_\_\_\_  
Stanley H. Hall  
Executive Director

  
\_\_\_\_\_  
John Bostic, Chair

06/06/89  
#B012/B55102

EXHIBIT "A"

ADDITIONAL ADVANCES AND EXPENDITURES

TO BE ADDED TO PRINCIPAL SUM

Date of Advance or Expenditure	Amount of Advance or Expenditure
<hr/>	<hr/> \$

55107

# Oversight Board Resolution Approving Sponsoring Entity Loan as Obligation



**RESOLUTION NO. OB 2016-02**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF EAST PALO ALTO APPROVING THE RAVENSWOOD OPERATING ADVANCES AGREEMENT WITH THE CITY OF EAST PALO ALTO IN THE AMOUNT OF \$5,371,520 AS ENFORCEABLE OBLIGATION AND FINDING THAT THE LOAN WAS FOR LEGITIMATE REDEVELOPMENT PURPOSES**

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding ABx1 26 (the "Dissolution Act") largely constitutional; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency of the City of East Palo Alto (the "Dissolved RDA"), were dissolved on February 1, 2012; and

**WHEREAS**, on January 10, 2012, the City Council (the "City Council") of the City of East Palo Alto (the "City") adopted resolution 4226 accepting for the City the role of Successor Agency to the Dissolved RDA (the "Successor Agency"); and

**WHEREAS**, under the Dissolution Law, including the recently enacted SB 107, the definition of sponsoring entity loans was expanded; and

**WHEREAS**, pursuant to HSC section 34191.4 (b), loan agreements between the former redevelopment agency and the sponsoring entity may be placed on the ROPS if the following requirements are met: (1) the Successor Agency has received a Finding of Completion; and (2) the Successor Agency's Oversight Board approves the loan as an enforceable obligation and finds the loan was for legitimate redevelopment purposes; and

**WHEREAS**, the Successor Agency staff prepared, and the Oversight Board met at a duly noticed public meeting on January 28, 2016 to consider and information regarding the legitimate redevelopment purposes for which the Ravenswood Operating Advances Loan was made; and

**WHEREAS**, the Successor Agency received a Finding of Completion on July 16, 2013;

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board of the Successor Agency for the Dissolved RDA hereby finds, resolves, and determines as follows:

**SECTION 1.** The foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

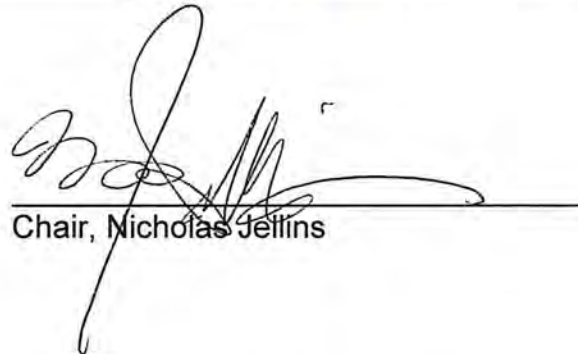
**SECTION 2.** Under the Health and Safety Code, the Oversight Board may reconsider disallowed enforceable obligations by the Department of Finance.

**SECTION 3.** The Oversight Board has reviewed the Ravenswood Operating Advances Loan, including the existing repayment schedule provided in Exhibit A to this resolution, and approves the loan as an enforceable obligation and finds the loan was made for legitimate redevelopment purposes. This finding is based upon information provided to the Oversight Board.

**SECTION 4.** The Oversight Board has reviewed the aforementioned obligation, and hereby approves this item to be listed in ROPS 16-17 as an enforceable obligation.

**ADOPTED** on January 28, 2016 by the Members of the Oversight Board of the Successor Agency for the Former Redevelopment Agency of the City of East Palo Alto with the following vote, to wit:

	Jellins	Farrales	Rutherford	Jackson	Sved (for Singh)	Chow	Martinez
AYES:	✓		✓	✓	✓		✓
NOES:							
ABSENT:		X				X	
ABSTAIN:							



Chair, Nicholas Jellins



Secretary, Joseph Prado



Approved as to form, OB Counsel

<b>Ravenswood Operating Advances Loan Agreement</b>					
<b>Amortization of Loan Payments</b>					
<b>Rate</b>		<b>0.75% Per Quarter</b>			
		<b>3.00% Annually</b>			
<b>Quarter</b>					
<b>Ending</b>	<b>Beginning Balance</b>	<b>Interest</b>	<b>Payment</b>	<b>Principal Balance</b>	
<b>Jun-15</b>	\$ 5,291,845.24	\$ -	\$0.00	\$ 5,291,845.24	
Sep-15	\$ 5,291,845.24	\$ 39,688.84	\$0.00	\$ 5,331,534.08	
Dec-15	\$ 5,331,534.08	\$ 39,986.51	\$0.00	\$ 5,371,520.58	
Mar-16	\$ 5,371,520.58	\$ 40,286.40	\$1.00	\$ 5,411,807.99	
<b>Jun-16</b>	<b>\$ 5,411,807.99</b>	<b>\$ 40,588.56</b>	<b>\$0.00</b>	<b>\$ 5,452,396.55</b>	<b>\$ 160,550.31</b>
Sep-16	\$ 5,452,396.55	\$ 40,892.97	\$0.00	\$ 5,493,289.52	
Dec-16	\$ 5,493,289.52	\$ 41,199.67	\$0.00	\$ 5,534,489.19	
Mar-17	\$ 5,534,489.19	\$ 41,508.67	\$0.00	\$ 5,575,997.86	
<b>Jun-17</b>	<b>\$ 5,575,997.86</b>	<b>\$ 41,819.98</b>	<b>\$0.00</b>	<b>\$ 5,617,817.85</b>	<b>\$ 165,421.30</b>
Sep-17	\$ 5,617,817.85	\$ 42,133.63	\$0.00	\$ 5,659,951.48	
Dec-17	\$ 5,659,951.48	\$ 42,449.64	\$0.00	\$ 5,702,401.12	
Mar-18	\$ 5,702,401.12	\$ 42,768.01	\$0.00	\$ 5,745,169.13	
<b>Jun-18</b>	<b>\$ 5,745,169.13</b>	<b>\$ 43,088.77</b>	<b>(\$1,075,145.00)</b>	<b>\$ 4,713,112.89</b>	<b>\$ 170,440.05</b>
Sep-18	\$ 4,713,112.89	\$ 35,348.35	\$0.00	\$ 4,748,461.24	
Dec-18	\$ 4,748,461.24	\$ 35,613.46	\$0.00	\$ 4,784,074.70	
Mar-19	\$ 4,784,074.70	\$ 35,880.56	\$0.00	\$ 4,819,955.26	
<b>Jun-19</b>	<b>\$ 4,819,955.26</b>	<b>\$ 36,149.66</b>	<b>(\$1,075,145.00)</b>	<b>\$ 3,780,959.93</b>	<b>\$ 142,992.03</b>
Sep-19	\$ 3,780,959.93	\$ 28,357.20	\$0.00	\$ 3,809,317.12	
Dec-19	\$ 3,809,317.12	\$ 28,569.88	\$	\$ 3,837,887.00	
Mar-20	\$ 3,837,887.00	\$ 28,784.15	\$0.00	\$ 3,866,671.16	
<b>Jun-20</b>	<b>\$ 3,866,671.16</b>	<b>\$ 29,000.03</b>	<b>(\$1,075,145.00)</b>	<b>\$ 2,820,526.19</b>	<b>\$ 29,000.03</b>
Sep-20	\$ 2,820,526.19	\$ 21,153.95	\$0.00	\$ 2,841,680.14	
Dec-20	\$ 2,841,680.14	\$ 21,312.60	\$0.00	\$ 2,862,992.74	
Mar-21	\$ 2,862,992.74	\$ 21,472.45	\$0.00	\$ 2,884,465.18	
<b>Jun-21</b>	<b>\$ 2,884,465.18</b>	<b>\$ 21,633.49</b>	<b>(\$1,075,145.00)</b>	<b>\$ 1,830,953.67</b>	<b>\$ 85,572.48</b>
Sep-21	\$ 1,830,953.67	\$ 13,732.15	\$0.00	\$ 1,844,685.82	
Dec-21	\$ 1,844,685.82	\$ 13,835.14	\$0.00	\$ 1,858,520.97	
Mar-22	\$ 1,858,520.97	\$ 13,938.91	\$0.00	\$ 1,872,459.87	
<b>Jun-22</b>	<b>\$ 1,872,459.87</b>	<b>\$ 14,043.45</b>	<b>(\$1,075,145.00)</b>	<b>\$ 811,358.32</b>	<b>\$ 55,549.65</b>
Sep-22	\$ 811,358.32	\$ 6,085.19	\$0.00	\$ 817,443.51	
Dec-22	\$ 817,443.51	\$ 6,130.83 =	\$	\$ 823,574.34	
Mar-23	\$ 823,574.34	\$ 6,176.81	\$0.00	\$ 829,751.14	
Jun-23	\$ 829,751.14	\$ 6,223.13	(\$835,974.28)	\$ (0.00)	\$ 24,615.95
		<b>\$913,629.90</b>	<b>(\$5,375,724.00)</b>		



\$1,200,000  
LOAN AGREEMENT  
The Courtyard at Bay Road  
(Bay Road Operating Subsidy)

This Loan Agreement (the "Agreement") is entered into as of December 30, 2004, by and between the Redevelopment Agency of the City of East Palo Alto, a public body, corporate, and politic (the "Agency") and Bay Road Housing L.P., a California limited partnership (the "Borrower"), with reference to the following facts:

A. The Borrower has acquired that certain property located at 1730 Bay Road and 1740 Bay Road, East Palo Alto (the "Property") and, on which it intends to develop seventy-seven (77) units of affordable housing (the "Improvements").

B. The Agency is required to replace housing units destroyed by the Agency as part of its redevelopment program. In consideration for the Agency loaning funds to the Borrower, the Borrower has agreed that the units in the Development will be regulated in order to comply with the requirements of the Health and Safety Code Section 33413 with regard to replacement housing, and the units will be counted towards the Agency's replacement housing obligation.

