



1 League #62335
Irvine, CA 92602

2022 SECOND ROUND
PERMANENT SUPPORTIVE AND
AFFORDABLE HOUSING
NOTICE OF FUNDING AVAILABILITY
DUE DATE: 5:00 P.M. - DECEMBER 16, 2022

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Section 1 INTRODUCTION

This Second Round 2022 Permanent Supportive and Affordable Housing Notice of Funding Availability (NOFA) announces the availability of seven million, one-hundred thirty-seven thousand, two hundred and five dollars and sixty cents (\$7,137,205.60) in Orange County Housing Finance Trust (OCHFT) (the “Trust”) funds to promote the new construction or acquisition/rehabilitation of Permanent Supportive and Affordable Housing for developments located in the cities of Irvine and Yorba Linda that serve Orange County’s extremely low-income households, and those experiencing homelessness by providing below market rate financing. Interested and qualified developers who can successfully demonstrate their ability to acquire, build or substantially rehabilitate, and operate Permanent Supportive and Affordable Housing are encouraged to submit proposals.

The Orange County Housing Finance Trust has been awarded \$7,137,205.60 by the California Department of Housing and Community Development through the 2022 Local Housing Trust Fund (LHTF) Program. However, this award can only be expended on developments located in the cities of Irvine and Yorba Linda, due to the fact that these two cities were the only cities in Orange County that had an adopted compliant housing element at the time the Trust submitted its 2022 application for the LHTF program.

The NOFA application deadline shall be approximately 25 days after the release of this NOFA. All applications submitted within the NOFA application period shall be reviewed by Trust staff to ensure compliance with all threshold requirements and shall be competitively scored.

The sources of capital funds made available for this NOFA are the following:

1. County Mental Health Services Act	\$3,568,602.80
2. State of California - Local Housing Trust Fund Program.....	\$3,568,602.80
TOTAL	\$7,137,205.60

The Trust reserves the right to increase or decrease the amount in this NOFA at the direction of the Orange County Housing Finance Trust Board.

Section 2 PROGRAM DESCRIPTION

2.01 FUNDS AVAILABLE

Up to five million, seven million, one-hundred thirty-seven thousand, two hundred and five dollars and sixty cents (\$7,137,205.60) is made available from Trust. Of that, three million, five-hundred sixty-eight thousand, six-hundred and two dollars (\$3,568,602.80) is from the Local Housing Trust Fund (LHTF) Program, which requires a local match to receive. An equal amount will be available in Mental Health Services Act (MHSA) funds that can be used as a matching source for the LHTF Program. However, cities have the option (not required) to donate additional non-housing funds (i.e. land, Permanent Local Housing Allocation (PLHA), etc.) to be used in developments in their cities as additional matching funds to maximize the award of LHTF Program funds.

Funding will be made available to projects with MHSA units. However, funds originating from the LHTF program may be used for non-MHSA units within projects receiving MHSA funds through the Trust.

2.02 MENTAL HEALTH SERVICES ACT (MHSA) ALLOCATION

Projects seeking MHSA funds must be reviewed by the Orange County Health Care Agency. Applicants are encouraged to submit their projects to the Health Care Agency, as soon as possible, and must meet with the Health Care Agency no later than December 5, 2022 to initiate the Health Care Agency's review process. More information regarding this requirement can be found in Section 5.10, *Health Care Agency Acknowledgement Letter*.

2.03 ELIGIBLE PROJECTS

Projects eligible under this NOFA must be located within the cities of Irvine and Yorba Linda. Projects must include a minimum of five (5) MHSA units which are assisted under this NOFA and must provide permanent supportive or affordable housing restricted to persons or families who qualify as extremely low income. Proposals must include a plan and eventual funding for the provision of supportive services appropriate to the needs of the designated population, if supportive services are being proposed.

Applicants who are awarded LHTF funds through this NOFA must comply with the State of California Housing and Community Development (HCD) 2017 Uniform Multifamily Regulations (UMR). The 2017 UMR can be found on HCD's website at <https://hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>.

2.04 ELIGIBLE APPLICANTS

Proposals will be accepted from non-profit and for-profit organizations, joint ventures, or partnerships that serve extremely low-income households, and those experiencing homelessness.

2.05 ELIGIBLE ACTIVITIES

Funds shall be used to develop permanent supportive or affordable rental housing through new construction, acquisition/rehabilitation and/or conversion of commercial and light industrial to residential use on a case-by-case basis.

2.06 ELIGIBLE COSTS

Under this NOFA, funds may be used for construction loan financing and/or permanent loan financing. To the extent that all sources of project funding has been secured and are a part of either the construction loan and/or the permanent loan the following costs are eligible: “hard” costs of construction or rehabilitation of housing, “soft” costs associated with acquisition, financing, and/or rehabilitation. “Soft” costs include marketing costs (not to exceed \$1,500 per unit), appraisals, architectural and engineering fees, individual apartment furnishings, certain common area furnishings (not to exceed \$1,000 per unit), building permit fees, credit reports, environmental assessments, impact fees, legal and accounting costs, private lender origination fees, recording fees, surety fees, and title insurance. An overall cost limitation of fourteen percent (14%) of the cost of construction shall apply to contractor overhead, profit, and general requirements, excluding contractor’s general liability insurance. For purposes of contractor overhead and profit, the cost of construction includes site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages.

2.07 AFFORDABILITY COVENANT

Restricted units must remain affordable for the remaining life of the project, which shall be no less than fifty-five (55) years. A restrictive covenant will be recorded against the property to ensure affordability during the term of the agreement. All projects shall be required to agree to maintain the project’s affordability for the term of the restrictive covenant, regardless of whether the loan is fully repaid.

The annual reporting requirements will be outlined in the Regulatory Agreement. Projects receiving funds from the Trust shall report annually certifying that they are in compliance with the occupancy and affordability requirements of the Regulatory Agreement.

Program Compliance shall utilize a two-step monitoring process that provides for monitoring of all affordable housing developments financed with funds from the Trust. Monitoring of each development will occur in two phases: Phase 1: In-house review of annual reports, and Phase 2: Annual on-site monitoring visit, which shall include monitoring of tenant files in accordance with the affordability and income restrictions of the restrictive covenant and a Housing Quality Standards (HQS) inspection.

2.08 LOAN AWARD TERMS & CONDITIONS

Applicants shall agree to the Loan Award Terms and Conditions detailed in this section as part of any funding award. Failure to accept these Loan Award Term and Conditions will result in forfeiture of any funding award.

2.10.1 **Funding Timing:** Loan funds will be made available at the closing of the construction loan and/or closing of the permanent loan and is subject to the timing of HCD final approval of the loan documents. The Trust **will not** bifurcate award funding in order to meet closing dates occurring before HCD’s final approval of the loan documents.

2.10.2 **Interest Rate:** Loans will bear an interest rate of three percent (3%) simple interest. Interest will be calculated based on a 360-day year and the actual number of days elapsed. The Orange County Housing Finance Trust reserves

the right to renegotiate this rate for the benefit of the Trust and the project.

2.10.3 **Term:** Loans will be for a term of fifty-five (55) years, from end of the construction period and conversion to permanent financing, as defined in the loan documents.

2.10.4 **Loan Repayment:** The Trust loan will be repaid through residual receipts. An amount equal to fifty percent (50%) of Net Operating Income (as defined in Section 2.10.5, *Residual Receipts Loans*, below), if any, will be paid to the Trust and other public agencies (if any) providing residual receipts loans, and fifty percent (50%) to the developer. The 50% of cash flow payable to public agencies shall be shared by agencies in an amount proportional to the loan provided by such agencies. The value of non-loan contributions by other agencies (i.e. ground lease, project-based vouchers) shall not be considered as part of the loan value when calculating the Trust's share of the residual receipts split.

2.10.5 **Residual Receipts Loans:** The following is the definition of a residual receipts loan, which will be used by the Trust to underwrite projects:

The loan for the project will be repaid from the Net Operating Income (NOI), if any, from the project as calculated ninety (90) days after the close of each fiscal year. NOI shall mean all of the rental revenue from the residential portion of the project (the "Annual Project Revenue") less (i) operating expenses of the project as approved by the Trust (the "Annual Operating Expenses") in an annual audit submitted by the developer and approved by the Trust; (ii) obligated debt service payments on the Project as approved by the Trust; (iii) scheduled deposits to reserves, as approved by the Trust; (iv) deferred developer fees, as approved by the Trust; and (v) partnership management or asset management fees as approved by the Trust.

Annual Project Revenue shall not include tenant security deposits, capital contributions, insurance or condemnation proceeds, income received for the purpose of completing the project, or funding received for the purpose of social services to the residents.

By applying to this NOFA, Applicant understands and agrees to the definitions stated above and must use these assumptions in the further underwriting of their project.

Exclusions to NOI: It is the policy of the Trust that the following costs, fees, charges, penalties, judgments and the like shall not be deducted from the Annual Project Revenue by the developer thereby reducing the amount of NOI available to pay the Trust's loan, including those arising out of: (i) a breach or default of the Trust's loan or any other mortgage loan on the project, (ii) the fraud, negligence or willful misconduct of developer, (iii) the failure to make timely payments under any loan secured by the project, (iv) the breach or default by developer under any other contract, lease or agreement pertaining to the project; and (v) any other cost, expense, fee or the like which is not first

approved by the Trust. The approved Operating Expenses of the project shall also not include other expenses such as intra-partnership or other internal loans of the operating entity, depreciation, amortization, accrued principal and interest expense on the deferred payment debt and capital improvement expenditures unless approved by the Trust.

2.10.6 **Security:** The loan shall be evidenced by a promissory note and secured by a deed of trust.

2.10.7 **Subordination:** The Orange County Housing Finance Trust may, at its sole discretion, subordinate repayment, security positions, and affordability covenants to a conventional lender or other public agency lenders such as the State of California HCD, County of Orange, city loans, and CalHFA or AHP loans.

2.09 MAXIMUM LOAN AMOUNT/SUBSIDY LIMITS

The maximum loan/subsidy amounts shall be calculated on the basis of the number of units assisted by the Trust and shall vary by unit size. However, in no case shall the Trust’s investment in a single development exceed two-million five-hundred thousand dollars (\$2,500,000). This cap may be waived at the sole discretion of the Trust Board. Final award amounts shall be at the discretion of the Trust Board. The maximum unit subsidy limits are shown below:

Unit Size	Maximum Loan Amount	
	Non-MHSA Units	MHSA Units
0 Bedroom	\$110,000	\$177,145
1 Bedroom	\$125,000	\$177,145
2 Bedroom or larger	\$135,000	\$177,145

Under no circumstances may a development exceed a total MHSA subsidy per unit regardless of sources of MHSA funds. In the event that a project has already been awarded the maximum loan amount per unit in MHSA funds, that project will not be eligible for additional MHSA funds from the Trust. If a project has received an award of MHSA funds less than the maximum loan amount per unit, the applicant may apply for additional MHSA funds to bring their total award up to the maximum loan amount per unit.

2.10 DEVELOPER FEE LIMIT

The maximum Developer Fee shall be the same as the maximum allowed under the State Tax Credit Allocation Committee regulations for those projects that have been or will be awarded Low-Income Housing Tax Credits, as adopted at the time this NOFA was issued. For projects not receiving Low-Income Housing Tax Credits, the maximum Developer Fee shall be the same as the maximum allowed under the State of California Housing and Community Development 2017 Uniform Multifamily Regulations.

2.11 NOFA SCHEDULE MILESTONES

The Orange County Housing Finance Trust is committed to helping Permanent Supportive and Affordable Housing units be occupied as quickly as possible. The Trust will strive to meet the

following milestones:

1. NOFA Issuance – November 28, 2022
2. Health Care Agency Meeting Deadline – December 5, 2022 (make sure to schedule this with the HCA at least one week prior to the deadline).
3. Applications Deadline – December 16, 2022, 5:00pm
4. Application Review Committee meeting December 2022
5. Trust Board Meeting and approval of NOFA awards – January 18, 2023

2.12 APPLICATION REVIEW COMMITTEE

After the close of the NOFA application period, the Orange County Housing Finance Trust will convene an Application Review Committee to review and score the applications. The Application review Committee may include:

- OCHFT's financial consultant
- County Health Care Agency Staff Member
- OCHFT Manager
- County of Orange Affordable Housing Development Manager
- Private sector representative with experience in homelessness

2.13 FORM OF LOAN DOCUMENTS

The Orange County Housing Finance Trust's standard loan document is included with this NOFA as Attachment A. These loan documents will be modified and negotiated on a project by project basis.

Section 3 THRESHOLD REQUIREMENTS

3.01 COORDINATED ENTRY SYSTEM

To be eligible to live in units assisted with Orange County Housing Finance Trust funding through this NOFA, each potential tenant must be referred by and go through the County of Orange Coordinated Entry System (a process developed to ensure that a fair and equal access to housing are quickly identified, assessed for, referred, and connected to housing and assistance based on their strengths and needs). Trust funded units shall not have additional residency restrictions placed on tenancy by local municipalities.

3.02 INCOME LIMITS

All units assisted with Orange County Housing Finance Trust funding through this NOFA will be required to be restricted to households whose income does not exceed Thirty Percent (30%) Area Median Income, as adjusted for household size with rents that are affordable to such households. Utility costs shall be deducted from the tenants rent so that rent and utilities combined remain at an affordable level. Projects receiving funding through the California Department of Housing and Community Development's (HCD's) Local Housing Trust Fund Program must meet the income limits as published by HCD (<https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/Income-Limits-2021.pdf>).

3.03 SUPPORTIVE SERVICES

MHSA units funded by the Trust shall include supportive services to ensure the maximum possible self-sufficiency by the tenants. Applicants must meet with the Orange County Health Care Agency prior to December 5th, 2022 to ensure the project meets all of the requirements for MHSA funding. Requirements for submission to the Health Care Agency can be found in Attachment B. See Attachment C – Mental Health Services Act Funding Term Sheet for loan terms and conditions applicable to all MHSA funded units.

For projects not applying for MHSA funds through this NOFA, a Social Services Plan and budget is required to document anticipated services that will be provided for all other supportive and non-supportive units in the proposed project. This Social Services Plan shall identify a lead service provider and other service providers who will be working with residents. A list of services should be included for each population that will be served at the property.

3.04 RESERVES

Projects funded by the Trust shall include a Capitalized Operating Reserve. Projects that have project-based rental assistance, such as Project Based Section 8 or Veterans Affairs Supportive Housing (VASH) Vouchers, may forego the Capitalized Operating Reserve. The Capitalized Operating Reserve shall provide for the ongoing operation and maintenance of the project and the provision of required supportive services throughout the term of the of the loan agreement.

In addition to the Capitalized Operating Reserve, projects shall provide for a Replacement Reserve to cover replacement of capitalized cost items. Projects requesting MHSA funds through the Trust shall provide Replacement Reserves at no less than \$500/unit/year, increasing 5% every five years.

3.05 COMPLIANCE MONITORING FEE

The Orange County Housing Finance Trust shall charge all projects an annual compliance

monitoring fee of \$103 per unit per year, increasing annually in accordance with the Consumer Price Index for Los Angeles – Anaheim – Riverside (All Urban Consumers – All Items) (CPI).

3.06 FINANCIAL COMMITMENTS

Projects must have all financing committed within 18 months of the Trust’s award letter or risk losing their project funding. The Trust reserves the right to extend this time limit at its sole discretion.

3.07 UNDERWRITING ASSUMPTIONS

The Orange County Housing Finance Trust has developed a set of underwriting assumptions to evaluate the financial feasibility of each project. These underwriting assumptions are based on the requirements of the Trust’s funding sources and industry best practices. The underwriting assumptions can be found in Attachment D. Applicants are encouraged to use these underwriting assumptions in their project proforma that will be submitted as part of their application to this NOFA. Further underwriting requirements are contained in the California Department of Housing and Community Development Uniform Multifamily Regulations located at <https://hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>

Section 4 SCORING

Applications will be competitively scored and ranked. Scoring serves as a basis to compare applications but ultimately the decision to award funds is based upon the Trust Board approval.

Project scoring shall be based on the following categories:

1. Project readiness;
2. Developer experience; and,
3. Service enriched location.

Projects that have identical scores based on the project scoring will be ranked by a tie-breaker detailed below in Section 4.04, *Tiebreaker*.