C. Through this Agreement, the Agency wishes to provide financial assistance to the Borrower for the Development, in the form of an operating subsidy loan in a maximum amount not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000) (the "Loan") to consist of an annual obligation to provide an operating subsidy until the Development is self-sustaining.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Agency and the Borrower (the "Parties") agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions

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

(a) "Adjusted Income" shall mean total anticipated annual income of all persons in a household as calculated in accordance with 24 CFR 92.203 (b)(1) (which incorporates 24 CFR 813).

(b) "Affordability Covenant" shall mean the affordability agreement between the Agency and the Borrower dated of even date herewith, and recorded against the Property on \_\_\_\_\_ as document no. \_\_\_\_\_.

(c) "Agency" shall mean the Redevelopment Agency of the City of East Palo Alto, a public body, corporate, and politic.

(d) "Agreement" shall mean this Loan Agreement.

(e) "Annual Operating Expenses" with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and other taxes and assessments imposed on the Development; debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with development of the Development and approved by the Agency including debt service on loans from the County of San Mateo; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the Agency; partnership management fees (including any asset management fees), if any, not to exceed a total of Twenty Thousand Dollars (\$20,000) per year increased by three percent (3%) per year, all as specifically approved in advance and in writing by the Agency at the time the tax credit syndication occurs and only during the approximately fifteen (15)-year time period when the tax credit investor is included in the Borrower's partnership, premiums for property damage and liability insurance; utility services not paid for directly by tenants, including but not limited to water, sewer, and trash collection; ordinary and extraordinary maintenance and repair; any annual license or certificate of occupancy fees required for operation of the Development; security services and systems; professional fees for legal, audit, accounting and tax returns, and others; advertising and marketing; cash deposited into reserves for capital replacements of the Development in an amount not to exceed six tenths of one percent (.6%) of the total development cost of the Development; cash deposited into an operating reserve in an amount not to exceed three percent (3%) of Annual Operating Expenses or the amount required in connection with the permanent financing and the tax credit syndication, whichever is greater (or any greater amount approved in writing by the Agency) but with the operating reserve capped at six (6) months gross rent from the Development (as such rent may vary from time to time); payment of any previously unpaid portion of the Developer Fee due Community Housing Developers (with interest at a rate not to exceed two percent (2%) simple interest) not exceeding a cumulative developer fee due Community Housing Developers in the maximum amount set forth in this Loan Agreement; extraordinary operating costs specifically approved in writing by the Agency; payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the Agency and not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Development, as determined by the accountant for the Development.

(f) "Approved Development Budget" shall mean the proforma development budget, including sources and uses of funds, attached to this Agreement as Exhibit B.

(g) "Approved Financing" shall mean financing approved by the Agency at the request of the Borrower and for which the Borrower demonstrates to the Agency's reasonable satisfaction that repayment of the additional loans will not jeopardize the repayment of the Loan.

- (h) "Authorized Officers" shall mean, in the case of the Agency, its Executive Director, and in the case of the Borrower, its President or Executive Director.
- (i) "Borrower" shall mean Bay Road Housing L.P., a California limited partnership.
- (j) "Certificate of Occupancy" shall mean a temporary or permanent certificate of occupancy issued by the City of East Palo.
- (k) "City" shall mean the City of East Palo Alto, a municipal corporation.
- (l) "County" shall mean the County of San Mateo, a subdivision of the State of California.
- (m) "Deed of Trust" shall mean the deed of trust securing the Loan to be recorded against the Property.
- (n) "Default" shall have the meaning set forth in Section 6.1 below.
- (o) "Development" shall mean Borrower's fee interest in the Property and in the Improvements.
- (p) "Development Services Agreement" shall mean that certain agreement between the Borrower and the General Partner whereby the General Partner agrees to be the Developer for the purposes of the Development.
- (q) "Financing Plan" shall mean evidence of the availability of the funds necessary to develop the Development on the Property as approved by the Agency prior to the execution of this Agreement.
- (r) "Fiscal Year" shall mean the fiscal year observed by the Development, which shall extend from January 1 to December 31.
- (s) "General Partner" shall mean Sands Drive Housing, Inc., a California nonprofit public benefit corporation, and the Borrower's general partner.
- (t) "Gross Revenue" with respect to a particular calendar year shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; net proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance and not paid to senior lenders; the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(u) "Hazardous Materials" shall have the meaning set forth in Section 4.6 below.

(v) "Hazardous Materials Claim" shall have the meaning set forth in Section 4.6 below.

(w) "Hazardous Materials Law" shall have the meaning set forth in Section 4.6 below.

(x) "Improvements" shall mean the seventy-seven (77) apartment units to be operated as affordable housing and ancillary improvements on the Property pursuant to this Agreement.

(y) "Loan" shall mean the loan from the Agency to the Borrower for an operating subsidy in a total amount not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000) pursuant to this Agreement.

(z) "Loan Documents" shall mean this Agreement, the Note, the Deed of Trust, and the Affordability Covenant.

(aa) "Median Income" shall mean the median gross yearly income for households in San Mateo County, as published periodically by the California Department of Housing and Community Development ("HCD"). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least twenty-four (24) months, the Agency shall provide Borrower with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD.

(bb) "Net Annual Housing Fund Deposit" shall mean the tax increment funds deposited by the Agency in its Low and Moderate Income Housing Fund as required by Health and Safety Code Section 33334.2 minus the following:

(i) Debt-service obligations on housing bonds issued prior May 2, 2004;

(ii) Payments and commitments of funds for housing projects approved by the Agency Board prior to May 2, 2004; and

(iii) Federal, state, and local government pass-through payments required by law, including, but not limited to, state Education Resource Augmentation Fund ("ERAF") payments.

(cc) "Net Cash Flow" shall mean the total Gross Revenue generated by the Development, less Annual Operating Expenses.

(dd) "Note" shall mean the note that will evidence the Borrower's obligation to repay the Loan to be executed concurrently herewith.

(ee) "Parties" shall mean the Agency and the Borrower.

(ff) "Property" shall mean the real property located in East Palo Alto, California, more particularly described in the attached Exhibit A.

(gg) "Term" shall mean the term of the Loan, commencing on the date of this Agreement and continuing for twenty (20) years after the initial disbursement of the Loan to Borrower.

(hh) "Transfer" shall have the meaning set forth in Section 4.12 below.

(ii) "Unit" shall mean one of the seventy-seven (77) apartment units to be constructed on the Property.

#### Section 1.2 Exhibits

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

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Approved Development Budget

### ARTICLE 2 LOAN PROVISIONS

#### Section 2.1 Loan.

The Agency shall loan to the Borrower the Loan in the maximum principal amount of One Million Two Hundred Thousand Dollars (\$1,200,000) for the purposes set forth in Section 2.3 of this Agreement.

The Agency shall disburse the Loan in accordance with Section 2.6.

#### Section 2.2 Interest.

(a) Subject to Section 2.2(b), the outstanding principal balance of the Loan shall accrue simple interest at the rate of two percent (2%) per annum, commencing on the initial disbursement of the Loan to Borrower.

(b) In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of eight percent (8%), compounded annually, or the highest rate permitted by law.

#### Section 2.3 Use of Loan Funds.



The Borrower shall use Loan funds to pay costs incurred by the Developer associated with the operation of the Development, and the Borrower shall not use the Loan funds for any other purpose.

Section 2.4 Security.

The Borrower's obligation under this Loan Agreement and the Note shall be secured by the Deed of Trust on the Property.

Section 2.5 Conditions Precedent to Disbursement of Loan.

(a) The City shall not be obligated to make any disbursements of Loan proceeds or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement if not cured within the applicable cure period;

(ii) The Borrower has executed and delivered to the Agency all documents, instruments, and policies required under the Loan Documents.

(iii) A title insurer reasonably acceptable to the Agency is unconditionally and irrevocably committed to issuing an ALTA lender's policy insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Agency, and containing such endorsements as the Agency may reasonably require.

(iv) The Deed of Trust has been recorded against the Property in the Office of the Recorder of the County.

(v) The Affordability Covenant has been recorded against the Property in the Office of the Recorder of the County.

(vi) The Borrower has furnished the Agency with evidence of the insurance coverage meeting the requirements of Section 4.13 below.

(v) The Borrower has furnished the Agency with the audited financials required pursuant to Section 2.7 in a timely manner.

Section 2.6 Loan Disbursement.

(a) The Loan is intended to provide an operating subsidy to fill a gap in the operating budget of the Development when, and only when, such a gap exists. No later than October 31<sup>st</sup> of each Fiscal Year commencing in the Fiscal Year in which a Certificate of Occupancy is issued and continuing until the nineteenth Fiscal Year after issuance of a Certificate of Occupancy, Borrower shall submit to the Agency a proposed operating budget for the succeeding Fiscal Year. The operating budget shall include all projected revenue sources as

well as all projected expenses and shall be in sufficient detail for the Agency to determine any operating deficits projected for the Development for the succeeding Fiscal Year. The Agency may, after receipt of the operating budget request supporting information that will enable it to verify the projected budget. If there exists a gap in the operating budget for succeeding Fiscal Year, then the Borrower is eligible for an Annual Disbursement (as defined below).

Notwithstanding the foregoing, in any year in which the proposed operating budget demonstrates that there exists Net Cash Flow, the Borrower shall not be eligible for an Annual Disbursement.

(b) If for a given Fiscal Year, there exists a gap in the operating budget submitted for that year, then the Borrower shall receive a disbursement of the Loan on January 30<sup>th</sup> of the applicable Fiscal year (the "Annual Disbursement"). If there does not exist a gap in the operating budget for a given Fiscal Year, then no Annual Disbursement shall be made in the following year.

(c) The maximum amount of the Annual Disbursement shall be the lesser of thirty percent (30%) of the Net Annual Housing Fund Deposit or Sixty Thousand Dollars (\$60,000). The minimum amount of the Annual Disbursement shall be as follows:

Year 1 - \$45,000  
 Year 2 - \$40,000  
 Year 3 - \$40,000  
 Year 4 - \$35,000  
 (2011) Year 5 - \$35,000  
 Year 6 - \$25,000  
 Year 7 - \$25,000  
 Year 8-20 \$15,000

#### Section 2.7 Repayment Schedule.

The Loan shall be repaid as follows:

(a) The Loan and this Agreement shall have a term (the "Term") that expires on the date twenty (20) years after the initial disbursement of Loan Funds to the Borrower.

(b) For any Fiscal Year in which there exists Net Cash Flow from the operation of the Development, Borrower shall make a repayment of the Loan equal to seventy-five percent (75%) of the Net Cash Flow. No later than April 30 of each Fiscal Year commencing in the first full Fiscal Year after the Development has received an Annual Disbursement, Borrower shall submit to the Agency copies of an independent audit of the financial operations of the Development. The independent audit shall indicate the Net Cash Flow for the Development. All repayments shall be due no later than May 31<sup>st</sup> of each year. Payments made shall be credited first against accrued interest and then against outstanding principal.

(c) All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the Agency, (ii) the date of any Default, and (iii) the expiration of the Term.

(d) The Borrower shall have the right to prepay the Loan at any time. However, the Affordability Covenant shall remain in effect for fifty-five (55) years, regardless of any prepayment.

(e) The Borrower shall owe a late charge of two percent (2%) of the amount due if an amount due under Section 2.6 (c) or under this Section 2.7 remains unpaid (i) ten (10) days after the due date, if the Borrower does not deliver an extension request to the Agency within such ten (10)-day period, or (ii) sixty (60) days after the due date, if the Borrower so requests an extension. After so requesting an extension, the Borrower's failure to make the payment by the sixty-first (61<sup>st</sup>) day after the due date shall be a Default without further notice and opportunity to cure.

#### Section 2.8 Non-Recourse

Except as provided below, the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Borrower under the Deed of Trust. The sole recourse of the Agency with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to the property described in the Deed of Trust; however, nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Agency thereunder, or (b) be deemed in any way to impair the right of the Agency to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the Agency under Sections 4.6 and 7.4 of this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

#### Section 2.9 Subordination.

The Agency may subordinate the Deed of Trust to the lien of certain deeds of trust securing the Approved Financing, including loans provided by the investor limited partner that are used for construction and development costs or provide permanent financing for the Development, provided the subordination documents provide the Agency with reasonably adequate notice and cure rights to enable the Agency to avoid foreclosure of the deeds of trust securing the Approved Financing.

Upon a determination by the Agency Executive Director that the requirements of Health and Safety Code Section 33334.14 are satisfied, including that the Approved Financing documents contain provisions that are reasonably designed to protect the Agency's interest in the event of default under such loans, the Agency shall subordinate the Affordability Covenant to the liens of the deeds of trust securing the Approved Financing.

Section 2.10 Limitation on Development Fee.

The amount and terms of the Loan have been determined in light of the reasonably anticipated costs operation of the Development. As provided in the Financing Plan, the parties have determined that the reasonable development fee (the "Development Fee") for acquisition, construction, and operation of the Development is an amount not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000). Unless otherwise approved in writing by the Agency, the Development Fee shall not exceed One Million Two Hundred Thousand Dollars (\$1,200,000).

No compensation from any source shall be received by or payable to the Borrower, the General Partner or any other person or entity in connection with the provision of development services for the acquisition, construction, or operation of the Development, except that Borrower may receive an incentive management fee in accordance with the Partnership Agreement, but only to the extent that such fee is paid from Net Cash Flow after repayment of the Agency Loan. The Agency acknowledges that the General Partner will be the Developer for the Development pursuant to a Development Services Agreement between the General Partner and the Borrower, and that the Development Fee described in this Section 2.10 will be paid to the General Partner.

ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Commencement of Construction.

Borrower shall cause the commencement of construction of the Development no later than November 1, 2004. The Borrower and the Agency agree that commencement of construction shall include commencement of grading and foundation work for the Development.

Section 3.2 Completion of Construction.

Borrower shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later than December 31, 2005. Completion of construction shall be evidenced by receipt of a Temporary or permanent Certificate of Occupancy from the City.

Section 3.3 Construction Pursuant to Plans and Laws.

(a) Borrower shall construct the Development in conformance with the permits and approvals. Borrower shall notify the Agency in a timely manner of any changes in the work required to be performed under this Agreement, including any material additions, changes, or deletions to the plans and specifications approved by the Agency. A written change

order authorized by the Agency must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (1) any change in the work the cost of which exceeds Twenty-Five Thousand Dollars (\$25,000); or (2) any set of changes in the work the cost of which cumulatively exceeds Fifty Thousand Dollars (\$50,000); or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the Agency. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond. Agency shall utilize best efforts to approve or disapprove change orders within five (5) working days of receipt of a request for approval.

(b) The Borrower shall cause all work performed in connection with construction of the Improvements to be performed in compliance with all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Borrower shall be responsible to the Agency for the procurement and maintenance thereof, as may be required of the Borrower and all entities engaged in work on the Property.

(c) The Borrower shall comply with the City's Prevailing Wage Policy. Consistent with such policy, the Borrower shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations. The Borrower shall and shall cause the contractor and contractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq. Copies of the currently applicable current per diem prevailing wages are available from the City of East Palo Alto Public Works Department, 2200 University Avenue, East Palo Alto, California 94303. During the construction of the Improvements, Borrower shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Borrower shall indemnify, hold harmless and defend, (with counsel reasonably acceptable to the Agency) the Agency and the City against any claims for damages, compensation, fines, penalties or other amounts arising out of failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations in connection with construction of the Improvements or any other work undertaken or in connection with the Property.

(d) The Borrower shall comply with the City's First Source Hiring Policy and Local Business Enterprise Policy and shall include such policies in all contracts and subcontracts.

#### Section 3.4 Marketing and Management Plan.

(a) No later than six (6) months prior to the projected date of the completion of the Development, Borrower shall submit to the Agency for approval its plan for marketing the

Development to income-eligible households as required pursuant to the Affordability Covenant, including information on affirmative marketing efforts and compliance with fair housing laws. The Borrower agrees that it shall draw applicants for the Units from the City Central Wait List, and only if the Borrower is unable to rent all the Units to qualified applicants on the Central Wait List, will the Borrower market the Units.

(b) Upon receipt of the Marketing and Management Plan, the Agency shall promptly review the Marketing and Management Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing and Management Plan is not approved, Borrower shall submit a revised Marketing and Management Plan within thirty (30) days. If the Agency does not approve the revised Marketing and Management Plan because Borrower fails to make specific revisions requested by the Agency, Borrower shall be in default hereunder.

### Section 3.5 Equal Opportunity.

During the construction of the Development there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

### Section 3.6 Progress Reports.

Until such time as Borrower has completed construction of the Property, as evidenced by a building permit sign-off by the City building official, Borrower shall provide the Agency with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.10 below.

### Section 3.7 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the Agency with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the Agency, and should not be relied upon by Borrower or by any third parties as a warranty or representation by the Agency as to the quality of the design or construction of the Development.

### Section 3.8 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or the Development or a stop notice affecting the Loan is served on the Agency or any other lender or other third party in

connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Agency a surety bond in sufficient form and amount, or provide the Agency with other assurance satisfactory to the Agency that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the Agency may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the Agency may require Borrower to immediately deposit with the Agency the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The Agency may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the Agency, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the Agency deems necessary or desirable to protect its interest in the Development and Property.

#### Section 3.9 Inspections.

Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and Agency and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement. Borrower may require that such observation and inspection visits be supervised by the Borrower's project coordinator.

#### Section 3.10 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the Agency has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Development Budget to the Agency for approval within fifteen (15) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the Agency shall be required to amend the Approved Development Budget. The Agency shall utilize best efforts to approve or disapprove requested amendments to the Approved Development Budget within five (5) working days of receipt of a request for approval.

### ARTICLE 4 LOAN REQUIREMENTS

#### Section 4.1 Applicability.

The Borrower shall comply with this Article Four throughout the Term.

Section 4.2 Financial Accountings and Post-Completion Audits.

No later than April 1, 2007, the Borrower shall provide to the Agency a financial accounting of all sources and uses of funds for the Development, consisting of the audited report, and such additional information as may be reasonably necessary to evidence project sources and uses.

Section 4.3 Information.

The Borrower shall provide any information reasonably requested by the Agency in connection with the Development.

Section 4.4 Records.

(a) The Borrower shall maintain complete, accurate, and current records pertaining to the Development for a period of three (3) years after the end of the operating year in which such records are created (or such longer period as may be required by law or this Agreement), and shall permit any duly authorized representative of the Agency to inspect and copy records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current.

(b) The Agency shall notify the Borrower of any records it deems insufficient. The Borrower shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Agency in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then the Borrower shall begin to correct the deficiency within fifteen (15) days and shall correct the deficiency as soon as reasonably possible.

Section 4.5 Audits.

The Borrower shall make available for examination at reasonable intervals and during normal business hours to the Agency all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit the Agency to audit, examine, and make excerpts or transcripts from such records. The Agency may make audits of any conditions relating to this Agreement.

Section 4.6 Hazardous Materials.

(a) The Borrower shall cause the Property to be kept or maintained in compliance with, and shall not cause or permit the Property to be in violation of, any federal, state or local laws, rules, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. The Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or



state laws or regulations (collectively referred to as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

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

(c) If the Agency reasonably believes that the Borrower is not acting prudently and with diligence, or if the Agency otherwise reasonably believes that its interests are not adequately protected, then the Agency shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by the Borrower. The Borrower shall indemnify and hold harmless the Agency and its Board members, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the Agency in connection with clauses (i) and (ii), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without the Agency's prior written consent, which shall not be unreasonably withheld, the Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Agency's reasonable judgment, impair the value of the Agency's security hereunder; however, the Agency's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Agency's consent before taking such action (but in such event the Borrower shall notify the Agency as soon as practicable). The Agency agrees not to withhold its consent, where such consent is required hereunder, if either (i)

a particular remedial action is ordered by a court of competent jurisdiction, (ii) the Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) the Borrower establishes to the reasonable satisfaction of the Agency that there is no reasonable alternative to such remedial action which would result in less impairment of the Agency's security hereunder; or (iv) the action has been agreed to by the Agency.

(e) This Section is intended as the Agency's written request for information (and the Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

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

#### Section 4.7 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, the Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving notice of such a condition, then in addition to any other rights available to the Agency, the Agency shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or

other encumbrance against the Property, including payment from loan proceeds not yet disbursed to the Borrower (which shall be deemed disbursed if used for such payment).