4.01 PROJECT READINESS

Projects shall be scored on how quickly they will have units ready for occupancy. Projects will receive a maximum of 35 points for project readiness. For acquisition/rehab projects, projects will be deducted one point for each month past June 1, 2023 for its scheduled loan closing. For new construction projects, projects will be deducted one point for each month past December 1, 2023 for its scheduled loan closing.

4.02 DEVELOPER EXPERIENCE & FINANCIAL STRENGTH

A maximum of 40 points will be available for applicants based on their prior development experience and financial strength. One point will be awarded for every ten (10) units of Permanent Supportive and Affordable Housing that the applicant developed and currently operates. Discretionary scoring may adjust this number downward based upon the financial strength of the applicant.

4.03 SERVICE ENRICHED LOCATION

Projects will be awarded a maximum of 25 points based on proximity to nearby amenities. Distances must be measured using a standardized radius from the development site to the target amenity, unless that line crosses a significant physical barrier or barriers. Such barriers include highways, railroad tracks, regional parks, golf courses, or any other feature that significantly disrupts the pedestrian walking pattern between the development site and the amenity. The radius line may be struck from the corner of development site nearest the target amenity, to the nearest corner of the target amenity site. However, a radius line shall not be struck from the end of an entry drive or on-site access road that extends from the central portion of the site itself by 250 feet or more. Rather, the line shall be struck from the nearest corner of the site's central portion. Where an amenity such as a grocery store resides within a larger shopping complex or commercial strip, the radius line must be measured to the amenity exterior wall, rather than the site boundary. The resulting distance shall be reduced in such instances by 250 feet to account for close-in parking.

Amenity definitions and criteria mentioned below shall have the same definition as the California Tax Credit Allocation Committee Regulations in effect at the time this NOFA was issued.

- 4** <https://www.treasurer.ca.gov/ctcac/programreg/2022/20220720/2022-Regulations.pdf>**Grocery Store**

Projects will be awarded 5 points if they are within 0.25 miles of a full-scale grocery store. Projects will be awarded 2 points if they are within 0.50 miles of a grocery store.

4.03.2 Medical Care

Projects will be awarded 5 points if they are within 0.5 miles of a hospital. Projects will be awarded 3 points if they are within 0.5 miles of an urgent care facility or qualifying medical clinic with a physician, physician's assistant, or nurse practitioner onsite for a minimum of 40 hours each week (not merely a private doctor's office). A qualifying medical clinic must accept Medi-Cal payments, or Medicare payments or have an equally comprehensive subsidy program for low-income patients.

4.03.3 Community Center

Projects will be awarded 5 points if they are within 0.5 miles of a public library or community center that is open at least 5 days a week to the general public.

4.03.4 Public Park

Projects will be awarded 5 points if they are within 0.5 miles of a public park.

4.03.5 Transit

Projects will be awarded 5 points if they are within 0.5 miles of a bus station, or bus stop that provides service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday. If frequency and hours cannot be met but the project is still within 0.5 miles, 3 points will be awarded.

4.04 DEVELOPMENT PIPELINE

Projects will be awarded 10 points if they are included on the Trust's Development Pipeline no later than November 1, 2022. New projects can be added to the Trust's Development Pipeline at any time on the Trust's website at <https://ochft.org/development-pipeline>. Applicants do not need to show evidence of project inclusion on the Trust's Development Pipeline as part of their application.

4.05 AFFIRMATIVELY FURTHERING FAIR HOUSING

Projects will be awarded 8 points if they are located in a High or Highest Resource area designated on the 2022 TCAC/HCD Opportunity Area Map (<https://belonging.berkeley.edu/2022-tcac-opportunity-map>).

4.06 TIE BREAKER

Projects receiving identical scores based on the project scoring will be ranked based on a tie breaker. The tie breaker is intended to determine the efficiency of each project's use of Trust funds. The tie breaker is a calculation of the requested Trust loan amount per unit in the project. (Total project request / total number of affordable units in the project = Trust dollars/unit.) The total number of affordable units in the project includes all affordable units, not limited to the number of units the applicant is requesting be funded through this NOFA. If a project includes multiple phases, the total number of affordable units in the project shall only include the number of units being proposed as part of the phase of the project that is being considered as part of the application to this NOFA.

Section 5 APPLICATION

This NOFA has an online application that is available at (<https://forms.gle/UXceq5oNkLaBkBch6>). Applications must be submitted through this website no later than 5:00pm, December 16, 2022. All submissions will be automatically date and time stamped. The application will consist of several parts, which are described below.

The online application form cannot be saved as a work-in-progress, and can only be saved once fully complete. A copy of the entire application form is provided as Attachment E to this NOFA.

5.01 GENERAL APPLICATION FORM

The General Application Form includes basic information about the project and the applicant. Project information will include project name, address, and type of project. Applicant information will include the applicant name, contact information, and the legal structure of the applicant.

5.02 PROJECT NARRATIVE

A narrative description of the project is required. The project narrative must include:

1. The purpose and the scope of the project.
2. Identify the neighborhood the project will serve.
3. Summarize the condition of the housing stock in the neighborhood.
4. Document neighborhood services (public transportation, schools, shopping, etc.)
5. Discuss the process and timing to receive entitlement approvals.

The project's narrative description will be submitted as a long-form text entry field in the online application form. There is no specific character limit for this text entry field, however applicants are encouraged to be concise and brief in describing the project.

5.03 PROJECT VICINITY MAP

A map showing the project site is required. The map should clearly show the project site boundaries and the surrounding neighborhood. In addition, the vicinity map must clearly show all service enriched amenities for which the applicant is seeking points for project scoring. The map should include the project boundary and numbered location markers showing the location of each amenity being used as part of the project scoring points calculation. In the map legend, include the name of each amenity and its corresponding numbered location marker, as well as the distance from the project site to the amenity. In addition to the one-page map, the applicant shall provide a schedule for any transit amenities being claimed as part of the project scoring. The file size for the PDF is limited to 100 megabytes.

5.04 PROJECT PROFORMA

The Orange County Housing Finance Trust will provide all applicants with a blank project proforma in Excel for them to fill out and submit as part of their application. The project proforma must be submitted in an Excel format.

In the event that the project proforma does not show any repayment of the Trust's loan within the first fifteen years of project operation, a 55-year cashflow project will need to be included as part of the project proforma.

5.05 FINANCIAL NOTES AND ASSUMPTIONS

Provide a brief narrative regarding each of the expected funding sources and their expected timing and other details indicating likelihood of award.

The project's financial notes and assumptions will be submitted as a long-form text entry field in the online application form. There is no specific character limit for this text entry field, however applicants are encouraged to be concise and brief in detailing their financial assumptions. Any and all residual receipts assumptions must include the criteria listed in 2.10.5.

5.06 PROJECT SCHEDULE

Provide a project schedule that includes funding milestones (anticipated application and award dates for all other funding sources), anticipated construction loan closing date, construction duration, and anticipated placed in service date.

The project schedule will be accepted as a PDF. The file size for the PDF is limited to 10 megabytes.

5.07 DEVELOPMENT TEAM MEMBERS

Provide the name, address, contact person, telephone number, e-mail address, and resumes for members of the proposed project team. Include the developer principals and project manager, architect, civil engineer, contractor, and social services provider (if applicable).

The list of development team members and their resumes will be accepted as a PDF. Limit the resume of each team member to two pages each. Please exclude any marketing material from all team members. The file size for the PDF is limited to 100 megabytes.

5.08 APPLICANT EXPERIENCE

Provide a brief description of the applicant's experience developing the type of housing that is being proposed.

The applicant's experience will be submitted as a long-form text entry field in the online application form. There is no specific character limit for this text entry field, however applicants are encouraged to be concise and brief in detailing their experience.

5.09 APPLICANT FINANCIAL STRENGTH

Provide the most recent audited financial statements and a schedule of real estate owned. A template for the schedule of real estate owned is provided on the Orange County Housing Finance Trust's website at <https://ochft.org/2022-notice-of-funding-availability>, other formats that include similar information will be accepted.

The audited financial statements and schedule of real estate owned will be submitted as separate PDFs. The file size for each PDF is limited to 100 megabytes.

5.10 HEALTH CARE AGENCY ACKNOWLEDGEMENT LETTER

Applicants seeking MHSA funding for their project must submit the project to the Orange County Health Care Agency and meet with them prior to December 5th, 2022 to be considered for this NOFA.

The Health Care Agency requirements for submission are included as Attachment B. The Health Care Agency will provide the applicant with a letter of acknowledgement that they are working with the applicant to develop a Social Service Plan and that the project meets the requirements for MHSA funding.

The Health Care Agency Acknowledgement Letter will be uploaded as a PDF through the application form. The size of the PDF is limited to 10 megabytes.

5.11 SOCIAL SERVICES PLAN

All applications shall include a Social Services Plan demonstrating how social services appropriate to the needs of the residents will be provided. The Plan shall include provisions specified in Section 3.03 of this NOFA and provide a description of the proposed social services to be provided, including:

- Target Population
- Types of Services to be provided
- Agency which will provide the services and their experience
- Location of the services (on or off-site, and if off-site, where and provide travel plan for clients)
- Proposed source of funding for services
- Status of funding for services
- Any fees to be charged for services

The Social Services Plan should address all populations that will reside in the proposed project. The applicant and the Orange County Health Care Agency will work together to develop a Social Services Plan for MHSA units funded through this NOFA. That portion of the Social Services Plan does not need to be included in this NOFA application, as long as the Health Care Agency has provided an Acknowledgement Letter in accordance with 5.10, *Health Care Agency Acknowledgement Letter*Health Care Agency Acknowledgement Letter.

All applicants must identify a qualified service provider that will provide supportive services to the residents occupying units assisted under this NOFA. For MHSA units funded through this NOFA, the Orange County Health Care Agency shall be the service provider, and will develop the Social Services Plan for those units with the applicant. The applicant will be required to arrange for the provision of supportive services for the term of the assistance provided under this NOFA.

The social services plan will be uploaded as a PDF through the application form. The size of the PDF is limited to 100 megabytes.

5.12 SOCIAL SERVICES OPERATING BUDGET

If the applicant is proposing to fund services for the people experiencing homelessness through project revenues, or a funding source that is specific to the project, provide a budget for the social services. A budget is not required where services are proposed to be provided by third party agencies from existing revenue sources.

The social services operating budget will be uploaded as a PDF through the application form. The size of the PDF is limited to 10 megabytes.

5.13 LEVINE ACT STATEMENT

An authorized agent of the applicant must review and execute the Levine Act Statement (Attachment E).

The Levine Act Statement will be uploaded as a PDF through the application form. The size of the PDF is limited to 10 megabytes.

ATTACHMENT A LOAN DOCUMENT TEMPLATE

LOAN AGREEMENT

BY AND BETWEEN

ORANGE COUNTY HOUSING FINANCE TRUST,

**a California public agency formed pursuant to California Government Code section
6500 et. seq**

AND

BORROWER

LOAN AGREEMENT

THIS LOAN AGREEMENT ("the **Agreement**") is entered into as of this _____ day of _____, 20[XX], by and between the ORANGE COUNTY HOUSING FINANCE TRUST, a California public agency formed pursuant to California Government Code section 6500 *et. seq.* ("**OCHFT**" or the "**Trust**"), and [BORROWER] ("**Borrower**"), with reference to the following:

RECITALS

1. Borrower intends to construct a housing project on that certain real property located within [unincorporated/the City of [XXXXX]], County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "**Property**"). The Borrower further intends to operate a [number of units] ([XX]) unit residential development consisting of [insert facts] which shall be constructed by Borrower on the Property (collectively, the "**Project**").

2. The Borrower has submitted to the Trust an application for funding of a project, described herein, under its 20[XX] Permanent Supportive Housing Notice of Funding Availability ("**20[XX] PSH NOFA**").

3. The Trust desires to provide a loan during the construction period (which will convert to a permanent loan upon completion of construction of the Project, as set forth herein) to Borrower subject to the Borrower's agreement, amongst other things, to encumber the Borrower's [fee simple/leasehold] interest in the Property with certain rental restrictions, all as more particularly set forth in this Loan Agreement and the Regulatory Agreement.

4. The Trust Board of Directors approved a loan to the Borrower from Trust funds for permanent financing on [DATE].

5. Borrower is financing the construction of the improvements and related costs and expenses through the following sources:

[FINANCING SOURCES TO BE OUTLINED FORTHWITH]

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the respective meanings assigned to them in this Article I unless the context in which they are used clearly requires otherwise:

- 1.1. **"20[XX] PSH NOFA"** shall mean the 20[XX] XXXXX Notice of Funding Availability issued by the Trust on [DATE].
- 1.2. **"Adjusted Income"** shall mean the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner which complies with determinations of income for low income families under the Department of Housing and Urban Development's Section 8 Program of the United States Housing Act of 1937, as amended.
- 1.3. **"Agreement"** shall mean this Loan Agreement.
- 1.4. **"Annual Project Revenue"** shall mean all of the rental revenue from the residential portion of the project but shall not include tenant security deposits, capital contributions, insurance or condemnation proceeds, income received for the purpose of completing the project, or funding received for the purpose of social services to the residents.
- 1.5. **"Architect"** shall mean [NAME OF ARCHITECT], or any other architect designated by Borrower and approved by Trust, which approval shall not be unreasonably withheld conditioned or delayed, as the architect for the Project.
- 1.6. **"Architect's Agreement"** shall have the meaning as set forth in Section 3.4, hereafter, in which the Borrower has entered into with the Architect.
- 1.7. **"Area"** shall mean Orange County, California.
- 1.8. **"Assignment of Leases"** shall mean that certain Assignment of Lessor's Interest in Leases, Rents and Profits executed by Borrower of even date herewith.
- 1.9. **"Borrower"** shall mean [NAME OF BORROWER]
- 1.10. **"Close of Escrow"** shall mean the date on which the Loan is funded by the Trust through the Escrow Holder and the Deed of Trust together with the other Loan Documents set up for recording are in fact recorded.
- 1.11. **"Code"** shall mean the Internal Revenue Code of 1986, as amended from time to time hereafter, or any successor statute thereto.
- 1.12. **"Commencement of Construction"** shall mean the date upon which the Senior Construction Deed of Trust is fully executed and recorded as a lien upon the Property.
- 1.13. **"Completion of Construction"** shall mean the date on which the Borrower has submitted to the Trust and the Trust has approved the recorded Notice of Completion and the final certificate of occupancy or jurisdictional equivalent,

and shall, among other things (as set forth in Article VI, herein) be deemed the commencement of the Qualified Project Period, as defined hereafter.

- 1.14. **"Construction Agreement"** shall have the meaning as set forth in Section 3.3, hereafter, in which the Borrower has entered into with the Contractor.
- 1.15. **"Construction Period"** shall mean the period beginning with the Commencement of Construction and ending upon the Completion of Construction, which is estimated to last no more than [number of years] ([X]) years.
- 1.16. **"Contractor"** shall mean [NAME OF CONTRACTOR], or any other contractor designated by Borrower and approved by Trust, which approval shall not be unreasonably withheld conditioned or delayed, as the contractor for the Project.
- 1.17. **"Conversion Date"** shall mean the date on which the Construction Period shall end and the Qualified Project Period shall begin, on this date the County's construction loan shall convert to a permanent loan as long as all of the conditions set forth in Article VI of this Agreement are fulfilled.
- 1.18. **"Deed of Trust"** shall mean that certain Deed of Trust, Assignment of Rents and Security Agreement executed by the Borrower in favor of the Trust of even date herewith.
- 1.19. **"Due Date"** shall mean the date which is fifty-five (55) years following the Conversion Date, on which all principal and interest due on the Loan shall be fully paid.
- 1.20. **"Escrow Holder"** shall mean the escrowholder approved by the Trust for the escrow established to facilitate the Close of Escrow.
- 1.21. **"Extremely Low Income Households"** shall mean persons and families whose incomes do not exceed the qualifying limits for extremely low income families as defined in and California Health & Safety Code section 50106.
- 1.22. **"Financing Plan"** shall mean the financing plan described in Section 5.1 below.
- 1.23. **"Financing Statement"** shall mean the UCC-1 form to be prepared and executed by Borrower, in a form satisfactory to the Trust, and delivered to the Trust, the filing of which shall give the Trust a perfected security interest in Borrower's tangible personal property and fixtures located on or about the Project.
- 1.24. **"Hazardous Materials"** or **"hazardous materials"** shall mean:
 - (a) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that:
 - (i) poses a hazard to the Project or to persons on the Project or

- (ii) causes the Project to be in violation of any Hazardous Substance Law;
- (b) asbestos in any form;
- (c) urea formaldehyde foam insulation;
- (d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls;
- (e) radon gas;
- (f) any chemical, material, or substance defined as or included in the definition of “hazardous substance,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, Code of Civil Procedure § 564, as amended from time to time, Code of Civil Procedure § 726.5, as amended from time to time, Code of Civil Procedure § 736, as amended from time to time, and Civil Code § 2929.5, as amended from time to time;
- (g) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project, or any other person coming on the Project or any adjacent property; and
- (h) any other chemical, material, or substance that may pose a hazard to the environment flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including, without limitation the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq., as amended.