(b) If any Improvement now or in the future on the Property is damaged or destroyed, then the Borrower shall, at its cost and expense, diligently undertake to repair or restore such Improvement.

Section 4.8 Fees and Taxes.

The Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property.

Section 4.9 Notice of Litigation.

The Borrower shall promptly notify the Agency in writing of any litigation materially affecting the Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 4.10 Operation of Development as Affordable Housing.

(a) Upon the execution of this Agreement or the recordation of the Affordability Covenant, whichever is later, the Borrower shall continuously operate and maintain the Development as multifamily housing rented to occupants and at rent levels in conformity with the Affordability Covenant.

(b) Before leasing any unit in the Development, the Borrower shall submit its proposed form of lease agreement for the Agency's review and approval.

(c) Before leasing the Development, the Borrower must provide the Agency, for its review and approval, with the Borrower's written tenant selection plan utilizing the City's Central Wait List.

(d) Information documenting the maximum household income of a household, and the total charges for rent, utilities, and related services to each household occupying the Development, shall be maintained as provided in the Affordability Covenant.

Section 4.11 Nondiscrimination.

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

Section 4.12 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and the Borrower retains title.

(b) No Transfer shall be permitted without the prior written consent of the Agency, which the Agency may withhold in its sole discretion, provided, however, the Borrower may transfer the general partnership interest to a wholly controlled affiliate or subsidiary of Community Housing Developers, Inc., provided the Borrower provides the Agency with notice of such transfer and an opportunity to review the bylaws or formation documents for such subsidiary or affiliate and provided further, the Borrower may transfer the limited partnership interest to a tax credit equity investor provided Community Housing Developers, Inc. or a wholly owned affiliate or subsidiary of Community Housing Developers, Inc., remains the general partner of the Borrower and the Agency has approved any amendments to the Partnership Agreement, which approval shall not be unreasonably withheld, denied or conditioned. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

(c) A reasonableness standard shall apply to certain Transfers, as provided in Section 7.14(b).

#### Section 4.13 Insurance Requirements.

The Borrower shall maintain or cause to be maintained, the following insurance coverages throughout the Term of the Loan:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations, provided, however, prior to construction of the Improvements, Borrower shall not be required to obtain Products and Completed Operations insurance.

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

(d) Property insurance covering the Development (including building risk insurance during the course of construction), in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the

replacement value, with deductible, if any, acceptable to the Agency, naming the Agency as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) The Borrower shall cause any general contractor or agent working on the Development under direct contract with the Borrower, and any subcontractors to such general contractors or agents, to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (f) and (g) below. Subcontractors working on the Development under indirect contract with the Borrower shall be required to maintain the insurance described in subsections (a), (b), and (c) above. Comprehensive General Liability and Comprehensive Automobile Liability insurance required to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the Agency, its officers, agents, employees and members of the Board of Directors.

(f) The required insurance shall be provided under an occurrence form, and Borrower shall maintain such coverage continuously so long as the Note is outstanding. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(g) All policies and bonds shall contain (a) the agreement of the insurer to give the Agency at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Agency; (c) a provision that no act or omission of the Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the Agency and its authorized parties in connection with any loss or damage thereby insured against.

## ARTICLE 5 REPRESENTATIONS OF BORROWER

### Section 5.1 Representations.

(a) The Borrower hereby represents as follows:

(i) the Borrower is unaware of any event or condition that would reasonably be expected to make development of the Development infeasible; and

(ii) the Borrower is unaware of any event or condition that would reasonably be expected to make development of the Development more costly than as set forth in the Approved Development Budget.

## ARTICLE 6 DEFAULT AND REMEDIES

### Section 6.1 Events of Default.

Each of the following shall constitute a "Default" by the Borrower under this Agreement:

- (a) Failure to Construct. Subject to Section 7.13, failure of the Borrower to commence and complete construction of the Development within the times set forth in Article 3 above.
- (b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within thirty (30) days of receipt of written notice from the Agency that such payment is due pursuant to the Loan Documents (except that in the event of an extension request under Section 2.7(e), a Default shall exist if the amount due under Section 2.7 remains unpaid on the sixty-first (61<sup>st</sup>) day after the due date, without further notice and opportunity to cure).
- (c) Breach of Covenants. Failure by the Borrower to duly perform, comply with, or observe any of the other conditions, terms, or covenants of any of the Loan Documents, including, but not limited to failure to provide the Agency with the audited financial for the project annually as required pursuant to Section 2.7 and such failure having continued uncured for sixty (60) days after receipt of written notice thereof from the Agency to the Borrower, or if the breach cannot reasonably be cured within sixty (60) days, the Borrower shall not be in breach if the Borrower diligently undertakes to cure such breach and such breach is cured within a reasonable time; however, if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.
- (d) Default Under Other Loans. Failure to make any payment or perform any of the Borrower's covenants, agreements, or obligations under the documents evidencing and securing the Approved Financing following expiration of all applicable notice and cure periods.
- (e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or the Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events in this paragraph shall act to accelerate automatically, without the need for any action by the Agency, the indebtedness evidenced by the Note.
- (f) Assignment; Attachment. The Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed

upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events in this paragraph shall act to accelerate automatically, without the need for any action by the Agency, the indebtedness evidenced by the Note.

(g) Suspension; Termination. The Borrower shall have voluntarily suspended its business, or while the Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(h) Liens on Property and the Project. There shall be filed any claim of lien (other than liens approved in writing by the Agency) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of such claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the Agency.

(i) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.12.

(j) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Agency in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made and causing a material adverse impact on the Agency that remains ten (10) days after receipt of written notice from the Agency.

#### Section 6.2 Remedies.

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

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

(b) Specific Performance. The Agency shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Borrower to perform its

obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The Agency shall have the right (but not the obligation) to cure any monetary default by the Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Agency for any funds advanced by the Agency to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or eight percent (8%) per annum from the date of expenditure until the date of reimbursement.

Section 6.3 Right of Contest.

The Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Agency.

Section 6.4 Remedies Cumulative.

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

Section 6.5 Condemnation.

The condemnation, seizure, or appropriation of all or a portion of the Property shall be the basis for a no-fault termination of this Agreement unless the Property is restored by Borrower subsequent to the condemnation in a manner that allows the Property to continue to be used for affordable housing in accordance with this Loan Agreement. Repayment of the Loan shall be made before any distribution of condemnation proceeds to the Borrower, except to the extent that such proceeds are used to rebuild the Development or repay the Approved Financing that is prior to the Loan or the extent that condemnation only affects a portion of the Property and the Property is capable of being restored, in which case the condemnation proceeds will be used for restoration of the Property.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Agency and Borrower or



its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the ownership of the Property, construction of the Improvements, and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

#### Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the Agency by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the lease of the Property, the construction of the Improvements, or the operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the lease of the Property, the construction of the Improvements, or the operation of the Development.

#### Section 7.3 Amendments.

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

#### Section 7.4 Indemnification.

(a) The Borrower shall indemnify, defend and hold the City, the Agency, their councilmembers, board members, officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with the Property, or the development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City or the Agency, their councilmembers, board members, officers, employees, agents, successors and assigns. The Borrower shall indemnify, defend and hold the City, the Agency, their councilmembers, board members, officers, employees, agents, successors and assigns harmless from any claims made against it or expenses, including reasonable attorneys' fees related to any relocation claims filed by occupants of the Property including any claims for relocation assistance, moving expenses, replacement housing payments, last resort housing or other claims pursuant to the Uniform Relocation Act, Section 104(d) and the California Relocation Law. The provisions of this Section 7.4(a) shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

(b) The Agency shall indemnify, defend and hold the Borrower and its board members, officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection

Agency's violation of this Agreement, except to the extent such claim arises from the grossly negligent or willful misconduct of the Borrower or its boardmembers, officers, employees, agents, successors and assigns. The provisions of this Section 7.4(b) shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 7.5 Non-Liability of Agency and Agency Officials, Employees and Agents.

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

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement, except that the investor limited partner of the Borrower shall be a third party beneficiary with respect to notice and cure rights granted the limited partner in this Agreement.

Section 7.7 Discretion Retained By City.

The Agency's execution of this Agreement in no way limits the discretion of the City in the permit and approval process in connection with development of the Development.

Section 7.8 Notices, Demands and Communications.

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

Agency:                      Redevelopment Agency of the City of East Palo Alto  
   2415 University Avenue  
   East Palo Alto, CA 94303  
   Attention: Executive Director

Borrower:                     Bay Road Housing, L.P.  
   255 N. Market Street, Suite 290  
   San Jose, CA 95110  
   Attention: Executive Director

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

Section 7.9 Applicable Law.

This Agreement shall be governed by California law.

Section 7.10 Parties Bound.

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

Section 7.11 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.12 Severability.

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

Section 7.13 Force Majeure.

Performance by either Party shall not be deemed to be in default where defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather which, in the opinion of the Borrower's contractor, will necessitate delays; acts of the other Party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the Agency); or any other causes (other than the Borrower's inability to obtain financing for the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. Times of performance under this Agreement may also be extended in writing by the Agency and the Borrower.

Section 7.14 Approvals.

(a) Whenever this Agreement calls for a Party's approval, consent, or waiver, the written approval, consent, or waiver of the Party's Authorized Officer shall constitute the approval, consent, or waiver of the Party, without further authorization required from the Party's board. The Parties hereby authorize their Authorized Officers to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of them.

(b) All approvals under this Agreement shall be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

Section 7.15 Waivers.

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

Section 7.16 Title of Parts and Sections.

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

Section 7.17 Entire Understanding of the Parties. This Agreement (and the other Loan Documents) constitute the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.18 Multiple Originals; Counterpart.

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

Section 7.19 Legal Actions.

If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement). The Superior Court of the County of San Mateo shall be the forum and venue for all litigation.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**


BY SIGNING BELOW, the Parties confirm their agreement to the terms of this Agreement as of the date first written above.

ATTEST:

AGENCY:

The Redevelopment Agency of the City of East Palo Alto, a public body, corporate, and politic

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

By:   
Its: Executive Director

BORROWER:

Bay Road Housing, L.P., a California limited partnership

By: Sands Drive Housing, Inc., a California nonprofit public benefit corporation, its general partner

By:   
Its: Executive Director

**EXHIBIT A**

**Legal Description of the Property**

**EXHIBIT B**

**Approved Development Budget**

**RIDER TO LOAN AGREEMENT DATED DECEMBER \_\_, 2004  
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF EAST PALO ALTO  
(the "AGENCY") AND BAY ROAD HOUSING, L.P., (the "BORROWER")  
CONCERNING PROPERTY LOCATED AT 1740 BAY ROAD, EAST PALO ALTO,  
CALIFORNIA (the "PROJECT")**

Notwithstanding anything to the contrary set forth in any one or more of the documents (the "Loan Documents") evidencing or securing the Agency's \$1,200,000 loan to the Borrower (the "Loan"), the Agency makes the covenants set forth in this Rider.

1. The Agency will give Wachovia Affordable Housing Community Development Corporation, together with its successors and assigns, (the "Limited Partner") a copy of any written notice it gives to the Borrower under the Loan Documents.
2. The Agency will give the Limited Partner ten (10) days after the Limited Partner's receipt of such notice to cure a non-payment of any sum due under the Loan Documents.
3. The Agency will give the Limited Partner thirty (30) days after the Limited Partner's receipt of such notice to cure any other default under the Loan Documents.
4. If a default is incapable of being cured within thirty (30) days, the Agency will give the Limited Partner such additional time as is reasonably necessary to cure such default provided it has commenced to cure such default within thirty (30) days and diligently proceeds to cure such default.
5. If the Limited Partner makes any such payment or otherwise cures such default, the Agency will accept such action as curing the respective default under the Loan Documents.
6. The Agency will permit the Limited Partner to transfer its limited partner interest to any person or entity at any time provided that, if at such time the Limited Partner has not made 100% of the capital contributions it is required to make to the Borrower, the Limited Partner shall remain liable to the Borrower for such capital contributions.
7. The Agency will permit the Limited Partner to remove the general partner of the Borrower in accordance with the Borrower's partnership agreement, provided that the substitute general partner shall be acceptable to the Agency in its reasonable discretion. An affiliate of the Limited Partner shall be an acceptable substitute general partner.
8. The Agency will permit insurance and condemnation proceeds to be used to rebuild the Project provided that (i) sufficient funds are provided from other sources to effectively rebuild the Project to a multifamily housing complex, and (ii) the Agency shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as the Agency may impose.



9. If the Project cannot be restored on or before the maturity date of the Loan, the Agency will extend such maturity date for so long as may be required to restore the Project, provided: (i) the Borrower provides evidence acceptable to the Agency in its reasonable discretion that the Borrower has or will have sufficient funds to pay all interest and principal on the Loan during such extended period; (ii) the Borrower diligently commences the restoration of the Project; and (iii) thereafter, the Borrower diligently prosecutes the restoration of the Project to completion.

10. The Agency has not and will not cross-default or cross-collateralize the Loan with any other loan.

11. Limited Partner is intended to be a direct beneficiary of the covenants set forth in this Rider and shall be entitled to bring an action to enforce the same independent of any rights of the Borrower.

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

AGENCY:

Redevelopment Agency of the City of East Palo Alto, a public body, corporate and politic

By: Alvin D. James

Name: Alvin D. James

Its: Executive Director

BORROWER:

Bay Road Housing, L.P., a California limited partnership

By: Sands Drive Housing, Inc., a California nonprofit public benefit corporation, its general partner

By: Ronald Morgan

Name: Ronald Morgan

Its: Executive Director

# Fee Invoice

## Corporate Trust Services



<b>Invoice Number</b> 1594682	<b>Billing Date</b> 08/01/2018	<b>Due Date</b> 08/31/2018	<b>Amount Due</b> <b>\$10,500.00</b>
Successor Agency to the Former Redevelopment Agency Brenda Cooley-Olwin, CPA 2415 University Ave East Palo Alto, CA 94303			Please mail or wire payment to: <b>Mailing Address:</b> Wells Fargo Bank WF 8113 P.O. Box 1450 Minneapolis, MN 55485-8113 <b>Wire Instructions:</b> ABA #: 121000248 DDA #: 1000031565 Swift Code: WFBUS6S Reference: Invoice #, Account Name, Attn Name <b>ACH Instructions:</b> ABA #: 091000019 DDA #: 1000031565 Memo: Invoice #, Account Name, Attn Name

Please return this portion of the statement with your payment in the envelope provided:

Please retain this portion for your records

Account Number: 84308400  
 SA to FRA of City of E Palo Alto 15A/B

Administration Charges

	For the Period 09/01/2018 through 08/31/2019	
Trustee Fee	2 @ \$5,000.00 Per Series	\$10,000.00
	For the Period 09/01/2018 through 08/31/2019	
Disclosure/Dissemination Fee		\$500.00

**Total Amount Due: \$10,500.00**

**VOUCHER** \_\_\_\_\_  
**P.O.** \_\_\_\_\_  
**VENDOR NAME** WELLS FARGO BANK  
**ACCOUNT** 984-95000-8210  
**AMOUNT** 10,500  
**CLAIMANT** n/a **DATE** n/a  
**APPROVED BY** Brenda Olwin **DATE** 8/3/2018  
**DESCRIPTION** 2018-19 REFUNDING TRUSTEE FEE

*Billings past due are subject to an 18% annual finance charge of the balance due.*

Bond Debt Service  
 Successor Agency to the East Palo Alto Redevelopment Agency  
 Series A (Tax-Exempt)

Dated Date 9/1/2015

Delivery

Date 9/1/2015

ROPS Collected	ROPS Incurred	Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
ROPS 18-19A	ROPS 18-19B	4/1/2019			338,775.01	338,775.01	
ROPS 18-19B	ROPS 19-20A	10/1/2019	900,000	4.000%	338,775.01	1,238,775.01	
ROPS 19-20A	ROPS 19-20B	4/1/2020			320,775.01	320,775.01	1,559,550.02
ROPS 19-20B	ROPS 20-21A	10/1/2020	935,000	5.000%	320,775.01	1,255,775.01	
ROPS 20-21A	ROPS 20-21B	4/1/2021			297,400.01	297,400.01	1,553,175.02
ROPS 20-21B	ROPS 21-22A	10/1/2021	975,000	5.000%	297,400.01	1,272,400.01	
ROPS 21-22A	ROPS 21-22B	4/1/2022			273,025.01	273,025.01	1,545,425.02
ROPS 21-22B	ROPS 22-23A	10/1/2022	1,030,000	5.000%	273,025.01	1,303,025.01	
ROPS 22-23A	ROPS 22-23B	4/1/2023			247,275.01	247,275.01	1,550,300.02
ROPS 22-23B	ROPS 23-24A	10/1/2023	1,085,000	5.000%	247,275.01	1,332,275.01	
ROPS 23-24A	ROPS 23-24B	4/1/2024			220,150.01	220,150.01	1,552,425.02
ROPS 23-24B	ROPS 24-25A	10/1/2024	1,140,000	5.000%	220,150.01	1,360,150.01	
ROPS 24-25A	ROPS 24-25B	4/1/2025			191,650.01	191,650.01	1,551,800.02
ROPS 24-25B	ROPS 25-26A	10/1/2025	1,195,000	5.000%	191,650.01	1,386,650.01	
ROPS 25-26A	ROPS 25-26B	4/1/2026			161,775.01	161,775.01	1,548,425.02
ROPS 25-26B	ROPS 26-27A	10/1/2026	1,250,000	3.000%	161,775.01	1,411,775.01	
ROPS 26-27A	ROPS 26-27B	4/1/2027			143,025.01	143,025.01	1,554,800.02
ROPS 26-27B	ROPS 27-28A	10/1/2027	1,295,000	3.000%	143,025.01	1,438,025.01	
ROPS 27-28A	ROPS 27-28B	4/1/2028			123,600.01	123,600.01	1,561,625.02
ROPS 27-28B	ROPS 28-29A	10/1/2028	1,325,000	3.250%	123,600.01	1,448,600.01	
ROPS 28-29A	ROPS 28-29B	4/1/2029			102,068.76	102,068.76	1,550,668.77
ROPS 28-29B	ROPS 29-30A	10/1/2029	1,370,000	3.375%	102,068.76	1,472,068.76	
ROPS 29-30A	ROPS 29-30B	4/1/2030			78,950.00	78,950.00	1,551,018.76
ROPS 29-30B	ROPS 30-31A	10/1/2030	1,425,000	3.500%	78,950.00	1,503,950.00	
ROPS 30-31A	ROPS 30-31B	4/1/2031			54,012.50	54,012.50	1,557,962.50
ROPS 30-31B	ROPS 31-32A	10/1/2031	1,465,000	3.625%	54,012.50	1,519,012.50	
ROPS 31-32A	ROPS 31-32B	4/1/2032			27,459.38	27,459.38	1,546,471.88
ROPS 31-32B	ROPS 32-33A	10/1/2032	1,515,000	3.625%	27,459.38	1,542,459.38	1,542,459.38
			16,905,000		4,821,106.47	21,726,106.47	21,726,106.47
	Distribute SA Reserves		1,515,000		27,459.38	1,542,459.38	1,542,459.38
			18,420,000	0	4,848,566	23,268,566	23,268,566

## **San Mateo County Countywide Oversight Board**

Date: January 18, 2019 Agenda Item No. 9  
To: San Mateo County Countywide Oversight Board  
From: Shirley Tourel, Assistant Controller  
Subject: Pacifica Agency (SA) Recognized Obligation Payment Schedule (ROPS) 19-20

### **Background**

California Health and Safety Section Code (HSC) 34180(g) requires all ROPS to be approved by the Oversight Board (the "Board").

### **Discussion**

The Annual ROPS 19-20 contains all the obligations of the former Redevelopment Agency (RDA) for fiscal year 2019-20.

The Pacifica SA presented their ROPS and Administrative Budget for fiscal year 2019-20 to the Board on January 14, 2019 for approval. The Board requested the SA revise the payments for City loans from \$93,396 to \$123,837.

Enclosed is the Pacifica SA's revised ROPS and Administrative Budget for fiscal year 2019-20 on which they are requesting approval by the Board to spend \$260,205 on outstanding obligations and administrative expenses.