1.25. **"Hazardous Substance Law"** means any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Project, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [Health and Safety Code §§ 25300 et seq.], as amended from time

to time; the Hazardous Waste Control Law [Health and Safety Code §§ 25100 et seq.], as amended from time to time; the Medical Waste Management Act [Health and Safety Code §§ 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], as amended from time to time.

- 1.26. **"HCD"** shall mean the California Department of Housing and Community Development.
- 1.27. **"Loan"** shall mean the Loan in the amount of **[LOAN AMOUNT]** (**\$XXXXXX**) by the Trust to the Borrower, which Loan is the subject of this Agreement.
- 1.28. **"Loan Documents"** shall mean the following documents evidencing the Loan:
(a) the Note; (b) the Deed of Trust; (c) the Financing Statement; (d) the Regulatory Agreement; (e) Request for Notice of Default; (f) the Assignment of Rents and Leases; and (g) this Loan Agreement.
- 1.29. **"Local Housing Trust Fund Program" or "LHTF Program"** shall mean the Local Housing Trust Fund Matching Grant Program as defined in California Health and Safety Code Sections 50842.1 through 50843.5, administered through the California Department of Housing and Community Development.
- 1.30. **"Lower Income Households"** shall mean persons and families whose income does not exceed the qualifying limits for lower income families as defined in California Health & Safety Code section 50079.5.
- 1.31. **"Management Plan"** shall mean that management plan submitted to and approved by the Trust pursuant to Section 5.1 below.
- 1.32. **"Marketing Plan"** shall mean that certain Marketing Plan submitted to and approved by the Trust pursuant to Section 9.8 hereof.
- 1.33. **"Median Income for the Area"** shall mean the median income for the Area as most recently determined by the United States Department of Housing and Urban Development ("HUD") and published by the State of California. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Trust shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and The Department of Housing and Community Development.
- 1.34. **"Mortgage Loan"** shall mean any of the following loans secured by a mortgage or deed of trust on the Project:
 - (a) The Loan evidenced by the Note and the balance of the Loan Documents.
 - (b) Any other loan secured by a mortgage or deed of trust on the Project, either senior or junior to the Loan.

- 1.35. **"Mortgage Loan Documents"** shall mean all documents executed by the Borrower endorsing or securing a Mortgage Loan.
- 1.36. **"Mortgagee"** shall mean the mortgagee or beneficiary under a mortgage or a deed of trust executed in connection with a Mortgage Loan.
- 1.37. **"Net Operating Income" or "NOI"** shall mean all of the Annual Project Revenue of the project less (i) operating expenses of the project as approved by the Trust in an annual audit submitted by the Borrower and approved by the Trust; (ii) obligated debt service payments on the Project as approved by the Trust; (iii) scheduled deposits to reserves, as approved by the Trust; (iv) deferred developer fees, as approved by the Trust; and (v) partnership management or asset management fees as approved by the Trust.
- 1.38. **"Note"** shall mean the promissory note in the principal amount of Loan evidencing the monies borrowed by Borrower from the Trust.
- 1.39. **"Operating Reserves"** shall mean reserves maintained during the Qualified Project period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for taxes and assessments, insurance premiums, operating expenses, and debt service. Projects that have project-based rental assistance, such as Project Based Section 8 Vouchers, may forego the Capitalized Operating Reserve. The Capitalized Operating Reserve shall provide for the ongoing operation and maintenance of the project and the provision of required supportive services throughout the term of the of the loan agreement.
- 1.40. **"Parties"** shall mean the Trust and the Borrower.
- 1.41. **"Partnership"** shall mean [NAME OF PARTNERSHIP CREATED, IF ANY].
- 1.42. **"Permanent Lender"** shall mean the permanent lender designated by Borrower and approved in advance by the Trust as the Permanent Lender for the Project.
- 1.43. **"Permanent Term"** shall mean the period beginning on the Conversion Date and ending on the date that is fifty-five (55) years after the Conversion Date.
- 1.44. **"Persons and families of low or moderate income"** shall mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size as further defined in California Health & Safety Code section 50093.
- 1.45. **"Plans and Specifications"** shall mean the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street and utility plans and specifications for the Project, including all supplemental, amendments and modifications.
- 1.46. **"Project"** means collectively the Property and the structures and related buildings and other improvements now or hereafter located on the Property from time to time together with all fixtures and other property owned by the Borrower

and located on, or used in connection with, such buildings, structures and other improvements.

- 1.47. **"Property"** means the real property legally described on Exhibit "A", which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.
- 1.48. **"Qualified Project Period"** shall mean the period beginning upon the Conversion Date and ending on the date which is fifty-five (55) years after the Conversion Date.
- 1.49. **"Qualified Tenant"** or **"Qualified Tenants"** shall collectively mean the individual or individuals occupying the Restricted Units with the Adjusted Incomes more particularly described in Exhibit "B" attached hereto and incorporated herein. The income of individuals shall be determined in a manner consistent with determinations of lower income households under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). In no event, however, will the occupant of a Restricted Unit be considered to be a Qualified Tenant if the occupant is a student, and is not entitled to file a federal income tax return.
- 1.50. **"Regulations"** shall mean the Income Tax Regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.
- 1.51. **"Regulatory Agreement"** shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants between the Trust and the Borrower of even date herewith.
- 1.52. **"Replacement Reserves"** shall mean reserves maintained during the Qualified Project period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for replacement of roofing, furniture, fixtures, equipment and other capital expenditures. The annual amount set aside shall provide for a Replacement Reserve to cover replacement of capitalized cost items at no less than three hundred and fifty dollars (\$350) per unit per year, or such higher amount as may be required by a tax credit investor or senior Mortgagee and approved by Trust.
- 1.53. **"Request for Notice of Default"** shall mean a request for notice of default to be recorded against the Property in a form approved by the Trust.
- 1.54. **"Residual Receipts"** shall mean Net Operating Income (NOI), if any, from the project as calculated ninety (90) days after the close of each fiscal year, a portion of which shall be used to repay the Loan (as required under the Loan Documents) and other subordinated loans to the Borrower.
- 1.55. **"Restricted Unit"** or **"Restricted Units"** means the dwelling units in the Project identified on Exhibit "B" attached hereto and incorporated herein required to be rented to, or held available for occupancy by, Qualified Tenants pursuant to the

terms, covenants and conditions of the Regulatory Agreement, this Agreement, including, but not limited to, the rental restrictions and other matters set forth in said Exhibit "B" and the other Loan Documents.

- 1.56. **"Tax Credit Investor"** shall mean the tax credit investor designated by Borrower and approved in advance by the Trust as the Tax Credit Investor for the Project.
- 1.57. **"Term"** shall mean the Construction Period, and the Permanent Term, as applicable, for a total possible term of up to fifty-eight (58) years
- 1.58. **"Trust"** shall mean the Orange County Housing Finance Trust, a California public agency formed pursuant to California Government Code section 6500 et. seq.
- 1.59. **"Trust Manager"** shall mean the Orange County Housing Finance Trust Manager or her or his designee.
- 1.60. **"Underwriting Standards"** shall mean those standards approved by the California Department of Housing and Community Development for this loan.

"Very Low Income Households" shall mean persons and families whose incomes do not exceed the qualifying limits for very low income families as defined in California Health & Safety Code section 50105.

ARTICLE II

LOAN

- 2.1. Amount. Subject to the terms of this Agreement, the Trust hereby agrees to lend and the Borrower hereby agrees to borrow, the Loan, evidenced by the Note, the proceeds of which shall be used for construction of the Project and upon fulfillment of certain conditions, as set forth herein, to permanently finance the Project and for the other purposes set forth herein.
- 2.2. Repayment of Loan. Borrower shall repay the Loan, with interest, in accordance with the provisions of the Note and this Agreement. Except as otherwise provided, all payments shall be applied first to interest and then to principal.

In the event that the Trust is dissolved prior to full repayment of the Loan, Borrower shall repay the loan portion comprised of the LHFT Program Funds to HCD.

- 2.3. Prepayment. Borrower may pay the principal and any interest due the Trust under the Note prior to or in advance of the time for payment thereof as provided in the Note, without penalty; provided, however, that Borrower acknowledges the provisions of this Agreement and the Regulatory Agreement will be applicable to the Project throughout the Qualified Project Period, even though Borrower may have prepaid the Note.

- 2.4. Assumption. Subject to the provisions of Section 8.7 hereof, the Note shall not be assumable by successors and assigns of Borrower, either voluntarily or by operation of law, without the prior written discretionary consent of the Trust and any such assignment or assumption without said prior consent of the Trust shall be void.
- 2.5. Loan Disbursement. Upon satisfaction of the conditions to disbursement set forth in Section 5.1 below and pursuant to the disbursement procedures set forth in Section 5.2 below, the Trust, through the approved Escrow Holder, will cause the disbursement of the Loan as provided for in Section 5.2.
- 2.6. Security for Loan. The Loan shall be secured by the Deed of Trust, Regulatory Agreement, the Financing Statement, Assignment of Leases and the Request for Notice of Default which shall be in [XXXXXX] priority during the Construction Period and in [XXXXXX] priority during the Qualified Project Period.
- 2.7. Approval of Additional Financing. Except as to the Senior Construction/Permanent Deed of Trust and as otherwise described herein, the Borrower shall not place or permit (either voluntarily or involuntarily) to be placed any encumbrances, including, but not limited to any additional liens or financing of any kind on the Project without the prior written discretionary consent of the Trust.
- 2.8. Subordination of Deed of Trust.
- (a) Construction Period. Upon Commencement of Construction, and until the beginning of the Qualified Project Period (as long as the conditions set forth in Article VI, herein, are fulfilled), the Trust agrees that the Deed of Trust may be subordinate to the lien of a permanent loan secured by the Senior Construction/Permanent Deed of Trust (and any refinancing of said construction loan secured by that Senior Construction/Permanent Deed of Trust) securing financing in an amount not to exceed \$[XXXXXXXX] so long as (i) the documentation for said loan is approved by the Trust, (ii) said loan is otherwise provided for and approved by the Trust in the Financing Plan and (iii) the maximum draw on said loan shall not exceed \$[XXXXXXXX] without the prior written consent of the Trust.
- (b) Qualified Project Period. During the Qualified Project Period, as long as the conditions set forth in Article VI, herein, are fulfilled and the Conversion Date, in addition to the subordination provided for in Section 2.8, the Trust agrees that the Deed of Trust may be subordinate to the lien of: a permanent loan secured by the Senior Construction/Permanent Deed of Trust (and any refinancing of said permanent loan secured by that Senior Construction/Permanent Deed of Trust) securing financing in an amount not to exceed \$[XXXXXXXX] so long as (i) the documentation for said loan is approved by the Trust and (ii) said loan is otherwise provided for and approved by the Trust in the Financing Plan.
- (c) The Trust has approved the [Senior financing], as set forth hereinabove, each to which the Trust Deed of Trust is subordinate, [as well as the [junior

financing,] Tax Credit Equity and the Deferred Developer Fee.] Any other financing, refinancing or encumbrance of the Project is prohibited without the Trust's prior written consent which consent the Trust may withhold in the exercise of its discretion.

- (d) In order to affect the subordinations described above and elsewhere in this Agreement, the Trust and Borrower agree to execute and acknowledge for recordation a subordination agreement (in a form acceptable to the Trust) in favor of the senior lender, as requested by such senior lender.

ARTICLE III

CONSTRUCTION

- 3.1. Construction. Borrower will diligently proceed with construction of the Project and related improvements in accordance with the Plans and Specifications as approved by the Trust and the construction lender without delay subsequent to the Commencement of Construction. It is anticipated that the Construction Period shall be no more than [number of months] (X) months from Commencement of Construction.
- 3.2. Force Majeure. The time within which construction of the Project must be completed may be extended for a period of time equal to the period of any delay directly affecting construction which is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot insurrection or governmental regulation of the sale or transportation of materials, supplies or labor; **provided however**, that (i) Borrower shall furnish to Trust written notice satisfactory to Trust evidencing any such delay within ten (10) business days from the occurrence of any such delay, and (ii) the delay shall in no event cause an event of default beyond any applicable notice and cure period under, or threaten the availability of, the other construction funding or permanent funding for the Project.
- 3.3. Construction Agreement. Borrower and Contractor have entered, or will soon enter into a Construction Agreement, as approved by the Trust, pursuant to the terms and conditions of which Contractor is to construct the Project. Borrower shall require Contractor to perform in accordance with the terms of the Construction Agreement and, except with respect to change orders approved under Section 3.5 below, shall not amend, modify or alter the responsibilities of Contractor under the Construction Agreement without the Trust's prior written consent. Borrower shall execute, upon the Trust's written request, an assignment of Borrower's rights under the Construction Agreement to Trust as security for Borrower's performance and obligations under this Agreement and the other Loan Documents and shall cause Contractor to consent to any such assignment, as necessary.
- 3.4. Architect's Agreement. Borrower and Architect have entered, or will soon enter into an Architect's Agreement, as approved by the Trust, pursuant to the terms

and conditions of which Architect is to design the Project. Borrower shall require Architect to perform in accordance with the terms of the Architect's Agreement and shall not amend, modify or alter the responsibilities of Architect under the Architect's Agreement without the Trust's prior written consent. Borrower shall execute, upon the Trust's written request, an assignment of the Architect's Agreement and the Plans and Specifications to Trust as additional security for Borrower's performance and obligations under this Agreement and the other Loan Documents and shall cause Architect to consent to any such assignment, as necessary.

3.5. Plans and Specifications.

(a) Changes; Trust Consent. Except as otherwise provided in this Agreement, Borrower shall not make any changes in the Plans and Specifications without Trust's prior written consent if such change: (i) constitutes a material change in the building material or equipment specifications, or in the architectural or structural design, value or quality of the Project; (ii) would result in an increase of construction costs in excess of one hundred thousand dollars (\$100,000) for any single change, or in excess of five hundred thousand dollars (\$500,000) for all such changes; (iii) would affect the structural integrity, quality or building materials, or overall efficiency of operating systems of the Project; or (iv) requires the approval of the Permanent Lender, Tax Credit Investor or any other third party. Without limiting the above, the Trust agrees that Borrower may make minor changes in the Plans and Specifications without Trust's prior written consent, provided that such changes do not violate any of the conditions specified herein, and provided that Borrower obtains the consent of the Permanent Lender and Tax Credit Investor to all such changes to the extent required by the permanent loan documents or any applicable partnership documents. Borrower shall at all times maintain, for inspection by Trust, a full set of working drawings of the Project.

(b) Changes; Submission Requirements. If Trust's consent to a change is required hereunder, then Borrower shall submit any proposed change in the Plans and Specifications to Trust at least ten (10) days prior to the commencement of construction relating to such proposed change; otherwise, Borrower shall submit plans and changes, which do not require Trust's consent, with Borrower's subsequent draw request. Requests for any change which requires consent shall be accompanied by working drawings and/or specifications sheet and a written description of the proposed change, submitted on a change order form acceptable to the Trust, signed by Borrower and, if required by Trust, also by the Architect and Contractor. At its option, Trust may require Borrower to provide: (i) evidence satisfactory to Trust of the cost and time necessary to complete the proposed change; (ii) a deposit in the amount of any increased costs into Borrower's construction account; and (iii) a complete set of "as built" Plans and Specification for the completed Project, including any changes.