### **CAC Exhibits**

A. Pacifica SA's Annual ROPS 19-20

Date: January 16, 2019

To: San Mateo County Countywide Oversight Board

From: **Lorenzo Hines Jr., Assistant City Manager, City of Pacifica**

Subject: Approval of the Recognized Obligation Payment Schedule (ROPS) 19-20 and Administrative Cost Allowance Budget of the Successor Agency to the Redevelopment Agency of the City Of Pacifica (SA)

Former RDA: **City of Pacifica**

### **Recommendation**

Adopt resolutions approving the Redevelopment Agency Of The City Of Pacifica SA's ROPS 19-20 and Administrative Cost Allowance Budget.

### **Background**

SAs that do not qualify under the Last and Final ROPS, must submit annually a ROPS listing the SA's enforceable obligations and expenses to the State Department of Finance (DOF) pursuant to Health & Safety Section Codes (H&S) 34177(m) and (o). The ROPS shall include an amount for the SA's Administrative Cost Allowance as authorized under the Dissolution Act which is subject to a cap as set forth under H&S 34171. The ROPS and the Budget for the SA's Administrative Cost Allowance must be approved by the Oversight Board.

### **Discussion**

Submitted for the Oversight Board's approval is the ROPS 19-20 (Exhibit A). While the DOF's ROPS template requires all enforceable obligations to be listed, the Oversight Board approval is for the funding of those items to be paid in fiscal year 2019-20. Exhibit C summarizes those items and provides supporting documentation.

### **Financial Impact**

No funds are involved with the approval of the ROPS.

### **Attachments:**

1. Resolution Approving Pacifica SA's ROPS 19-20 and FY 2019-20 Administrative Budget
2. Exhibit A - Pacifica SA's ROPS 19-20
3. Exhibit B - Pacifica SA's FY 2019-20 Administrative Budget
4. Exhibit C - Summary of Obligations and Supporting Documents

**RESOLUTION NO. 2019-\_\_\_\_\_**

**RESOLUTION OF THE SAN MATEO COUNTY COUNTYWIDE OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE 19-20 ("ROPS 19-20") AND FISCAL YEAR 2019-20 ADMINISTRATIVE BUDGET OF THE SUCCESSOR AGENCY TO THE FORMER PACIFICA REDEVELOPMENT AGENCY (RDA)**

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare a Recognized Obligation Payment Schedule ("ROPS") for each 12-month fiscal period, which lists the outstanding obligations of the former RDA and states the sources of funds for required payments; and

**WHEREAS**, the Successor Agency to the Former Pacifica Redevelopment Agency has prepared a draft ROPS for the period July 1, 2019 to June 30, 2020, referred to as "ROPS 19-20", as set forth in the attached Exhibit A, claiming a total enforceable obligation amount of \$260,205; and

**WHEREAS**, pursuant to HSC 34180(g) the Oversight Board must approve the establishment of each ROPS; and

**WHEREAS**, California Health and Safety Section Code (HSC) 34177 requires the Successor Agencies to prepare an administrative budget for Oversight Board approval; and

**WHEREAS**, the Successor Agency to the Former Pacifica Redevelopment Agency has prepared an administrative budget for the period July 1, 2019 to June 30, 2020, for \$9,500, as set forth in the attached Exhibit B; and

**WHEREAS**, California Health and Safety Code Section (HSC) 34179(e) requires all action items of Countywide Oversight Boards, including the San Mateo County Countywide Oversight Board, be accomplished by resolution.

**NOW, THEREFORE, BE IT RESOLVED**, the San Mateo County Countywide Oversight Board hereby approves the Pacifica Successor Agency ROPS 19-20 and the Pacifica Successor Agency Fiscal Year 19-20 Administrative Budget, attached hereto as Exhibits A and B and incorporated herein by this reference;

**BE IT FURTHER RESOLVED**, that the Oversight Board directs the Successor Agency to submit the ROPS 19-20 to the State Department of Finance upon approval by the Oversight Board.

\* \* \*

Exhibit A – Pacifica Successor Agency Recognized Obligation Payment Schedule 19-20

Exhibit B – Pacifica Successor Agency FY 2019-20 Administrative Budget

**Recognized Obligation Payment Schedule (ROPS 19-20) - Summary  
Filed for the July 1, 2019 through June 30, 2020 Period**

**Successor Agency:** Pacifica  
**County:** San Mateo

<b>Current Period Requested Funding for Enforceable Obligations (ROPS Detail)</b>	<b>19-20A Total (July - December)</b>	<b>19-20B Total (January - June)</b>	<b>ROPS 19-20 Total</b>
<b>A Enforceable Obligations Funded as Follows (B+C+D):</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
B Bond Proceeds	-	-	-
C Reserve Balance	-	-	-
D Other Funds	-	-	-
<b>E Redevelopment Property Tax Trust Fund (RPTTF) (F+G):</b>	<b>\$ 162,271</b>	<b>\$ 97,934</b>	<b>\$ 260,205</b>
F RPTTF	154,771	95,934	250,705
G Administrative RPTTF	7,500	2,000	9,500
<b>H Current Period Enforceable Obligations (A+E):</b>	<b>\$ 162,271</b>	<b>\$ 97,934</b>	<b>\$ 260,205</b>

Certification of Oversight Board Chairman:  
Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named successor agency.

Tom Casey Board Chair  
\_\_\_\_\_  
Name Title  
  
/s/ \_\_\_\_\_  
Signature Date

**Pacifica Recognized Obligation Payment Schedule (ROPS 19-20) - ROPS Detail**  
**July 1, 2019 through June 30, 2020**  
**(Report Amounts in Whole Dollars)**

A	B	C	D	E	F	G	H	I	J	K	19-20A (July - December)					Q	19-20B (January - June)					W
											Fund Sources						Fund Sources					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
											Total Outstanding Debt or Obligation	Retired	ROPS 19-20 Total	19-20A Total	19-20B Total							
								\$ 5,248,041		\$ 260,205	\$ 0	\$ 0	\$ 0	\$ 154,771	\$ 7,500	\$ 162,271	\$ 0	\$ 0	\$ 0	\$ 95,934	\$ 2,000	\$ 97,934
1	2004 Tax Allocation Bond Series A	Bonds Issued On or Before	8/19/2004	7/30/2031	Bank of New York Mellon	2004 Tax Allocation Bonds that	Rockaway Beach	1,493,214	N	\$ 126,868						\$ 30,934						\$ 95,934
2	2004 Tax Allocation Bond Series A Fiscal Agent Fee	Fees	8/19/2004	7/30/2031	Bank of New York Mellon	Fiscal Agent fees associated with 2004 Tax Allocation Bonds	Rockaway Beach	2,400	N	\$ -						\$ -						\$ -
3	Annual Audit	Admin Costs	7/1/2011	6/30/2015	Maze & Associates	Annual Audit	Rockaway Beach	4,500	N	\$ 4,500				4,500		\$ 4,500						\$ -
4	Administration Successor Agency	Admin Costs	1/1/2014	6/30/2014	Successor Agency / Regional Government Services	Staffing / Administrative Contract Costs (RGS) Prepare Meeting reports / forms	Rockaway Beach	4,000	N	\$ 4,000				2,000		\$ 2,000					2,000	\$ 2,000
7	Administration - Legal	Legal	1/1/2014	6/30/2015	Law Offices of Craig Labadie	Legal support for Oversight Board and Successor Agency	Rockaway Beach	1,000	N	\$ 1,000				1,000		\$ 1,000						\$ -
11	Reso 17-88 - Loan #4 From General Fund	City/County Loan (Prior 06/28/11), Cash exchange	4/14/1988	6/30/2032	City of Pacifica	Loan from City of Pacifica to former RDA	Rockaway Beach	397,662	N	\$ 123,837			123,837			\$ 123,837						\$ -
12	Reso 19-89 -Loan #5 From General Fund	City/County Loan (Prior 06/28/11), Cash exchange	5/8/1989	6/30/2032	City of Pacifica	Loan from City of Pacifica to former RDA	Rockaway Beach	849,990	N	\$ -						\$ -						\$ -
13	Reso 20-90 -Loan #6 From General Fund	City/County Loan (Prior 06/28/11), Cash exchange	5/14/1990	6/30/2032	City of Pacifica	Loan from City of Pacifica to former RDA	Rockaway Beach	891,973	N	\$ -						\$ -						\$ -
14	Reso 9-91 -Loan #7 From General Fund	City/County Loan (Prior 06/28/11), Cash exchange	4/8/1991	6/30/2032	City of Pacifica	Loan from City of Pacifica to former RDA	Rockaway Beach	878,452	N	\$ -						\$ -						\$ -
15	Reso 1-92 -Loan #8 From General Fund	City/County Loan (Prior 06/28/11), Cash exchange	1/27/1992	6/30/2032	City of Pacifica	Loan from City of Pacifica to former RDA	Rockaway Beach	433,185	N	\$ -						\$ -						\$ -
16	Reso 15-94 -Loan #10 From General Fund	City/County Loan (Prior 06/28/11), Cash exchange	4/11/1994	6/30/2032	City of Pacifica	Loan from City of Pacifica to former RDA	Rockaway Beach	291,665	N	\$ -						\$ -						\$ -
19									N	\$ -					\$ -							\$ -
20									N	\$ -					\$ -							\$ -
21									N	\$ -					\$ -							\$ -
22									N	\$ -					\$ -							\$ -
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59									N	\$ -					\$ -							\$ -
60									N	\$ -					\$ -							\$ -
61									N	\$ -					\$ -							\$ -