(c) Consent Process. Borrower acknowledges that Trust's review of any changes and required consents may result in non-material delays in construction and hereby consents to any such non-material delays, so long as such non-

material delays do not result in penalties or fines imposed on Borrower (e.g., liquidated damages under the construction contract, etc.), and the Borrower notifies Trust of the possibility of such penalties or fines; provided, however, that Trust shall use commercially reasonable efforts to review such changes in a timely manner. Trust shall review and respond to any proposed change order that requires Trust's consent hereunder within ten (10) business days of receipt of the requested change order. If Trust fails to timely respond to a change order request, then Borrower may submit to Trust a second request for review and approval, which request will include a bolded and capitalized statement that **“THIS IS A SECOND REQUEST FOR REVIEW AND APPROVAL OF A CHANGE ORDER – FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS SHALL CONCLUSIVELY BE DEEMED TRUST CONSENT THERETO.”** If Trust fails to respond to the second request for said change order within five (5) business days of receipt of the second request, then the applicable change order shall be conclusively deemed approved by the Trust.

(d) Final Plans and Specifications. Upon Completion of Construction, Borrower shall deliver to Trust within thirty (30) days a set of final Plans and Specifications.

- 3.6. Contractor/Construction Information. Within ten (10) days of Trust's written request, Borrower shall deliver to Trust from time to time in a form acceptable to Trust: (a) a list detailing the name, address and phone number of each contractor, subcontractor and material supplier to be employed or used for construction of the Project together with the dollar amount, including changes, if any, of each contract and subcontract, and the portions, thereof, if any, paid through the date of such list; (b) copies of each contract and subcontract identified in such list, including changes thereto; (c) a cost breakdown of the projected total cost of constructing the Project, and that portion, if any, of each cost item which has been incurred; and (d) a construction progress schedule detailing the progress of construction and the projected sequencing and completion time for the uncompleted work, all as of the date of such schedule.
- 3.7. Prohibited Contracts. Without Trust's prior written consent, Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Project, if any third party shall retain any ownership interest (other than lien rights created by operation of law) in such items after funds have been disbursed to pay for such items. Borrower shall have five (5) days to effect the removal of any such retained interest.
- 3.8. Liens and Stop Notices. If a claim of lien is recorded which affects the Property or the Project, or a bonded stop notice is served upon Trust or Borrower, Borrower shall, within twenty (20) calendar days of such recording or service or within five (5) business days of Trust's demand, whichever occurs first: (a) pay or discharge the claim of lien or bonded stop notice; (b) effect the release thereof by recording or delivering to Trust a surety bond in sufficient form and amount; or (c) provide Trust with other assurances which Trust deems, in its sole discretion, to be satisfactory for the payment of such claim of lien or bonded

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

- 3.9. Construction Responsibilities. Borrower shall construct the Project in a workmanlike manner in accordance with the approved Plans and Specification and the recommendations of any soils or engineering reports approved by Trust. Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions (as approved by the Trust), requirements of all regulatory authorities having jurisdiction over the Property and Project. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and Project, including, without limitation, for the quality and suitability of the Plans and Specification and their compliance with all governmental requirements, the supervision of the work of construction, the qualifications, financial conditions and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. Trust is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Project or any other matter referred to above.
- 3.10. Assessments and Community Facilities Districts. Without Trust's prior written consent, Borrower shall not cause or allow to become effective or otherwise consent to the formation of any assessment district or community facilities district which includes all or any part of the Property and Project pursuant to: (a) the Mello-Roos Community Facilities Act of 1982; (b) the Municipal Improvement Act of 1913; or (c) any other comparable or similar statute or regulation. Nor shall Borrower cause or otherwise consent to the levying of special taxes or assessments against the Property or Project by any such assessment district or community facilities district.
- 3.11. Delay. Borrower shall promptly notify Trust in writing of any event causing delay or interruption of construction, or the timely Completion of Construction. The notice shall specify the particular work delayed, and the cause and period of each delay.
- 3.12. Inspections. Trust, or Trust's authorized representative, shall have the right to enter upon the Property at all reasonable times to inspect the Project and the construction work to verify information disclosed or required pursuant to this Agreement. Any inspection or review of the Project by the Trust is solely to determine whether the Borrower is properly discharging its obligations to Trust under this Agreement and may not be relied upon by Borrower or any third party as a representation or warranty of compliance with this Agreement or any other agreement. Trust owes no duty of care to Borrower or any third party with regard to any negligent, faulty, inadequate or defective design or construction of the Project as determined by Trust.
- 3.13. Surveys. Upon Trust's written request, Borrower shall promptly deliver to Trust: (a) a perimeter survey of the property; (b) upon completion of the foundations of the Project, a survey showing the location of the improvements constituting the

Project on the Property and confirming that the Project is located entirely within the Property and does not encroach upon any easement or breach or violate any governmental requirement; and (c) upon Completion of the Construction, an “as built” survey as set forth in Section 6.1(d) below. All such surveys shall be performed and certified by a licensed engineer or surveyor acceptable to the title insurer.

- 3.14. Letter of Credit. Borrower’s contractor on the Project has provided a letter of credit in compliance with the Senior Mortgage Loan Document. If requested by Trust, within five (5) calendar days of such request, Borrower shall deliver to Trust evidence of such letter of credit. If requested, by Trust, Borrower shall record said letter of credit, the Plans and Specifications and the Construction Agreement, if any, in the Office of the County Recorder.
- 3.15. Trust’s Cessation of Construction. If Trust reasonably determines at any time that the Project is not being constructed in accordance with the Plans and Specification and all governmental requirements, Trust may immediately cause all construction to cease on any of the Project improvements affected by the condition of nonconformance. Borrower shall thereafter not allow any construction work, other than corrective work, to be performed on any of the Project affected by the condition of nonconformance until such time as the Trust notified the Borrower in writing that the nonconforming condition has been corrected to Trust’s reasonable satisfaction.

ARTICLE IV

QUALIFIED PROJECT PERIOD

- 4.1. Use and Rent Restrictions.
- (a) During the Qualified Project Period, the Project shall be “Affordable” as defined in 24 CFR Part 92.252 and LHFT Program Guidelines Section 105(c)(d)(e) as published by HCD, and in compliance with Trust policies associated with the 20[XX] PSH NOFA for a period of not less than fifty-five (55) years.
- (b) In accordance with the provisions of the Regulatory Agreement, this Loan Agreement and Exhibit “B” attached hereto and incorporated herein, the Borrower has agreed to rent the Restricted Units of the Project to Qualified Tenants for the Qualified Project Period at the rents described in said Exhibit “B.”
- (c) Borrower agrees to provide to Qualified Tenants notice of all rent increases pursuant to applicable California law.
- (d) Borrower agrees to limit rent increases to (i) the Department of Housing and Urban Development’s (HUD) annually published Rent Adjustment factor for the Section 8 program, or (ii) no more than the rent established as affordable

based on the Median Income for the Area and the affordability restrictions set forth in Exhibit “B”, which is adjusted annually by HUD and published by the State of California.

- 4.2. Income Determination. For the purposes of this section, the income of individuals and families and the area median gross income shall be determined in a manner consistent with determinations of lower income families and the Median Income for the Area under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for household size.
- 4.3. Certifications. With respect to those Restricted Units subject to the rental restrictions described above, during the Qualified Project Period the Borrower will comply with the Qualified Tenant certifications and recertifications in the same manner as prescribed under the Regulatory Agreement. Said certifications and recertifications shall include, but not be limited to, client name, address, and verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third party documentation approved by the Trust for determining eligibility). Such information shall be made available to Trust monitors, or their designees, for review upon request.
- 4.4. Records.
 - (a) The Borrower will maintain complete and accurate records as required by Federal Regulations specified in 24 CFR 92.508, which shall contain a description of each activity undertaken, records pertaining to the Restricted Units, records documenting compliance with fair housing and equal opportunity components, financial records as required by 24 CFR 92.508 (a)(5), other records to document compliance with Subpart K of 24 CFR 92, and records documenting the continued affordability and income restrictions outlined in Exhibit “B”.
 - (b) The Borrower will permit any duly authorized representatives of the Trust to inspect and copy the books and records of the Borrower pertaining to the Project, including those books and records pertaining to the occupancy of the Restricted Units provided that the Trust will make a reasonable effort to provide notice of at least forty-eight (48) hours to inspect, examine, or make copies of such information.
 - (c) Borrower will retain such records for a period of five (5) years after the termination of all activities funded under this Agreement.
- 4.5. Leases. Each lease pertaining to a Restricted Unit shall contain provisions to the effect that the Borrower has relied on the income certification and supporting information supplied by the Qualified Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such

certification (whether or not intentional) will be cause for immediate termination of such lease. Trust reserves the right to require additional non-financial terms or clauses that are reasonably related to such qualifications (including, but not limited to additional disclosure clauses) that the Trust may from time to time deem appropriate or necessary to be included in said leases.

ARTICLE V

DISBURSEMENT OF LOAN

5.1. Conditions Precedent to Disbursement of Loan Proceeds. The Trust shall cause Loan proceeds to be disbursed through escrow to the Borrower as set forth in this Article V. No disbursement shall be made until all of the following conditions precedent are satisfied:

(a) Execution and Delivery of Documents. Borrower shall have executed and delivered to the Trust (i) this Agreement, the Note, the Deed of Trust, the Financing Statement, the Regulatory Agreement, and the Assignment of Leases, (ii) all resolutions and certificates necessary or appropriate in the opinion of the Trust to evidence the Borrower's authority to enter into the Loan and be bound by the Loan Documents, and (iii) all other documents and instruments required by the Trust to be executed and delivered, all in form and substance satisfactory to the Trust.

(b) Insurance. Borrower shall have furnished the Trust with certificates of insurance for all policies required under this Agreement.

(c) Phase One Environmental Assessment Report. Borrower shall have provided the Trust with a Phase One Environmental Assessment Report on the Property prepared by a licensed and registered environmental engineer or other qualified party satisfactory to Trust, along with any other information the Trust may require, in each case stating that no hazardous substances are present in, on, under or around the Property and that no condition or circumstances warranting further investigation now exists.

(d) Phase Two Environmental Assessment Report. If the Phase One Environmental Assessment Report recommends further investigation, the Borrower shall provide a Phase Two Environmental Assessment Report on the Property prepared by a licensed and registered environmental engineer or other qualified party satisfactory to Trust, along with any other information the Trust may require, in each case stating that no hazardous substances are present in, on, under, or around the Property and that no condition or circumstances warranting further investigation now exists or prevent the construction and habitation of the Project.

(e) Compliance with Applicable Requirements. The Borrower shall have submitted to the Trust evidence that the Property and its intended use are in

compliance with all applicable building, zoning and other requirements of applicable public authorities.

(f) Financing Plan. The Borrower shall have submitted and the Trust shall have approved the Borrower's plan for the permanent financing of the Project ("Financing Plan").

(g) Title Policy. Borrower shall, at its sole expense, have delivered to the Trust an ALTA loan policy-2006, with ALTA endorsement Form 1 coverage, amended 6/1/87, without further revision or amendment, issued by an insurer satisfactory to the Trust, together with an unconditional CLTA 100 endorsement, a CLTA 103.7 endorsement, a CLTA 116.1 endorsement, an ALTA Form 8.1 endorsement and all other endorsements and binders required by the Trust, naming the Trust as the insured, in a policy amount of not less than the Loan, showing Borrower as the owner of the Property [OR showing the County/City as the owner of the Property with evidence of a long-term ground lease by Borrower] and insuring the Deed of Trust to be a valid [number] lien on the Property during the Construction Period, subject only to printed exceptions and exclusions to the title policy and other Schedule "B" exceptions approved by the Trust, and exceptions approved by the Trust in Section 2.8 above.

(h) Recordation. The Regulatory Agreement, Deed of Trust, Assignment of Leases and Financing Statement shall have been recorded, in that order, in the Official Records of Orange County.

(i) Senior Construction Deed of Trust. The Mortgage Loan Documents for the Senior Construction Loan shall have been recorded in such order as directed by the said senior construction lender.

(j) No Default. There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(k) Representations and Warranties. All representations and warranties of Borrower herein contained shall be true and correct.

(l) Availability of Funds. The Borrower has submitted to the Trust and the Trust has approved in the exercise of its discretion evidence that the funds identified as committed to the acquisition of the Property in the approved Financing Plan are in fact unconditionally and readily available to Borrower for the Property as of the Close of Escrow.

(m) Priority of Regulatory Agreement. The Regulatory Agreement has been executed and recorded as a lien senior to the Deed of Trust.

5.2. Procedure for Disbursement of Loan Proceeds. When all the conditions to disbursement have been satisfied, the Trust shall deposit the Loan with the Escrow Holder for disbursement upon the Close of Escrow in accordance with

the terms of separate written escrow instructions between the Trust and Borrower. Said agreement shall be deposited into escrow.

- 5.3. Waiver; Termination. No waiver of any of the conditions to the Close of Escrow and disbursement of the Loan shall be permitted unless agreed to in writing by the Trust. If any of the conditions to disbursement of the Loan are not satisfied within ninety (90) days following the date of this Agreement, Trust may terminate this Agreement by giving written notice to Borrower. Upon such termination, the parties shall have no further rights or obligations under this Agreement.

ARTICLE VI

QUALIFIED PROJECT PERIOD

- 6.1. Conditions Precedent to Commencement of Qualified Project Period. Prior to the end of the Construction Period and as conditions precedent to the occurrence of the Conversion Date and commencement of the Qualified Project Period, all of the following conditions precedent must be satisfied:
- (a) Tax Credit Equity. Borrower shall have secured the anticipated tax credit equity, as set forth in the Financing Plan.
 - (b) Completion of Construction; Notice of Completion; Permits. The Borrower shall have submitted to the Trust and the Trust shall have approved the recorded Notice of Completion, the final certificate of occupancy, or jurisdictional equivalent, and any other evidence required by Trust that the Project and its intended use are in compliance with all applicable building, zoning and other requirements of applicable public authorities.
 - (c) Mechanic's Liens. The Borrower shall have submitted to Trust for Trust approval evidence that all construction costs have been paid in full and that the period for filing of mechanic's liens has expired without the filing of any lien.
 - (d) As-Built Survey. Borrower shall have delivered and the Trust shall have approved a final, as-built ALTA survey for the Project showing the location of all improvements in and to the Project as well as: (i) all "setbacks" and other restrictions applicable to the Project pursuant to requirements of applicable public authorities, (ii) all easements, licenses and other rights of way, (iii) that no encroachments onto the Project or from the Project onto adjoining property and (iv) certifying the legal description of the Project as insured in the title policy.
 - (e) Title Policy. Borrower shall, at its sole expense, have delivered to Trust an ALTA loan policy-2006, with ALTA endorsement Form 1 coverage, amended 6/1/87, without further revision or amendment, issued by an insurer satisfactory to Trust, together with an unconditional CLTA 100 endorsement, a CLTA 103.7 endorsement, a CLTA 116.1 endorsement, an ALTA Form 8.1 endorsement and all other endorsements and binders required by Trust, naming Trust as the insured,

in a policy amount of not less than the Loan, showing Borrower as the owner of the Property and insuring the Deed of Trust to be a valid [number] lien on the Property, subject only to printed exceptions and exclusions to the title policy and other Schedule "B" exceptions approved by the Trust, and exceptions approved by the Trust in Section 2.8(c) above.

(f) No Default. There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(g) Management Plan. The Borrower shall have submitted and the Trust shall have approved a Management Plan ("Management Plan"). The Management Plan shall include a management contract with a manager approved in writing by the Trust for management of the Project and a plan for long-term marketing, operation, maintenance, repair and security of the Project, method of selection of tenants, and for rental policies in compliance with HUD and HOME requirements, policies and procedures and with the Regulatory Agreement, along with any other policies or procedures required by the Trust. The Management Plan shall also include an initial budget for the Project.

(h) Representations and Warranties. All representations and warranties of Borrower herein contained shall continue to be true and correct.

(i) Availability of Funds. The Borrower has submitted to the Trust and the Trust has approved in the exercise of its discretion evidence that the funds identified as committed to the Project in the approved Financing Plan are in fact unconditionally and readily available to Borrower for the Project as of the commencement of the Qualified Project Period.

(j) Utilities. All utility services, including gas, water, sewage, electrical and telephone, which are necessary or appropriate for the use and occupancy of the Project, are available, connected and functioning.

6.2. Waiver. No waiver of any of the conditions to commencement of the Qualified Project Period shall be permitted unless agreed to in writing by the Director.

6.3. Conversion Date. The Conversion Date shall be that date on which all of the conditions set forth in this Article VI are fulfilled and the Construction Period ends and the Qualified Project Period begins (whereby the Trust's Loan shall convert to a permanent loan). In the event that the Conversion Date does not occur upon the Completion of Construction, the Loan shall be immediately due and payable upon demand, as set forth herein and in the Note.

6.4. Extension; Loan Repayment. If any of the conditions precedent as set forth in this Article VI has not been completed by the end of the Construction Period, the Director may, in the sole and absolute discretion of Director, grant an extension as an addition to the Construction Period. In the event such extension is not granted, the Loan shall immediately become due and payable upon written demand of the Director, as set forth herein and in the Note.

ARTICLE VII

LEASES

- 7.1. Standard Form Leases. On or before the commencement of the Qualified Project Period, Borrower shall submit to Trust for its written approval a standard form of residential lease to be used for leasing of the Project (the “Standard Lease”). The Standard Lease shall be in compliance with all applicable laws and Borrower shall be obligated to revise said Standard Lease from time to time to comply with any changes in said applicable laws.
- 7.2. Leasing Program. Borrower shall market and lease the Project consistent with the Marketing Plan described in Section 9.8 hereof.
- 7.3. Pro-Forma Schedules. Attached hereto and incorporated herein as Exhibit “B” is the rental rate schedule for the Units at the Project approved by Trust.
- 7.4. No Changes. Borrower shall not materially modify the approved Standard Lease or materially deviate from the approved rental rate schedule for the Units without the Trust’s prior written consent in each instance, which consent shall not be unreasonably withheld or delayed.
- 7.5. Landlord’s Obligations. Borrower shall timely and in good faith, perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Project. If any tenant at any time claims any breach of landlord’s obligations and the amount of such claim (in excess of available insurance coverage) is \$10,000 or more, Borrower shall promptly notify Trust of such claim.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES OF BORROWER

- 8.1. Representations and Warranties. Borrower hereby makes the following representations and warranties to the Trust, each of which shall also be deemed a covenant and all of the following, Borrower agrees, shall continue to be true and accurate in all material respects so long as the Loan or any portion thereof remains outstanding:
 - (a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Borrower delivered to the Trust are true and correct copies of the originals, as amended to the date of this Agreement, and Borrower will promptly provide the Trust with copies of any modifications thereto.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against the Borrower in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower and in effect at the time of execution of this Agreement, or any provision of the organizational documents of Borrower or, if applicable, of its constituent partners, or will conflict with or constitute a breach of or a default under any agreement to which Borrower, or, if applicable, its constituent partners, is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against Borrower or the Property or Project, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the Trust pursuant hereto.

(g) Compliance with Laws; Consents and Approvals. The Project shall comply at all times with all applicable laws (including but not limited to all

Hazardous Substances Laws), ordinances, rules and regulations of federal, state, and local governments and agencies, and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector, and other officers of any such government or agency. All consents, permissions and licenses required by any federal, state, or local government or agency to which the Borrower, the Property or the Project is subject, which may be necessary in relation to this Agreement or the ownership or operation of the Project, have been or will be obtained.

(h) Financial Statements. The financial statements of the Borrower and its constituent partners, if any, and other financial data and information furnished by the Borrower for review by the Trust relating to the financial condition of Borrower or any of Borrower's constituent partners or the Project, fairly present the information contained therein. As of the date of Loan disbursement, there will not have been any adverse material change in the financial condition of the Borrower or its constituent partners from that shown by such financial statements and other data and information.

(i) Adequacy of Loan. The amount of the Loan, together with any funds to be provided by the Borrower or to the Borrower from any other sources, is adequate to pay all costs incurred in connection with the acquisition of the Property and to enable the Borrower to satisfy the covenants contained in this Agreement.

(j) Payment of Taxes. All federal, state, county, and municipal taxes required to be paid by the Borrower or on account of the Property have been paid in full as of the date of this Agreement or will be paid in full by the Close of Escrow. Borrower knows of no basis for any additional assessment of taxes as of this date.

(k) Regulatory Agreement. The Project is, and will at all times remain, in compliance with all requirements of this Agreement and the Regulatory Agreement. The units in the Project shall be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement. All leases will comply with all applicable laws and the Regulatory Agreement.

ARTICLE IX

CONTINUING OBLIGATIONS OF BORROWER

- 9.1. Applicability. For the longer of the entire Term, or so long as the Note remains outstanding, the Borrower shall comply with the provisions of this Article IX.
- 9.2. Compliance with Loan Documents. Borrower shall promptly comply with all the terms, covenants and provisions of the Loan Documents.
- 9.3. Taxes and Assessments. So long as Borrower owns the Property and the Project, Borrower shall pay all real and personal property taxes, assessments and charges, and all franchise, income, unemployment, old age benefit, withholding, sales,

and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any delinquency or penalty from accruing, or any lien or charge from attaching to the Project; provided, however, that Borrower shall have the right to contest in good faith any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges, and interest.

9.4. Indemnity.

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

- (i) the Loan Documents or the execution or amendment thereof or in connection with the transactions contemplated thereby;
- (ii) Borrower's ownership or operation of the Project or any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation of, the Project or any part thereof;
- (iii) any lien or charge upon payments by the Borrower to the Trust, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Trust in respect of any portion of the Project;
- (iv) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof;
- (v) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any Loan Document or any of the documents or instruments relating to said Loan Documents that the Trust relied upon in making the Loan except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the

Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for counsel selected by the Indemnified Party, and shall assume the payment of all reasonable expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

(vi) If judgment is entered against Borrower and Trust by a court of competent jurisdiction because of the concurrent active negligence of Trust or Indemnified Parties, Borrower and Trust agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

- 9.5. Entry by the Trust. Borrower shall permit the Trust, through its officers, agents, or employees, at all reasonable times to enter into or onto the Property or the Project and inspect the Project to determine that the same is in conformity with the Loan Documents and all the requirements hereof. Borrower acknowledges that the Trust is under no obligation to supervise, inspect, or inform Borrower of the results of its said inspection(s) and Borrower shall not rely upon the Trust therefor. Any inspection by the Trust is entirely for its purposes in determining whether Borrower is in default under this Agreement or the Loan Documents. Borrower shall rely entirely upon its own supervision and inspection.
- 9.6. Entry by HCD. As required by the HCD as a condition of the LHTF Program, Borrower shall permit HCD, through its officers, agents, or employees, at all reasonable times to enter into or onto the Property or the Project and inspect the Project to determine that the same is in conformity with the Loan Documents and all the requirements hereof. Borrower acknowledges that HCD is under no obligation to supervise, inspect, or inform Borrower of the results of its said inspection(s) and Borrower shall not rely upon HCD therefor. Any inspection by HCD is entirely for its purposes in determining whether Borrower is in default under this Agreement or the Loan Documents. Borrower shall rely entirely upon its own supervision and inspection.
- 9.7. Hazardous Materials. Borrower shall indemnify, defend and hold harmless the Trust, and its respective elected and appointed officials, members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the Project, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Project and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the Trust or Trust in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

- 9.8. Signage During Construction. As required by the HCD as a condition of the LHTF Program, during the Construction Period, if Borrower elects to place a sign or signs identifying the Project that is visible to the public, Borrower shall include the following language on the sign, “Funding provided by the Orange County Housing Finance Trust and the California Department of Housing and Community Development.” If the Borrower does not elect to place a sign on the Property identifying the Project, HCD may place one or more signs on the property stating that it is providing financing for the development.
- 9.9. Transfers. During the Term, Borrower shall not sell or otherwise transfer the Project or any portion thereof, and none of the constituent general partners of Borrower shall sell or otherwise transfer their interests in Borrower, and none of the constituent general partners in a partnership that is a partner in Borrower shall sell or otherwise transfer their interest in such partnership without first obtaining the approval of the Trust, which consent the Trust may withhold or grant in the exercise of its good faith discretion. The Trust shall not approve any such transfer request if the Borrower is in default under any of the Loan Documents or the Management Plan.
- 9.10. Management; Annual Marketing and Management Plans. Any management company of the Project and the management agreement with such management company shall be subject to the prior written approval of the Trust. The management agreement shall not be amended, modified, supplemented, terminated or canceled without the prior written consent of the Trust. Borrower and the Trust (if it so elects) will cooperate in the marketing of the units on the Property pursuant to a marketing plan (the “Marketing Plan”) prepared by the Borrower and approved by the Trust. Said Marketing Plan and the Management Plan described in Section 6.1 hereof shall be prepared by the Borrower and approved by the Trust on an annual basis; however, the Borrower shall provide quarterly written supplements to said approved plans (or more frequently if requested by the Trust).
- 9.11. Operation and Maintenance of Project.
- (a) Operation. During the Qualified Project Period, Borrower shall at all times operate on the Project an affordable housing rental facility in compliance with this Agreement and the Regulatory Agreement.
- (b) Maintenance. During the Qualified Project Period, Borrower agrees to maintain all interior and exterior improvements, including landscaping (and all abutting ground, sidewalks, roads, parking and landscape areas) on the Project in good condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with any Management Plan approved by the Trust under the Loan Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials. Borrower acknowledges the great emphasis the Trust places on quality maintenance to

protect its investment and to provide quality low income housing for its constituents and to ensure that all Trust-subsidized affordable housing projects within the Trust are not allowed to deteriorate due to deficient maintenance. In addition, Borrower shall keep the Project free from all graffiti and any accumulation of debris or waste material. Borrower shall promptly make all repairs and replacements necessary to keep the Project in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials. Borrower shall not commit or permit any waste or deterioration of the Project, shall not abandon any portion of the Project, and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of damage to the Project.

In the event that Borrower breaches any of the covenants contained in this Section 9.9 and such default continues for a period of five (5) days after written notice from Trust (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from Trust (with respect to landscaping and building improvements), then Trust, in addition to whatever other remedies it may have under this Agreement, the other Loan Documents or at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the Trust shall be permitted (but not required) to enter upon the Project and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas on the Project, in the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by Trust and/or reasonable costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by Borrower to Trust upon demand.

(c) Removal of Personal Property. During the Qualified Project Period, Borrower shall not cause or permit the removal from the Project of any items of Borrower's personal property (other than tools and equipment used in the operation of the Project) unless (i) no Event of Default remains uncured and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which shall be free of liens and shall be subject to the liens of the Deed of Trust and the Financing Statement and executes and delivers to Trust all documents required by Trust in connection with the attachment of such liens to such items. Borrower shall keep detailed records of such removal and shall make such records available to Trust upon written request from time to time.

9.12. Status of Borrower. Borrower shall at all times maintain its legal status and all material licenses, rights, franchises and privileges in the jurisdiction of its formation in good standing and comply with all laws, rules and regulations of California and the United States and of any political subdivision thereof applicable to it or its business.

9.13. Insurance. While any obligation of Borrower under any Loan Document remains outstanding, Borrower shall maintain at Borrower's sole expense, the following policies of insurance in form and substance as follows:

- (a) Statutory Workers' Compensation insurance and Employers' Liability insurance with a minimum limit of \$1,000,000 per occurrence;
- (b) Builder's all-risk insurance covering one hundred percent (100%) of the replacement cost of the Project during the course of any construction or reconstruction in the event of fire, lightning, windstorm, vandalism, malicious mischief, and all other risks normally covered by extended coverage policies in the locality where the Project is situated (including insurance against loss by flood if the Project is located in an area now or hereafter designated as subject to the danger of flood);
- (c) Fire and hazard "all risk" insurance with boiler and machinery coverage, covering one hundred percent (100%) of the replacement cost of the Project in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the locality where the Project is situated (including insurance against loss by flood if the Project is located in an area now or hereafter designated as subject to the danger of flood, but excluding insurance against loss by earthquake), which coverage shall also include Project fixtures, furniture and equipment owned by Borrower and business income of at least one (1) year ;
- (d) General liability insurance in an amount not less than \$5,000,000 for combined single limit per occurrence to cover bodily injury and property damage and \$5,000,000 in the aggregate;
- (e) All such insurance shall be endorsed to provide that said insurance may not be canceled or materially modified without 30 days' prior written notice to the Trust. The policies required pursuant to subparagraphs (b) and (c), above, shall include a "lender's loss payable endorsement" (Form 438BFU) in form and substance satisfactory to the Trust assuring Trust that all proceeds shall be paid to Trust as provided in the Deed of Trust subject to the interests of the senior lenders on the Project. The Trust shall be an additional insured as to the policies required pursuant to subparagraph (d) above, and such insurance shall be primary and any insurance maintained by the Trust shall be excess and non-contributing. All policies shall waive all rights of subrogation against the Trust, its elected and appointed officials, officers, agents, and employees. The general liability policy shall contain a severability of interests endorsement. Certificates of insurance and endorsements for all of the above policies (and/or original policies, if required by the Trust from time to time), showing the same to be in full force and effect, shall be delivered to the Trust. All policies insuring against damage to the Project shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. Trust expressly retains the right to require Borrower when reasonable to increase or decrease insurance of any of the above insurance types throughout the term of this Loan. Any increase or decrease in insurance will be as deemed by Trust Risk Manager as appropriate to adequately protect Trust.
- (f) No such insurance shall include deductible amounts to which the Trust has not previously consented in writing. All insurance policies required by this Loan Agreement shall declare any deductible or self-insured retention (SIR). Amounts

in excess of \$25,000 shall specifically be approved by the Trust's Risk Manager, CEO/Risk Management. Borrower shall be solely responsible for the reimbursement of any deductible to the insurer.

(g) The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier). Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or by ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category). If the proposed carrier is a non-admitted carrier in the State of California, the Trust's Risk Manager, Trust Risk Management reserves the right to approve or reject said proposed carrier after a review of said carrier's performance and financial ratings.

(h) Borrower shall file with the Trust, prior to the funding of the Loan, an original Certificate of Insurance together with all required endorsements evidencing that the coverage required under this Loan Agreement is in full force and effect.

(i) All contractors performing work on behalf of Borrower shall be covered under Borrower's insurance or shall obtain insurance subject to the same terms and conditions as set forth herein for Borrower, with the Trust named as an additional insured on all such policies.

(j) The Trust retains the rights at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the Trust, the insurance provisions in this Loan Agreement do not provide adequate protection for the Trust, the Trust may require Borrower to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Trust's said additional requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. Trust shall notify Borrower in writing of changes in the insurance requirements. If Borrower does not deposit copies of acceptable certificates of insurance and endorsements with the Trust incorporating such changes within thirty (30) days of receipt of such notice, said failure shall constitute, at the option of Trust, an Event of Default (hereinafter defined in Article IX) this Loan Agreement without further notice to Borrower.

(k) The procuring of such required policy or policies of insurance shall not be construed to limit Borrower's liability hereunder nor to fulfill the indemnification provisions and requirements of this Loan Agreement.

(l) The Trust shall also be named as an additional insured on any insurance policies required by the Senior Construction Deed of Trust or any related loan documents evidencing such construction loan.

9.14. Alterations and Repair. Except with the prior consent of the Trust, during the Qualified Project Period, Borrower shall not remove, demolish or materially alter any improvement constituting the Project, except to make non-structural repairs which preserve or increase the Project's value, and shall promptly restore, in

good and workmanlike manner, any said improvement (or other aspect of the Project) that is damaged or destroyed from any cause.