**Pacifica Recognized Obligation Payment Schedule (ROPS 19-20) - Report of Cash Balances**  
**July 1, 2016 through June 30, 2017**  
**(Report Amounts in Whole Dollars)**

source is available or when payment from property tax revenues is required by an enforceable obligation. For tips on how to complete the Report of Cash Balances Form, see <a href="#">Cash Balance Tips Sheet</a> .								
A	B	C	D	E	F	G	H	
		Fund Sources					Comments	
		Bond Proceeds		Reserve Balance	Other Funds	RPTTF		
ROPS 16-17 Cash Balances (07/01/16 - 06/30/17)		Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, Grants, Interest, etc.	Non-Admin and Admin		
1	<b>Beginning Available Cash Balance (Actual 07/01/16)</b> RPTTF amount should exclude "A" period distribution amount	129,859				9,376	\$129,859 is Debt Service Reserve held by Trustee. Beg balance incl. \$238 interest earning posted at 06/30/2016 for allocated share of pooled cash.	
2	<b>Revenue/Income (Actual 06/30/17)</b> RPTTF amount should tie to the ROPS 16-17 total distribution from the County Auditor-Controller					260,697	RPTTF is for ROPS 16-17 \$161,035 + \$99,662	
3	<b>Expenditures for ROPS 16-17 Enforceable Obligations (Actual 06/30/17)</b>	129,859				254,543	Audit Expense: \$4,500, Gen Admin \$4,615, Legal \$3,887; Transferred to Trustee \$35,661.88, Trustee fees \$2,363, Repayment of General Fund loan of \$112,853 (12/16), \$90,662 (06/17)	
4	<b>Retention of Available Cash Balance (Actual 06/30/17)</b> RPTTF amount retained should only include the amounts distributed as reserve for future period(s)							
5	<b>ROPS 16-17 RPTTF Prior Period Adjustment</b> RPTTF amount should tie to the Agency's ROPS 16-17 PPA form submitted to the CAC	No entry required					6,154	
6	<b>Ending Actual Available Cash Balance (06/30/17)</b> C to F = (1 + 2 - 3 - 4), G = (1 + 2 - 3 - 4 - 5)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 9,376		



**Successor Agency to the Former Pacifica Redevelopment Agency  
 ROPS 19-20 Administrative Cost Allowance Budget  
 Period: 7/1/19 to 6/30/20**

<b>Description of Cost/Expense</b>	<b>Amount</b>
Payee - Legal Expense	\$ 1,000
Annual Audit	4,500
Administration General	4,000
<b>Total - ROPS 19-20</b>	<b>\$ 9,500</b>

Controller's Notes:

1. Previous ROPS period admin costs funding = \$14,000

**SUMMARY OF OBLIGATIONS AND SUPPORTING DOCUMENTS**

ROPS		ROPS 19-20			
Item No.	ROPS Category	Description of Obligation	Payee	Funding	Supporting Documentation
1	Bonds	2004 Tax Allocation Bond Series A	Bank of NY Mellon	\$ 126,868	Exhibit C Page 2 - Debt Service Schedule
3	Admin	Annual Audit	Various	4,500	Exhibit C Page 3 - Audit
4	Admin	Staffing Costs	Various	4,000	Exhibit C Page 4 - Trial Balance
7	Admin	Legal Costs	Various	1,000	Exhibit C Page 5 - Trial Balance
11	Loans/Borrowings	Advances from Public Agencies	City of Pacifica	123,837	Exhibit C Page 6 - Loan Repayment Amount Schedule & Board Resolution Approving the Loan
Total Obligations Under ROPS 19-20				<u>\$ 260,205</u>	

### Debt Service Schedule

Scheduled debt service on the Bonds, without regard to any optional redemption, is shown in the following table.

**Table 1**  
**REDEVELOPMENT AGENCY OF THE CITY OF PACIFICA**  
**Rockaway Beach Redevelopment Project**  
**2004 Tax Allocation Bonds**  
**Debt Service Schedule**

Bond Year Ending (July 1)	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2005		\$ 78,025.99	\$ 78,025.99
2006	\$ 35,000	92,096.26	127,096.26
2007	35,000	91,081.26	126,081.26
2008	35,000	89,856.26	124,856.26
2009	40,000	88,526.26	128,526.26
2010	40,000	86,866.26	126,866.26
2011	40,000	85,186.26	125,186.26
2012	45,000	83,386.26	128,386.26
2013	45,000	81,293.76	126,293.76
2014	50,000	79,133.76	129,133.76
2015	50,000	76,683.76	126,683.76
2016	55,000	74,183.76	129,183.76
2017	55,000	71,323.76	126,323.76
2018	60,000	68,408.76	128,408.76
2019	60,000	65,168.76	125,168.76
<b>2020</b>	<b>(65,000)</b>	<b>(61,868.76)</b>	<b>(126,868.76)</b>
2021	70,000	58,212.50	128,212.50
2022	75,000	54,222.50	129,222.50
2023	75,000	49,947.50	124,947.50
2024	80,000	45,672.50	125,672.50
2025	85,000	41,112.50	126,112.50
2026	90,000	36,225.00	126,225.00
2027	95,000	31,050.00	126,050.00
2028	100,000	25,587.50	125,587.50
2029	110,000	19,837.50	129,837.50
2030	115,000	13,512.50	128,512.50
2031	<u>120,000</u>	<u>6,900.00</u>	<u>126,900.00</u>
<b>Total</b>	<b>\$1,725,000</b>	<b>\$1,655,369.89</b>	<b>\$3,380,369.89</b>

**Mosser, Cindy**

---

**From:** Mark Wong <markw@mazeassociates.com>  
**Sent:** Wednesday, January 27, 2016 1:28 PM  
**To:** Mosser, Cindy  
**Subject:** Successor Agency Audit Cost for 6/30/15 Audit

Hi Cindy,

This is to confirm that the cost for the audit of the City of Pacifica Successor Agency Activities including footnotes is \$4,500.

Please let us know if you have any additional questions.

Best regards,

Mark

**mercedes yapching**

---

**From:** tioyaos@ci.pacifica.ca.us  
**Sent:** Monday, December 31, 2018 10:44 AM  
**To:** mercedes yapching  
**Cc:** HinesL@ci.pacifica.ca.us  
**Subject:** RE: City of Pacifica ROPS submission - revised  
**Attachments:** Admin expenditure back-up 17-18.pdf; Trial balance FY17-18.pdf

Hi Mercedes,

Please find attached the actual invoices for admin which includes the RGS invoices, legal and audit. For the audit expense, we get a bill from Maze and Associates but there is no breakdown for the RDA portion so we use the \$4,500/year based on the email from Maze. Also attached is the trial balance.

Thanks,  
Sheila

**From:** Hines, Lorenzo  
**Sent:** Monday, December 31, 2018 10:27 AM  
**To:** mercedes yapching <myapching@smcgov.org>  
**Cc:** Tioyao, Sheila <tioyaos@ci.pacifica.ca.us>  
**Subject:** RE: City of Pacifica ROPS submission - revised

Hi Mercedes,

**CITY OF PACIFICA**  
**Trial Balance by Fund**  
**As of June 30, 2018**

FUND 91: REDEVELOPMENT-SUCCESSOR AGENCY

Account Number	Account Name	Debit	Credit
91.960000.11000.0000.000	CASH GENERAL-FNB	\$ 145,401.83	\$ 0.00
91.960000.11019.0000.000	DEBT SERVICE RESERVE FUND	130,596.94	0.00
91.960000.11020.0000.000	CASH WITH FISCAL AGENT	94,204.38	0.00
91.960000.22001.0000.000	ACCTS PYBL-GENERAL	0.00	1,197.56
91.960000.22005.0000.000	INTER-FUND PAYABLE	0.00	2,056,836.10
91.960000.22028.0000.000	PAYABLE TO GENERAL FUND	0.00	1,720,583.09
91.960000.22117.0000.000	INTEREST PAYABLE - 2004 TAB	0.00	34,204.38
91.960000.22197.0000.000	BONDS PAYABLE-2004 TAB	0.00	1,140,000.00
91.960000.22205.0000.000	BONDS PAYABLE-2004 TAB-SHORT TERM	0.00	60,000.00
91.960000.33039.0000.000	FUND BALANCE, UNDES/UNRES	4,730,989.19	0.00
91.960000.41191.0000.000	RPTTF DISTRIBUTION	0.00	216,813.00
91.960000.44501.0000.000	INVESTMENT EARNINGS	0.00	1,757.02
91.960000.53611.0000.000	INTEREST EXPENSE	55,292.44	0.00
91.969901.52800.0000.000	CONTRACTUAL SERVICES	(2,936.25)	0.00
91.969901.52828.0000.000	CONTRACT LEGAL SVCS-RDA SUCCESSORY AGENC	1,197.56	0.00
91.969906.55201.0000.000	MATURED BOND INT EXP-2004 TAB	68,408.76	0.00
91.969906.55203.0000.000	FISCAL AGENT FEES-04 TAX ALLOCATION BNDS	2,363.80	0.00
<b>Total</b>		<b>\$5,231,391.15</b>	<b>\$5,231,391.15</b>

(Actual staffing costs for FY 17/18. Estimate for FY 19/20 is \$4,000.)

**CITY OF PACIFICA**

**Trial Balance by Fund**

**As of June 30, 2018**

FUND 91: REDEVELOPMENT-SUCCESSOR AGENCY

Account Number	Account Name	Debit	Credit
91.960000.11000.0000.000	CASH GENERAL-FNB	\$ 145,401.83	\$ 0.00
91.960000.11019.0000.000	DEBT SERVICE RESERVE FUND	130,596.94	0.00
91.960000.11020.0000.000	CASH WITH FISCAL AGENT	94,204.38	0.00
91.960000.22001.0000.000	ACCTS PYBL-GENERAL	0.00	1,197.56
91.960000.22005.0000.000	INTER-FUND PAYABLE	0.00	2,056,836.10
91.960000.22028.0000.000	PAYABLE TO GENERAL FUND	0.00	1,720,583.09
91.960000.22117.0000.000	INTEREST PAYABLE - 2004 TAB	0.00	34,204.38
91.960000.22197.0000.000	BONDS PAYABLE-2004 TAB	0.00	1,140,000.00
91.960000.22205.0000.000	BONDS PAYABLE-2004 TAB-SHORT TERM	0.00	60,000.00
91.960000.33039.0000.000	FUND BALANCE, UNDES/UNRES	4,730,989.19	0.00
91.960000.41191.0000.000	RPTTF DISTRIBUTION	0.00	216,813.00
91.960000.44501.0000.000	INVESTMENT EARNINGS	0.00	1,757.02
91.960000.53611.0000.000	INTEREST EXPENSE	55,292.44	0.00
91.969901.52800.0000.000	CONTRACTUAL SERVICES	2,936.25	0.00
91.969901.52828.0000.000	CONTRACT LEGAL SVCS-RDA SUCCESSORY AGENC	1,197.56	0.00
91.969906.55201.0000.000	MATURED BOND INT EXP-2004 TAB	68,408.76	0.00
91.969906.55203.0000.000	FISCAL AGENT FEES-04 TAX ALLOCATION BNDS	2,363.80	0.00
<b>Total</b>		<b>\$5,231,391.15</b>	<b>\$5,231,391.15</b>

(\$1,197.56 is actual legal costs for FY 17/18. SA is estimating \$1,000 for FY 19/20)

Estimated legal costs to support exploration of legal action against DOF related to the rejection of the SA's last and final ROPS request.