- 9.15. Changes in Property Restrictions. Borrower shall not initiate, join in or consent to any change in any applicable zoning ordinance, general plan or similar law, or to any private restrictive covenant or any similar public or private restriction on the use of the Project, except with the prior written consent of the Trust.
- 9.16. Books, Records and Annual Statement. Borrower shall maintain complete books of account and other records reflecting the construction and operation of the Project in accordance with generally accepted accounting principles applied on a consistent basis. During the Qualified Project Period, the amount of the Residual Receipts (as defined in the Note) shall be determined on the basis of an annual audited financial statement (“Annual Statement”), for the preceding year, beginning with the first year of operation of all or any part of the Project, prepared at the Borrower’s expense by an independent certified public account firm acceptable to the Trust. Such Annual Statement shall be prepared based on the guidelines, and taking into account the information, set forth on Exhibit “C,” attached hereto and incorporated herein. During the Qualified Project Period, the Borrower shall submit the Annual Statement and any payment to the Trust not later than six (6) months after closing of the Borrower’s previous year’s books. The first Annual Statement submitted by the Borrower for the Loan shall include the period from the Completion of Construction to the close of that year’s books. The Trust shall review and approve such statement, or request revisions, within ninety (90) days after receipt. In the event that as the result of Trust review, there is an increase in the amount of Residual Receipts, Borrower shall pay to the Trust the full amount of such increase within ten (10) days of notice of such increases. The terms of this subsection shall not be the exclusive method by which the Trust may review Residual Receipts payments by the Borrower. In the event that an increase in the amount of Residual Receipts for any annual period is discovered at any time subsequent to the ninety (90) day period for that year’s books, no previous action or inaction by the Trust shall prohibit the Trust from requesting repayment of those amounts at any time during the term of this Agreement or thereafter. The Borrower shall pay to the Trust the full amount of such increase within thirty (30) days of notice of such increase for periods prior to the previous year.
- 9.17. Notices of Certain Matters. Borrower shall give notice to Trust, within ten (10) days after Borrower receives actual knowledge thereof, of each of the following:
- (a) Any litigation or claim against the Borrower relating to the Property or the Project and involving an amount in excess of \$25,000 and any litigation or claim that might subject Borrower or any constituent partner of Borrower to liability in excess of \$50,000, whether covered by insurance or not;
 - (b) Any dispute between Borrower and any governmental or public agency relating to the Property or the Project, the adverse determination of which might materially affect the Project;

- (c) Any trade name hereafter used by Borrower and any change in Borrower's principal place of business;
 - (d) Any Event of Default or event, which, with the giving of notice or the passage of time, without ameliorative action, or both, would constitute an Event of Default;
 - (e) Any default by Borrower or any other party under any Loan Document or Mortgage Document, or the receipt by Borrower of any notice of default under any Loan Document or Mortgage Document;
 - (f) The creation or imposition of any mechanics' lien or other lien against the Project;
 - (g) The presence of any hazardous materials on, under or about the Property or the Project; any enforcement, clean-up, removal or other action or requirement of any local, state or federal governmental or quasi-governmental authority with jurisdiction relating to any such hazardous materials; and the existence of any occurrence of conditions on any property in the vicinity of the Project that could cause any portion of the Project to be classified as "border-zone property" under the provisions of the California Health and Safety Code or any related regulations, or that could cause the Project to be otherwise subject to any restrictions relating to hazardous materials; and
 - (h) Any material adverse change in the financial condition of Borrower or any of its constituent general partners.
- 9.18. Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Trust all documents, and take all actions, reasonably required by Trust from time to time to confirm the rights created or now or hereafter intended to be created under the Loan Documents, to protect and further the validity, priority and enforceability of the Loan Documents, to subject to the Loan Documents any property intended by the terms of any Loan Document to be covered by the Loan Documents, or otherwise to carry out the purpose of the Loan Documents and the transactions contemplated thereunder.
- 9.19. Liens. Borrower shall not cause or suffer to become effective any lien, restriction or other title limitation affecting any part of the Project other than the (a) Regulatory Agreement, the Deed of Trust, the Financing Statement and the senior first deed of trust Mortgage Documents (including the Senior Acquisition Deed of Trust, Senior Construction Deed of Trust and the Senior Permanent Deed of Trust, as applicable) and (ii) taxes not delinquent.
- 9.20. Payment of Expenses. Borrower shall pay the Trust's costs and expenses incurred in connection with the making, disbursement and administration of the Loan and the conversion of the acquisition loan to a permanent loan, as well as any revisions, transfers, extensions, renewals, modifications, refinancing or "workouts," and providing estoppels or subordinations of the Loan, and in the exercise of any of Trust's rights or remedies under this Agreement. The Trust

will receive from Borrower a nonrefundable fee in the amount of Five Hundred Dollars (\$500) and Borrower shall reimburse Trust for all of the Trust's reasonable out-of-pocket expenses (including reasonable attorney's fees) incurred in the administration and review of such changes, to the extent such expenses exceed Five Hundred Dollars (\$500). Such costs and expenses may include title insurance, recording and escrow charges, survey charges, hazard insurance, premiums, fees for any appraisals and any appraisal reviews, architectural and engineering review, construction services and environmental and toxic services and reviews, zoning and entitlement services and reviews, mortgage taxes, legal fees and any other reasonable fees and costs for services, regardless of whether such services are furnished by the Trust's employees or agents or independent contractors.

- 9.21. Loan Monitoring Fees. Unless prohibited by Federal, State or local laws, the Borrower shall pay an annual loan monitoring fee during the Term. Loan monitoring fees shall be incorporated into the operating pro forma. Orange County Housing Finance Trust shall charge all projects an annual compliance monitoring fee ("Annual Fee") of sixty-five dollars (\$95) per unit per year. The Annual Fee will be payable to the Trust at the Close of Escrow. The Annual Fee will be due each subsequent year for the Qualified Project Period on or within thirty (30) days of the day and month that this Agreement was entered into as set forth on page one hereof. Loan monitoring fees will be adjusted annually. The annual adjustment shall be in accordance with the change in the Consumer Price Index for Los Angeles – Anaheim – Riverside (All Urban Consumers – All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$A = B \times C/D$$

Where: A = Adjusted Annual Fee

B = Annual Fee (as such Annual Fee may have been previously adjusted)

C = Average monthly index for the most recent twelve-month period

D = Average monthly index for the twelve-month period preceding the date of this Loan Agreement.

In the event that the Consumer Price Index (CPI) ceases to use 1982-84 = 100 as the basis of calculation, or if, in Trust's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figures as shall be practical) had the manner of calculating the CPI in effect at the date of this Loan Agreement not been altered.

In the event that the CPI is not issued or published for the period for which such minimum Annual Fees are to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by Trust, shall be used and if none is so published, then another index general recognized as authoritative shall be substituted by Trust.

9.22. Subcontracts.

- (a) Upon request of Trust, or their designated agent, Borrower shall submit any requested subcontract agreements to the Trust for review and consent. Any requested Subcontracts shall be submitted to Trust within forty-eight (48) hours of such request.
- (b) Borrower shall assume responsibility for all subcontracted services to assure compliance with this Agreement.
- (c) Borrower shall cause all of the applicable provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

9.23. Relocation. Borrower shall, if applicable, in all matters relating to the Project:

- (a) Take all reasonable steps to minimize displacement by providing tenants a reasonable opportunity to lease and occupy dwelling units in the Project being improved, if applicable;
- (b) Submit to Trust a plan outlining financial and advisory assistance in securing temporary housing for any eligible tenant who is temporarily or permanently relocated due to the Project; and,
- (c) Comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24 in providing relocation assistance for persons displaced by the Project.
- (d) Has in effect, and follows a residential anti-displacement and relocation plan required under Section 104 (d) of the Housing and Community Development Act of 1974, as amended, in conjunction with any activity assisted with funds under the subject program.

9.24. Mental Health Services Act Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the requirements set forth in California Welfare and Institutions Code Section 5771.1 *et. seq.* and, without limitation, the requirements found in Exhibit D attached to this Agreement.

- 9.25. Lender Recognition. The owner shall ensure recognition of the role of the Trust in providing funds through this Agreement. All activities, facilities and items utilized pursuant to the Agreement shall be prominently labeled as to funding source.
- 9.26. Labor Standards. To the extent applicable, the Borrower agrees to comply with the requirements of the California Department of Industrial Relations Prevailing Wage Requirements and the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland “Anti-Kickback” Act (40 U.S.C. 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Borrower shall maintain documentation, which demonstrates compliance with hour, and wage requirements of this part. Such documentation shall be made available to the Trust for review upon request. The Borrower agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than twelve (12) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the Trust pertaining to such contracts and with the applicable requirements of the regulations of the U.S. Department of Labor, under 29 CFR, Parts 1, 3, 5, 7 and 1926 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing herein is intended to relieve the Borrower of its obligation, if any, to require payment of the higher rate. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of \$10,000.00.

9.27. Annual Audit.

Following the Conversion Date and commencing on the date six (6) months after closing of the Borrower’s previous year’s books and every one year anniversary date thereafter during the Term, Borrower shall submit to Trust the following audit reporting package (the “Audit Reporting Package”). Trust reserves the right to revise the Audit Reporting Package requirements in accordance with changed Federal, State or County rules, regulations, ordinances, laws and statutes. The Audit Reporting Package shall include the following:

- (a) Financial Statements for the Project preferably with a classified Balance Sheet identifying Current Assets and Current Liabilities;
- (b) Schedule of expenditures of Federal awards;
- (c) Independent Auditor’s report;
- (d) Summary schedule and prior audit findings, if applicable;

(e) Corrective action plan, if applicable; and

(f) Management Letter.

9.28. Operating Reserve. [REMOVE IF PROJECT HAS PROJECT BASED SECTION 8 VOUCHERS]

Borrower shall establish an interest bearing account to be known as the Operating Reserve Account. Upon the Conversion Date shall deposit an amount into the Operating Reserve Account sufficient to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments (“Target Balance”).

Funds shall be invested subject to the prior written approval of the Trust, which approval shall not be unreasonably withheld, and any earnings shall become and remain a part of the Operating Reserve. Funds may be drawn only when revenue is insufficient to pay operating expenses. The Borrowers shall not draw funds from the Operating Reserve Account without the prior written approval of the Trust, which approval shall not be unreasonably withheld.

If the balance in the Operating Reserve Account falls below the amount required to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments, then Borrower shall apply Residual Receipts, when and if available, or other funds, to the replenishment of Operating Reserves until the Target Balance is achieved.

In the event of a failure by the Borrower to pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then Trust may, after delivery of notice to Borrower and the expiration of any applicable cure periods, apply the funds in the Operating Reserve Account to the Loan, a Mortgage Loan, or use such funds for the continued operation of the Project.

9.29. Replacement Reserve. [WITHOUT MHSA THIS IS APPROPRIATE. WITH MHSA FUNDS \$350 GOES TO \$500 AND GO UP 5% EVERY 5 YEARS]

At or before the Conversion Date, Borrower shall establish an interest bearing account to be known as the Replacement Reserve Account. Annually prior to March 31 of each year, Borrower shall deposit into the Replacement Reserve Account an amount equal to three hundred and fifty dollars (\$350) per unit or such higher amount as may be required by a tax creditor investor or senior Mortgagee and approved by Trust, which approval shall not be unreasonably withheld. The Funds shall be invested subject to the prior written approval of the Trust and any earnings shall become and remain a part of the Replacement Reserve. The Borrowers shall not draw funds from the Replacement Reserve Account without the prior written approval of the Trust, which approval shall not be unreasonably withheld.

Funds may only be drawn from the Replacement Reserve Account to replace or maintain Project assets which have a useful life of more than one (1) year in accordance with Generally Accepted Accounting Principles ("GAAP"), and have been or will be depreciated on the Partnership Tax Return, Form 1040P, filed with the Internal Revenue Service by the Borrower's accountant.

In the event of a failure by the Borrower to adequately maintain the Project, or pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then Trust may, after delivery of notice to Borrower and the expiration of any applicable cure periods, apply the funds in the Replacement Reserve Account to the Loan, a Mortgage Loan, or use such funds for the maintenance, improvement, or continued operation of the Project.

ARTICLE X

DEFAULT AND REMEDIES

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

(a) Failure to Make Note Payments. Borrower fails to make any payment of principal and/or interest under the Note when due, after ten (10) days notice from Trust. Any payment that falls due on a non-business day may be made the next succeeding business day without penalty and shall not be considered a past-due payment;

(b) Failure to Make Other Payments. Borrower fails to perform any other obligation for the payment of money (other than payments described in subparagraph (a) above) under any Loan Document within ten (10) days after Trust gives Borrower written notice that such obligation was not performed or paid for;

(c) Non-Monetary Failure to Perform. Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement or any other Loan Document (other than those provisions elsewhere referred to in this Section 10.1) and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given by the Trust to Borrower, provided that if Borrower has commenced cure but cannot complete such cure reasonably within thirty (30) days, Borrower shall have ninety (90) days from the date of notice to cure such failure without such failure constituting an event of default;

(d) Mortgage Loan Document Breach. Any default or breach of Borrower that continues uncured after the expiration of any applicable cure period under

any other loan document including, but not limited to, the Mortgage Loan Documents;

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

(f) Unauthorized Transfer. Borrower's sale or other transfer of the Property or the Project in violation of Section 9.7 above;

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

(h) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 10.1(h) as well; or Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the Trust, the indebtedness evidenced by the Note; or

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

10.2. Remedies. The occurrence of any Event of Default shall, either at the option of the Trust or automatically where so specified, relieve the Trust of any obligation to make or continue the Loan and shall give the Trust the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the Trust's rights and remedies shall be cumulative), including but not limited to the following:

(a) Acceleration of Note. The Trust shall have the right to cause all indebtedness of the Borrower to the Trust 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 Trust may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Trust as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the Trust on demand all expenses, costs and fees (including, without

limitation, attorneys' fees and expenses) paid or incurred by the Trust 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 Trust shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The Trust shall have the right to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Trust for any funds advanced by the Trust to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum (which rate shall in no event exceed the maximum rate permitted by law and if it does, said rate shall be reduced to the maximum rate then permitted by law), from the date of expenditure until the date of reimbursement.

10.3. Remedies Cumulative. No right, power, or remedy given to the Trust 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 Trust by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Trust to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Trust of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

10.4. Waiver of Terms and Conditions. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by the Trust to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the Trust to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the Trust in the exercise of any right, power, or remedy hereunder or under the Loan Documents, unless in the exercise of any such right, power, or remedy all obligations of Borrower to Trust are paid and discharged in full.

ARTICLE XI

MISCELLANEOUS

- 11.1. Approvals Under Agreement. Where this Agreement requires an approval or consent of the Trust, such approval or consent may be given on behalf of the Trust by the Trust Manager or his or her designee.
- 11.2. Time. Time is of the essence in this Agreement.
- 11.3. Notices. Any notice requirement set forth herein shall be in writing and delivered to the appropriate party at the address listed in this subparagraph. Addresses for notice may be changed from time to time by written notice to the other party. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change in address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Borrower: [BORROWER TO PROVIDE]

Trust: Orange County Housing Finance Trust
1 League #62335, Irvine, CA 92602
Attn: Adam B. Eliason

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

[courtesy notices]

Such addresses may be changed by notice to the other party given in the same manner as provided above.

- 11.4. No Third Parties Benefitted. This Agreement is made and entered into for the sole protection and benefit of the Trust, its successors and assigns, and Borrower, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.
- 11.5. Trust to File Notices. Borrower irrevocably appoints, designates, and authorizes the Trust as its agent (said agency being coupled with an interest) to file for record any notice that the Trust deems necessary or desirable to protect its interest hereunder and under the Loan Documents.
- 11.6. Actions. The Trust shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the disbursement of any proceeds of the Loan.

- 11.7. Successors and Assigns. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of Borrower's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of the Trust as specified in Section 9.7 above, and that any such assignment without said consent shall be void.
- 11.8. Construction of Words. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.
- 11.9. Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.
- 11.10. Governing Law and Venue. This Agreement and the Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement or any of the Loan Documents, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.
- 11.11. Amendment. This Agreement may not be changed orally, but only by an agreement in writing signed by Borrower and the Trust. In the event of amendments to these loan documents, the Trust shall submit copies of all Trust fund loan guidelines and underwriting standards and procedures for review and approval by the Department of Housing and Community Development.
- 11.12. Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing.
- 11.13. Captions and Headings. Captions and headings in this Agreement are for convenience of reference only, and are not to be considered in construing the Agreement.
- 11.14. Nonliability. By accepting or approving anything required to be performed or given to Trust under the Loan Documents, including any certificate, financial statement, survey, or insurance policy, Trust shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Trust to anyone.
- 11.15. Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of Trust to Borrower, or any claim by Borrower against Trust, in connection with the Loan or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under the Loan Documents or

(b) to claim that the existence of any such obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under the Loan Documents.

11.16. Survival of Representations and Warranties. All representations and warranties of Borrower in the Loan Documents shall survive the making of the Loan and have been or will be relied on by Trust notwithstanding any investigation made by Trust.

11.17. Prior Agreements. This Agreement (together with the other Loan Documents) contains the entire agreement between Trust and Borrower with respect to the Loan and all prior negotiations, understandings and agreements (including, but not limited to, any commitment letter issued by Trust to Borrower) are superseded by this Agreement and such Loan Documents.

11.18. Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided, however, that with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

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

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

BORROWER:

[PLEASE PROVIDE SIGNATURE BLOCK]

By:

Signature Page Follows

TRUST:

ORANGE COUNTY HOUSING FINANCE TRUST, a
California public agency formed pursuant to California
Government Code section 6500 et. seq.

By: _____

Adam B. Eliason, Trust Manager

Orange County Housing Finance Trust

APPROVED AS TO FORM

TRUST COUNSEL

By _____

Trust Counsel

Dated _____

EXHIBIT A
LEGAL DESCRIPTION

[LEGAL DESCRIPTION TO BE PROVIDED]

EXHIBIT B

[TO BE PROVIDED]

LOW AND VERY LOW QUALIFIED TENANT/UNIT MIX

[XXXXXX], California

11.20. RENT & AFFORDABILITY SCHEDULE

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

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

- * * Utility allowance is based on the current utility schedule published by the Orange County Housing Authority annually.

- *** Income Limit may be adjusted in accordance with Section 2(g) of the Regulatory Agreement in the event that Project Based Section 8 rental subsidies are no longer available for the Project.

Rent increases shall be limited to (i) the Department of Housing and Urban Development's (HUD) annually published Rent Adjustment factor for the Section 8 program, or (ii) no more than the lower of rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth above, which is adjusted annually by HUD and published by the State of California, or as required by California Health & Safety Code section 50053, as referenced in the Loan Agreement Section 4.1 (a).

EXHIBIT C

Annual Statement Guidelines

Gross Revenue

Rental Income (including Project Based Vouchers)
Laundry & Miscellaneous

Expenses

Obligated debt service on the Senior Permanent Loans
Operating reserves
Replacement reserves (\$XXX per unit)
Deferred developer fee
Trust annual loan monitoring fee
Asset management and property management fee
Utility fees
Property taxes
Insurance premiums
Operating and maintenance expenses
Supportive/Resident services

Debt Service

First Trust Deed
Second Trust Deed
Third Trust Deed

Partnership and Management Fees

Partnership management related charges and fees

Cash Flow Available for Distribution as further described in the Promissory Note

X.XX%

Orange County Housing Finance Trust

EXHIBIT D

Mental Health Services Act Requirements

- 1. Population.** The population to be served shall include extremely low income (30% of Area Median Income for Orange County), homeless individuals with documentation of a serious mental disorder completed by a qualified mental health worker.
- 2. Rent Restrictions.** Restricted rents for the MHSA funded units shall not exceed 30% of the HUD-published 30% Area Median Income (AMI) levels for Orange County, adjusted for designated household size (less a utility allowance unless included in the rent) with the tenants rent portion not to be more than 30% of their Social Security Income/Social Security Pension (SSI/SSP) or not more than 30% of their total gross household income (if additional income beyond SSI/SSP is received). If federally funded Project Based Vouchers are provided, the developer shall comply with the federal regulations for maximum rent and tenant rent portions.
- 3. Coordinated Entry System.** To the greatest extent feasible, the Developer shall utilize the local coordinated entry system to screen for eligible residents currently experiencing homelessness and with a documented serious mental disorder.
- 4. Housing Unit General Requirements.** Housing units and building features must meet the needs of the MHSA tenants to be served at the development, including privacy, housing activities and community interaction. There shall be no requirement for non-related, single, adult tenants to share bedrooms. There shall be adequate number of bedrooms to accommodate the housing composition. Units are encouraged to have at least one-bedroom and be at least 450 square feet.
- 5. Housing Unit Living Requirements.** Housing units must have an identifiable and private living area, sleeping area, full kitchen area and a full bathroom. The kitchen area shall at a minimum include a sink, full size refrigerator, cupboard space, counter area, microwave or oven, and a two burner stove or built-in cook top.
- 6. Furnishings.** All units should be furnished with standard furnishings applicable to the unit type.
- 7. Technology.** Developers are encouraged to provide units that are pre-wired for high technology and internet access.
- 8. Common Space.** The building must include common space, such as a community room that can accommodate a variety of activities and where tenants can choose to interact with one another.
- 9. Office Space.** The building must include a designated office space to provide services to MHSA tenants.
- 10. Efficiency Requirements.** The design and operation of the Project shall incorporate features designed to increase efficiency and reduce ongoing expenses. The Project shall incorporate appropriate and feasible green design practices, such as the use

of ENERGY STAR rated energy-efficient appliances and water-conserving fixtures and products. The Project must also utilize durable materials chosen to reduce future maintenance costs and renewable building supplies.

Environmental Information. Tenants shall be provided with information to assist them to participate in environmentally friendly practices such as energy and water conservation, recycling and use of non-toxic household products.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Orange County Housing Finance Trust
1 League #62335, Irvine, CA 92602
Attn: Adam B. Eliason

**REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

By and Between

**ORANGE COUNTY HOUSING FINANCE TRUST,
a California public agency formed pursuant to California Government Code section
6500 et. seq**

and

[BORROWER TO CONFIRM PARTY AND ORG IDENTITY]

**REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "**Regulatory Agreement**" or "**Agreement**") is made and entered into as of _____ 2020, by and between the ORANGE COUNTY HOUSING FINANCE TRUST, a California public agency formed pursuant to California Government Code section 6500 et. seq. (the "**Trust**") and [XXXXX] [BORROWER TO CONFIRM PARTY AND ORG IDENTITY] (the "**Borrower**").

RECITALS

- A. Borrower intends to construct a housing project on that certain real property located within [unincorporated/the City of [CITY]], County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"). The Borrower further intends to construct and operate a [number of units] (#) unit residential development consisting of [insert facts] which shall be constructed by Borrower on the Property (collectively, the "Project").
- B. The Borrower has submitted to the Trust an application for funding of a project, described herein, under its 20[XX] Permanent Supportive Housing Notice of Funding Availability ("20[XX] PSH NOFA").
- C. The Trust desires to provide a loan during the construction period (which will convert to a permanent loan upon completion of construction of the Project, as set forth herein) to Borrower subject to the Borrower's agreement, amongst other things, to encumber the Borrower's [leasehold/fee simple] interest in the Property with certain rental restrictions, all as more particularly set forth in this Regulatory Agreement and the Loan Agreement.
- D. The Trust Board of Directors approved a loan to the Borrower from Trust funds on [DATE].
- E. Borrower is financing the construction of the improvements and related costs and expenses through the following sources:
 - [Add funding sources]
- F. Relevant to this Agreement, the Trust has agreed to loan Borrower the sum of \$[XXXXX] in Trust Funds, the repayment of which is to be secured by the Project and will be evidenced by, among other documents, a promissory note secured by a [XXXXX] priority deed of trust during the Construction Period and a [XXXXX] priority deed of trust during the Qualified Project Period.
- G. The Trust and the Borrower now desire to enter into this Agreement to set forth their agreement regarding the affordable housing restrictions for the Project and to cause said affordable housing restrictions to run with the land.

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

1. **Definitions.** Unless otherwise defined herein or in the Loan Agreement (as such term is defined below), capitalized terms used in this Regulatory Agreement shall have the respective meanings assigned to them in this Section 1:
 - 1.1. **"Act"** means Chapter 8 (commencing with Section 33750) of Part 1 of Division 24 of the Health and Safety Code of the State of California, as amended.
 - 1.2. **"Adjusted Income"** shall mean the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner which complies with determinations of income for low income families under the Department of Housing and Urban Development's Section 8 Program of the United States Housing Act of 1937, as amended.
 - 1.3. **"Area"** means Orange County, California.
 - 1.4. **"Borrower"** means [XXXXXX] [BORROWER TO CONFIRM PARTY AND ORG IDENTITY].
 - 1.5. **"Code"** means the United States Internal Revenue Code of 1986, as amended hereafter, or any successor statute thereto.
 - 1.6. **"Trust"** means the Orange County Housing Finance Trust, a California public agency formed pursuant to California Government Code section 6500 et. seq.
 - 1.7. **"Trust Manager"** means the Orange County Housing Finance Trust Manager or their designee.
 - 1.8. **"Housing Act"** means the United States Housing Act of 1937, as amended, or its successor.
 - 1.9. **"Loan"** means the loan made by the Trust to the Borrower pursuant to the Loan Agreement for the purpose of financing the acquisition, construction and development of the Project.
 - 1.10. **"Loan Agreement"** means that certain Loan Agreement between the Trust and the Borrower of even date herewith as it may be amended from time to time, the terms of which are hereby incorporated herein by this reference.
 - 1.11. **"Median Income for the Area"** shall mean the median income for the Area as most recently determined by the United States Department of Housing and Urban Development ("HUD") and published by the State of California. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Trust shall provide the Borrower with

other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the Department of Housing and Community Development.

- 1.12. **“Parties”** shall mean the Trust and the Borrower.
- 1.13. **“Project”** means collectively the Property and the structures and related buildings and other improvements located on the Property from time to time together with all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.
- 1.14. **“Property”** means the real property legally described in Exhibit "A", which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.
- 1.15. **“Qualified Project Period”** shall mean the period beginning upon fulfillment of the conditions precedent set forth in Article VI of the Loan Agreement and ending on the date which is fifty-five (55) years after the beginning of the Qualified Project Period.
- 1.16. **“Qualified Tenant” or “Qualified Tenants”** shall collectively mean the individuals occupying the Restricted Units with the Adjusted Incomes more particularly described in Exhibit “B” attached hereto and incorporated herein. The income of individuals shall be determined in a manner consistent with determinations of lower income households under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination) and by the California Department of Housing and Community Development in accordance with California Health and Safety Code Section 50052.5. In no event, however, will the occupant of a Restricted Unit be considered to be a Qualified Tenant if the occupant is a student, and is not entitled to file a federal income tax return.
- 1.17. **“Regulations”** means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time.
- 1.18. **“Regulatory Agreement” or “Agreement”** means this Regulatory Agreement.
- 1.19. **“Restricted Unit” or “Restricted Units”** means the dwelling units in the Project identified on Exhibit “B” attached hereto and incorporated herein required to be rented to, or held available for occupancy by Qualified Tenants pursuant to the terms, covenants and conditions of this Agreement, including, but not limited to, the rental restrictions and other matters set forth in said Exhibit "B" and the other Loan Documents.

1.20. “**Term**” is defined under Section 8 of this Agreement.

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

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

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

i. Are consistent with the purpose of providing housing for Qualified Tenants and families.

ii. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.

iii. Provide for:

A. The selection of Qualified Tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

B. The prompt written notification to any rejected applicant of the grounds for any rejection.

iv. Carry out the affirmative marketing procedures of the Trust, to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market Area to the program. Borrower and the Trust shall cooperate to effectuate this provision prior to the initial renting, upon occurrence of a vacancy, or upon the re-renting of any Restricted Unit.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Termination of Tenancy. Borrower may not terminate the tenancy or refuse to renew the lease of a Qualified Tenant except for serious or repeated violation of the terms and conditions of the Lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period (if the housing is transitional); or for other good cause. Any termination or refusal to renew must be

preceded by not less than thirty (30) days by the Borrower's service upon the Qualified Tenant of a written notice specifying the grounds for the action.

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

(f) Non-Qualifying Adjusted Income. Subject to the applicable requirements and provisions of, and changes to, Section 42 of the Code, if, upon recertification of the income of a Qualified Tenant of a Restricted Unit, the Borrower determines that a Qualified Tenant has an Adjusted Income exceeding 30% of Median Income for the Area, adjusted for household size in accordance with the Act, as defined in Section 1.2 above, such Qualified Tenant may be permitted to continue to occupy the Restricted Unit at the rental rate as provided for in Exhibit B, until the Qualified Tenant chooses to vacate the Restricted Unit. After the Restricted Unit is vacated, the Restricted Unit shall be re-rented to a Qualified Tenant pursuant to the terms, covenants and conditions of this Agreement.

(g) Loss of Project Based Voucher Subsidy.

1. It is anticipated that during the Qualified Project Period the Project will maintain Project Based Voucher ("PBV") Restricted Units, supported by Project-Based Section 8 rental subsidy payments (the "**Rental Subsidy**"). If, during the Qualified Project Period, any change in federal law or regulations occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination, or nonrenewal of the Rental Subsidy through no fault of Borrower, such that the Rental Subsidy shown on the Financing Plan (as defined in the Loan Agreement) is no longer available (or available in a lesser amount), Borrower may request approval of the Trust to increase the rent on one or more of the PBV Restricted Units, to an adjusted income that does not exceed sixty percent (60%) of Area Median Income, adjusted for actual household.

2. The rent increase is subject to the following requirements: (a) concurrently with the request, Borrower shall provide the Trust with evidence of the

anticipated reduction, termination, or nonrenewal of the Rental Subsidy, (b) a Management Plan (as defined in Section 1.19 of the Loan Agreement) for the Project for the Trust's approval pursuant to Sections 4.1 and 7.8 of the Loan Agreement, showing the impact of the loss or reduction of the Rental Subsidy, (c) a proposed operating budget reflecting the rent increases (the “**Operating Budget**”), and (d) a description of efforts to obtain alternate sources of rent. The number of PBV Restricted Units subject to the rent increase and the amount of the proposed increase may not be greater than the number or amount required to ensure that the Project generates sufficient income to cover its operating costs, required deposits to replacement reserves, and debt service on approved financing as shown on the Operating Budget, and as is necessary to maintain the financial stability of the Project. In addition, upon a reduction, termination or nonrenewal of the Rental Subsidy as described above, Borrower hereby agrees to the following:

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

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

3. All rent increases are subject to County approval pursuant to the terms of this Section 2 (g). No later than sixty (60) days prior to the proposed implementation of any rent increase, Borrower shall submit to the County a schedule of any proposed increase in the rent. The County will disapprove a rent increase allowed pursuant to Section 2(g)(1) if it does not comply with the restrictions set forth in Section 2(g)(2). Notwithstanding the foregoing, rent increases for the PBV Restricted Units shall be subject to review and approval of the County.

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

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

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

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

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

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

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

(e) Trust Right to Replace Management Agent. If at any time the Trust determines that the Project is not being managed or maintained in accordance with the approved Management Plan, Borrower shall change the management agent or the practices complained of, upon receipt of written notice from the Trust. The Trust may require Borrower to change management practices or to terminate the management contract and designate and retain a different management agent, to be approved by the Trust. The management agreement shall provide that it is subject to termination by

Borrower without penalty, upon thirty (30) days prior written notice, at the direction of the Trust. Within ten (10) days following a direction of the Trust to replace the management agent, Borrower shall select another management agent or make other arrangements satisfactory to the Trust for continuing management of the Project.

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

In the event that Borrower breaches any of the covenants contained in this Section 5 and such default continues for a period of five (5) days after written notice from the Trust (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from the Trust (with respect to landscaping and building improvements), then the Trust, in addition to whatever other right or remedy it may have under the Loan Agreement, the other Loan Documents, this Regulatory Agreement or at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the Trust shall be permitted (but is not required) to enter upon the Project and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas on the Project. Borrower shall promptly pay to the Trust, as applicable, the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by the Trust and/or costs of such cure, including a fifteen percent (15%) administrative charge.

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

7. Sale or Transfer of the Project. The Borrower hereby covenants and agrees not to voluntarily sell, transfer or otherwise dispose of the Property or the Project, or any

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

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

9. Covenants to Run with the Land.

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

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

(c) The Trust and its successors and assigns, and Borrower and the permitted successors and assigns of Borrower in and to all or any part of the fee title to the Project, shall jointly have the right upon written agreement signed by both parties to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or restrictions contained in this Agreement without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any

other person or entity having any interest less than a fee in the Project. The covenants contained in this Agreement, without regard to technical classification shall not benefit or be enforceable by any owner of any other real property within or outside the Project, or any person or entity having any interest in any other such realty.