**COUNTY OF SAN MATEO  
 PACIFICA  
 LIMITATIONS ON REPAYMENT OF SERAF AND CITY LOANS Per 34176 (e)(6)(B) and 34191.4 (b)(2)**

Payments are limited to no more than half the increase in residual above a FY 2012-13 base year.  
 Payments of housing fund loan or deferral amounts are first in priority.

**Maximum Allowable Repayment for FY 2019-20**

**Residual in FY 2012-13**

ROPS II Residual	5,308	<i>June 2012 Distribution</i>
ROPS III Residual	0	<i>January 2013 Distribution</i>
(A)	<u>\$ 5,308</u>	

**Residual in FY 2018-19**

ROPS 18-19A Residual	69,885	<i>June 2018 Distribution</i>
ROPS 18-19B Residual	183,096	<i>January 2019 Distribution</i>
(B)	<u>\$ 252,981</u>	

**Increase in Residual over FY 2012-13**

(C) \$ 247,673

**Not To Exceed Amount (50% of Increase)**

(D) \$ 123,837

**Reported Loan Repayments**

ROPS 19-20A - (July to December)	123,837
ROPS 19-20B - (January to June)	0
(E)	<u>\$ 123,837</u>

**Amount Exceeded, (E) - (D)**

\$ 0

**OVERSIGHT BOARD RESOLUTION NO.01-2016**

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF PACIFICA RESTATING AND AMENDING RESOLUTION NO. 01-2015 APPROVING REPAYMENT OF AMOUNTS OWED TO THE CITY OF PACIFICA BY THE FORMER REDEVELOPMENT AGENCY**

**WHEREAS**, April 26, 2013, the California Department of Finance granted a "Finding of Completion" allowing for loans to be added to the Recognized Obligation Payment Schedule (ROPS) provided certain findings were made; and

**WHEREAS**, June 19, 2013 the Oversight Board adopted Resolution No. 2013-4; and

**WHEREAS**, the Oversight Board resolution declared that the loans from the City to the Redevelopment Agency were for legitimate redevelopment purposes; and

**WHEREAS**, the Department of Finance was provided with the adopted Resolution; and

**WHEREAS**, the Resolution set forth a principal balance of \$3,237,150 owed to the City of Pacifica pursuant to loan agreements from 1985 through 1994; and

**WHEREAS**, on February 11, 2015 the Oversight Board adopted Resolution No. 01-2015 which updated the presentation of loans outstanding including the origination date, amended balances, and rate of interest in accordance with the Redevelopment Dissolution process; and

**WHEREAS**, effective on September 22, 2015, the California Legislature enacted SB 107, a budget trailer bill amending various provisions of the Redevelopment Dissolution Law, including Health & Safety Code Section 34191.4(b)(3), which provides for interest on such loans to be calculated as simple interest at the rate of three percent (3%); and

**WHEREAS**, the Oversight Board reviewed at a public meeting the revised schedule which also included revised origination date(s) accounting for repayments of interest prior to dissolution; and

**WHEREAS**, the adjustment of the origination dates shorten the length of time the loans have been outstanding and will prevent the collection of interest by the City in excess of what is owed; and

**WHEREAS**, this restated and amended resolution does not alter the finding by the Oversight Board that the loans from the City to the Redevelopment Agency were for legitimate redevelopment purposes, and therefore such loans as presented shall be deemed an enforceable obligation of the former Pacifica Redevelopment Agency; and

**RESOLUTION No. 01-2016 (January 26, 2016) Restated and Amended Resolution****RECORD OF LOANS BETWEEN CITY OF PACIFICA AND  
PACIFICA REDEVELOPMENT AGENCY****(Based on authorized ROPS and RPTTF funding available - payments as of 7/1/2015 Interest Accrued To 6/30/2016)**

City Ref #	Origination Date	Revised Origination Date (Accounts For Payments of Interest Prior To Dissolution)	City Council Resolution Reference	Original Principal Amount Loaned	Unpaid Balance Owed To City 7/2/2015	Accrued Interest As of 6/30/2016	6/30/2016 Total Balance - Principal & Interest
<b>RETIRED LOANS</b>							
1	March 25, 1985			62,150.00	0.00		Paid Off
2	November 25, 1985		Reso 69-85	175,000.00	0.00		Paid Off
3	February 9, 1987		Reso 3-87	300,000.00	0.00		Paid Off
9	May 24, 1993		Reso 16-93	300,000.00	0.00		Paid Off
<b>OUTSTANDING LOANS</b>							
4	March 14, 1988	January 12, 1992	Reso 17-88	500,000.00	340,283.10	\$323,817.78	\$664,100.88
5	May 8, 1989	March 7, 1993	Reso 19-89	475,000.00	475,000.00	\$332,239.73	\$807,239.73
6	May 14, 1990	May 13, 1993	Reso 20-90	500,000.00	500,000.00	\$346,972.60	\$846,972.60
7	April 8, 1991	April 4, 1994	Reso 9-91	500,000.00	500,000.00	\$333,452.05	\$833,452.05
8	January 27, 1992	January 26, 1995	Reso 1-92	250,000.00	250,000.00	\$160,684.93	\$410,684.93
10	April 11, 1994	April 10, 1997	Reso 15-94	175,000.00	175,000.00	\$100,915.07	\$275,915.07
<b>TOTAL</b>				<b>\$3,237,150.00</b>	<b>\$2,240,283.10</b>	<b>\$1,598,082.16</b>	<b>\$3,838,365.26</b>

**OVERSIGHT BOARD RESOLUTION NO. 01-2015**

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF PACIFICA RESTATING AND AMENDING RESOLUTION NO. 2013-4 APPROVING REPAYMENT OF AMOUNTS OWED TO THE CITY OF PACIFICA BY THE FORMER REDEVELOPMENT AGENCY**

**WHEREAS**, April 26, 2013, the California Department of Finance granted a "Finding of Completion" allowing for loans to be added to the Recognized Obligation Payment Schedule (ROPS) provided certain findings were made; and

**WHEREAS**, June 19, 2013 the Oversight Board adopted Resolution No. 2013-4; and

**WHEREAS**, the Oversight Board resolution declared that the loans from the City to the Redevelopment Agency were for legitimate redevelopment purposes; and

**WHEREAS**, the Department of Finance was provided with the adopted Resolution; and

**WHEREAS**, the Resolution set forth a principal balance of \$3,237,150 owed to the City of Pacifica pursuant to loan agreements from 1985 through 1994; and

**WHEREAS**, to date no repayments have been granted on approved ROPS, due to insufficient balance available in the Redevelopment Property Tax Trust Fund as reported by the County Auditor Controller; and

**WHEREAS**, during the review of the 2014-15A ROPS it was indicated that the Agency may be eligible for funding in the 2015-16A ROPS (beginning July 1, 2015); and

**WHEREAS**, the Oversight Board desires to update with a detailed schedule of loans including the origination date, amended balances, and rate of interest in accordance with the Redevelopment Dissolution process; and

**WHEREAS**, this resolution shall amend and reduce the principal amount owed to \$2,341,185.10 which accounts for repayments made prior to dissolution and not accounted for when Resolution 2013-4 was first presented; and

**WHEREAS**, this restated and amended resolution does not alter the finding by the Oversight Board that the loans from the City to the Redevelopment Agency were for legitimate redevelopment purposes, and therefore such loans as presented shall be deemed an enforceable obligation of the former Pacifica Redevelopment Agency; and

**WHEREAS**, in accordance with the dissolution laws the interest rate is to be recalculated beginning with the origination of the loan, and at the rate earned by the State Treasurer Local Agency Investment Fund (LAIF) at the time the Oversight Board makes its finding the interest; and

**WHEREAS**, the LAIF rate for June 2013 when Resolution No. 2013-4 was adopted was 0.24%; and

**EXHIBIT A - (February 2015) Restated and Amended Resolution****RECORD OF LOANS BETWEEN CITY OF PACIFICA AND  
PACIFICA REDEVELOPMENT AGENCY****(Per authorized ROPS and RPTTF funding available - no repayments will occur prior to 7/1/2015)**

	<b>Origination Date</b>	<b>City Council Resolution Reference</b>	<b>Original Principal Amount Loaned</b>	<b>Unpaid Balance Owed To City</b>	<b>Accrued Interest As of 6/30/2015</b>	<b>6/30/2015 Total Balance - Principal &amp; Interest</b>
<b>1</b>	March 25, 1985		62,150.00	0.00		<b>Paid Off</b>
<b>2</b>	November 25, 1985	Reso 59-85	175,000.00	0.00		<b>Paid Off</b>
<b>3</b>	February 9, 1987	Reso 3-87	300,000.00	0.00		<b>Paid Off</b>
<b>4</b>	March 14, 1988	Reso 17-88	500,000.00	441,185.10	29,833.11	<b>\$471,018.21</b>
<b>5</b>	May 8, 1989	Reso 19-89	475,000.00	475,000.00	30,722.69	<b>\$505,722.69</b>
<b>6</b>	May 14, 1990	Reso 20-90	500,000.00	500,000.00	31,044.17	<b>\$531,044.17</b>
<b>7</b>	April 8, 1991	Reso 9-91	500,000.00	500,000.00	29,898.08	<b>\$529,898.08</b>
<b>8</b>	January 27, 1992	Reso 1-92	250,000.00	250,000.00	14,439.75	<b>\$264,439.75</b>
<b>9</b>	May 24, 1993	Reso 16-93	300,000.00	0.00		<b>Paid Off</b>
<b>10</b>	April 11, 1994	Reso 15-94	175,000.00	175,000.00	9,131.74	<b>\$184,131.74</b>
<b>TOTAL</b>			<b>\$3,237,150.00</b>	<b>\$2,341,185.10</b>	<b>\$145,069.55</b>	<b>\$2,486,254.65</b>