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

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

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

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

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

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

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

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

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

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

(g) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of sixty (60) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 12(g) as well; or Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the Trust, the indebtedness evidenced by the Note; or

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

13. Remedies. The occurrence of any Event of Default shall, either at the option of the Trust or automatically where so specified, relieve the Trust of any obligation to make or continue the Loan and shall give the Trust the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the Trust's rights and remedies shall be cumulative), including but not limited to the following:

(a) Acceleration of Note. The Trust shall have the right to cause all indebtedness of the Borrower to the Trust under the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest, or dishonor. The Trust may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Trust as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the Trust on demand all expenses, costs and fees (including, without limitation, attorneys' fees and expenses) paid or incurred by the Trust 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 Trust shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under this Agreement and/or the Loan Documents or to enjoin acts on things, which may be unlawful, or in violation of the provisions of this Agreement and/or the Loan Documents.

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

(d) Remedies Cumulative. No right, power, or remedy given to the Trust 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 Trust by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Trust to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Trust of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

(e) Waiver of Terms and Conditions. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by the Trust to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the Trust to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the Trust in the exercise of any right, power, or remedy hereunder or under the Loan Documents, unless in the exercise of any such right, power, or remedy all obligations of Borrower to the Trust are paid and discharged in full.

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

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

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

17. Notices.

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

Borrower: [BORROWER TO PROVIDE]

Trust: Orange County Housing Finance Trust
1 League #62335, Irvine, CA 92602
Attn: Adam B. Eliason

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

[courtesy notices]

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

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

19. Additional Terms.

(a) Indemnity. To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Trust and its elected officials, officers, governing members, employees, attorneys and agents (collectively, the "Indemnified Parties"), from and against any and all losses, damages, claims, actions, liabilities, costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in

settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject to under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

i. this Agreement or the execution or amendment thereof in connection with the transactions contemplated thereby;

ii. Borrower's ownership or operation of the Property and the Project or any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Property and the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation of, the Project or any part thereof;

iii. any lien or charge upon payments by the Borrower to the Trust, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Trust in respect of any portion of the Project;

iv. any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Property or the Project or any part thereof;

v. any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any Loan Document or any of the documents or instruments relating to said Loan Documents that the Trust relied upon in making the Loan; except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

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

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

(d) Waiver of Jury Trial. Unless prohibited by Federal, State or local laws, each party to this Agreement hereby expressly waives any right to trial by jury of any

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

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

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

(g) Department of Housing and Community Development Underwriting Standards. The Trust attests that the underwriting standards being utilized for this transaction are those that have been submitted and approved by the Department of Housing and Community Development.

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

Signature Pages to Follow

BORROWER:

[PLEASE PROVIDE SIGNATURE BLOCK]

By:

Signature Page Follows

TRUST:

ORANGE COUNTY HOUSING FINANCE TRUST, a
California public agency formed pursuant to California
Government Code section 6500 et. seq.

By: _____
Adam B. Eliason, Trust Manager
Orange County Housing Finance Trust

APPROVED AS TO FORM
TRUST COUNSEL

By _____
Trust Counsel

Dated _____

**EXHIBIT A
LEGAL DESCRIPTION**

[PLEASE PROVIDE LEGAL DESCRIPTION]

EXHIBIT B

[PLEASE PROVIDE]

EXTREMELY LOW INCOME QUALIFIED TENANT/UNIT MIX

[LOCATION], California

RENT & AFFORDABILITY SCHEDULE

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

* Restricted Rental Rate is based on the current Area Median Income (AMI) published by HUD annually and does not include the utility allowance deduction.

** Utility allowance is based on the current utility schedule published by the Orange County Housing Authority annually.

*** Income Limit may be adjusted in accordance with Section 2(g) in the event that Project Based Section 8 rental subsidies are no longer available for the Project.

Rent increases shall be limited to (i) the Department of Housing and Urban Development’s (HUD) annually published Rent Adjustment factor for the Section 8 program, or (ii) no more than the lower of rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth above, which is adjusted annually by HUD and published by the State of California, or as required by California Health & Safety Code section 50053, as referenced in the Loan Agreement Section 4.1 (a).

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Orange County Housing Finance Trust
1 League #62335, Irvine, CA 92602
Attn: Adam B. Eliason

DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT (“**Deed of Trust**”) is made as of this ____ day of _____, 2020, by [BORROWER TO CONFIRM PARTY AND ORG IDENTITY], (“**Trustor**”), to _____, as trustee (“**Trustee**”), for the benefit of the ORANGE COUNTY HOUSING FINANCE TRUST, a California public agency formed pursuant to California Government Code section 6500 *et. seq.* as beneficiary (“**Beneficiary**”).

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor’s fee interest in the property located in Orange County, State of California, that is described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”), on which Trustor intended to construct and operate an apartment complex commonly known as [PROJECT NAME].

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

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

TOGETHER WITH any and all buildings, improvements and landscaping of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property (sometimes collectively referred to as the “**Improvements**”);

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

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed,

adjoining the Property, and any and all sidewalks, alleys, strips and gores of land adjacent to or used in connection with the Property and/or Improvements;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all oil, gas and mineral rights (including royalty and leasehold rights relating thereto), all water and water rights and shares of stock relating thereto, all leases of all or any portion of the Property or Improvements entered into by Trustor as lessor or lessee, all options to purchase or lease all or any portion of the Property and/or Improvements, all deposits made with or other security given by Trustor to third parties including, utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property; and

TOGETHER WITH all articles of personal property or fixtures now or hereafter attached to, located on, installed in or used in and about the Property and/or Improvements, including without limitation, all partitions, generators, screens, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing machinery and equipment, water tanks, heating, ventilating, air conditioning and air cooling machinery and, equipment, gas and electric machinery and equipment and other appliances, machinery and equipment and other fixtures of every nature, all of which shall remain real property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the Property in any manner.

TOGETHER WITH all present and future accounts, general intangibles, chattel paper, deposit accounts, investment property, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or Improvements and/or the use thereof or any improvements thereto, including without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property and/or Improvements; (ii) all deposit accounts and other accounts and funds created under or pursuant to the Loan Agreement (as defined below), and the other Loan Documents, all amounts now or hereafter on deposit herein, and all interest and other earnings thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property and/or Improvements; (iv) any and all agreements relating to the occupancy and/or operation of the Property and/or Improvements, including without limitation service, property management, landscaping, gardening, consulting and other contracts of every nature (to the extent the same are assignable); (v) all lease or rental agreements; (vi) all names under which the Property and/or Improvements are now or hereafter known and all rights to carry on business under any such names or any variant thereof; (vii) all trademarks relating to the Property and/or Improvements and/or the use, occupancy or operation thereof; (viii) all goodwill relating to the Property and/or Improvements and/or the use, occupancy or operation thereof; (ix) all insurance proceeds and condemnation awards arising out of or incidental to the ownership, use, occupancy or operation of the Property and/or Improvements; (x) all reserves, deferred payments, deposits, refunds, cost savings, bonds,

insurance policies and payments of any kind relating to the Property and/or Improvements; (xi) all water stock, if any, relating to any Property and/or Improvements; (xii) all supplements, modifications and amendments to the foregoing and all present and future accessions, additions, attachments, replacements and substitutions of or to any or all of the foregoing; and (xiii) all cash and noncash proceeds and products of any or all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing, whether voluntary or involuntary; and

TOGETHER WITH all present and future goods, equipment and inventory, as those terms are defined in the California Commercial Code, and all other present and future personal property of any kind or nature whatsoever, now or hereafter located at, upon or about the Property and/or Improvements, or used or to be used in connection with or relating or arising with respect to the Property and/or Improvements, the use thereof or any improvements thereto.

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

FOR THE PURPOSE OF SECURING:

(a) Payment of and performance of all indebtedness of Trustor to Beneficiary as set forth in the Loan Agreement (defined in Section 1.5 below) and the Note (defined in Section 1.6 below) in the original principal amount of [AMOUNT OF LOAN] (\$XXX) until paid or canceled. Said principal and other payments shall be due and payable as provided in the Loan Agreement and the Note. The Loan Agreement and the Note and all their terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

(b) Payment and performance of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust with interest thereon as provided herein;

(c) Payment and performance of every other obligation, covenant or agreement of Trustor contained in this Deed of Trust and in the other "Loan Documents" (as such term is defined in the Loan Agreement);

(d) Payment and performance of all renewals, extensions, supplements, amendments and other modifications of any of the foregoing, including without limitation modifications that are evidenced by new or additional documents or that change the rate of interest on any obligation.

All of the foregoing obligations are referred to collectively herein as the "Obligations".

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

ARTICLE I

DEFINITIONS

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

Section 1.1. The term “**Debt Instrument**” means any debt, loan, mortgage, deed of trust, regulatory agreement or security instrument relating to the Property or the Security, including, but not limited to, the Loan Documents. Section 1.2. The term “**Hazardous Substance**” means:

(a) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that

(i) poses a hazard to the Property or to persons on the Property or

(ii) causes the Property to be in violation of any Hazardous Substance Law;

(b) asbestos in any form;

(c) urea formaldehyde foam insulation;

(d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls;

(e) radon gas;

(f) any chemical, material, or substance defined as or included in the definition of “hazardous substance,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, Code of Civil Procedure § 564, as amended from time to time, Code of Civil Procedure § 726.5, as amended from time to time, Code of Civil Procedure § 736, as amended from time to time, and Civil Code § 2929.5, as amended from time to time;

(g) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Property or the owners or occupants of property adjacent to or surrounding the Property, or any other person coming on the Property or any adjacent property; and

(h) any other chemical, material, or substance that may pose a hazard to the environment.

Section 1.3. The term “**Hazardous Substance Claim**” means any enforcement, cleanup, removal, remedial, or other governmental, regulatory, or private actions, agreements, or orders

threatened, instituted, or completed pursuant to any Hazardous Substance Law together with all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost-recovery compensation, loss, or injury resulting from the presence, release or discharge of any Hazardous Substance.

Section 1.4. The term “**Hazardous Substance Law**” means any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [Health and Safety Code §§ 25300 et seq.], as amended from time to time; the Hazardous Waste Control Law [Health and Safety Code §§ 25100 et seq.], as amended from time to time; the Medical Waste Management Act [Health and Safety Code §§ 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], as amended from time to time.

Section 1.5. The term “**Loan Agreement**” means that certain Loan Agreement, which terms and provision are incorporated into this Deed of Trust by reference, of even date herewith between Trustor and Beneficiary.

Section 1.6. The term “**Note**” means that certain promissory note of even date herewith executed by the Trustor, the payment of which is secured by this deed of Trust.

Section 1.7. The term “**Principal**” means the aggregate of all principal and interest due under the Note.

Section 1.8. The term “**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Substances that goes into the soil, surface water, or groundwater of the Property, whether or not caused by, contributed to, permitted by, acquiesced to, or known to Trustor.

ARTICLE II

GENERAL COVENANTS OF TRUSTOR REGARDING THE PROPERTY, IMPROVEMENTS AND SECURITY

Section 2.1. Payment of Secured Obligations.

Trustor shall duly and punctually pay and perform all Obligations, including but not limited to all terms, covenants, conditions and agreements set forth in the Debt Instruments, the Loan Agreement, the Note and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 2.2. Maintenance, Repair and Modification.

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

(b) Trustor shall not remove, demolish or substantially alter any of the Improvements, other than to make repairs in the ordinary course of business of a non-structural nature which serve to preserve or increase the value of the Security without Beneficiary's prior written consent, which consent shall not be unreasonably withheld so long as Trustor provides reasonable evidence to Beneficiary that, following such demolition and restoration and/or alteration, the Improvements shall have a fair market value at least equal to their fair market value prior to such demolition and restoration and/or alteration; Trustor shall complete promptly and in a good and workmanlike manner any Improvement which may now or hereafter be constructed and promptly restore in like manner any Improvement which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor; Trustor shall comply with all laws, ordinances, rules, regulations, covenants, conditions, restrictions and orders of any governmental authority now or hereafter affecting the conduct or operation of Trustor's business or the security or any part thereof or requiring any alteration or improvement to be made thereon; Trustor shall not commit, suffer or permit any act to be done in, upon or to the Security or any part thereof in violation of any such laws, ordinances, rules, regulations or orders, or any covenant, condition or restriction now or hereafter affecting the Security; Trustor shall not commit or permit any waste or deterioration of the Security, and shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; Trustor will not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Security or otherwise would impair the security of Beneficiary in the Security; Trustor shall comply with the provisions of all leases, if any, constituting a portion of the Security; Trustor shall not abandon the Security or any portion thereof or leave the Security unprotected, unguarded, vacant or deserted; Trustor shall not initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Security by Trustor or by the owner thereof; Trustor shall secure and maintain in full force all permits necessary for the use, occupancy and operation of the Security; except as otherwise prohibited or restricted by the Loan Agreement and the other instruments and documents executed in connection with the transaction to which the Loan Agreement pertains or any of them, Trustor shall do any and all other acts which may be reasonably necessary to protect

or preserve the value of the Security and the rights of Trustee and Beneficiary with respect thereto.

Section 2.3. Granting of Easements.

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

Section 2.4. Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so paid by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are paid at the Agreed Rate (as defined in Section 3.1(d) below).

Section 2.5. Payment of the Principal.

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

Section 2.6. Fixture Filing and Security Agreement.

(a) To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixture filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code and Trustor hereby grants to Beneficiary a security interest in all of Trustor's right, title and interest, whether now existing or hereafter arising, in and to any portion of the Property which constitutes personal property (the "**Personal Property**").

(b) Trustor hereby represents and warrants to Beneficiary that: (1) Trustor is the owner of the Personal Property and no other person has any right, title, claim or interest (by way of security interest or other lien or charge or otherwise) in, against or to the Personal Property other than any senior lender or lien holder approved in writing by Beneficiary; (2) the Personal Property is free from all liens, security interests, encumbrances and adverse interests, except Permitted Encumbrances (hereinafter defined); (3) no financing statement or similar filing covering any of the Personal Property, and naming any secured party other than Beneficiary and the holders of Permitted Encumbrances, is on file in any public office; (4) each account, general intangible, chattel paper, deposit account, instrument, document, agreement, contract or right to the payment of money constituting Personal Property (collectively, the "Rights to Payment"), if any, is genuine and enforceable in accordance with its terms against the party obligated to pay

the same and (5) the Personal Property is not used nor was the Personal Property purchased for personal or family use by Trustor.

(c) Trustor hereby agrees: (1) to pay, prior to delinquency, all taxes, assessments, charges, encumbrances and liens now or hereafter imposed upon or affecting all or any part of the Personal Property; (2) not to amend, modify, supplement, terminate or cancel any of the Personal Property; (3) without the prior written consent of Beneficiary, not to remove all or any part of the tangible Personal Property from the Property; (4) to give Beneficiary thirty (30) days' prior written notice of any change in Trustor's residence, principal place of business, chief executive office or trade names or styles; (5) to appear in and defend any action or proceeding which may affect the Personal Property (including, without limitation, actions, proceedings and claims which may affect Trustor's title to the Personal Property or the validity or priority of Beneficiary's security interest in the Personal Property); (6) to indemnify Beneficiary against all claims, demands and liabilities of every kind caused by the Personal Property; and (7) to permit Beneficiary to enter Trustor's premises to inspect the Personal Property. Trustor further agrees (8) to fully and timely perform all of its obligations under and with respect to all Rights of Payment and to diligently enforce all of the obligations of each obligor thereunder; (9) not to amend, modify, supplement, cancel or terminate any of the Rights to Payment in any material respect without the prior written consent of Beneficiary; (10) to keep the Rights to Payment and all proceeds free and clear of all defaults, defenses, rights of offset and counterclaim; (11) to take or bring, in Beneficiary's name or in the name of Trustor, as Beneficiary may require, all actions, suits or proceedings deemed reasonably necessary or desirable by Beneficiary to effect collection or to realize upon Rights to Payment; and (12) not to commingle Rights to Payment or collections thereunder with other property.

(d) As soon as practicable, and in any event within ten (10) days, Trustor shall notify Beneficiary of: (1) any attachment or other legal process levied against any of the Personal Property; (2) any information received by Trustor which may in any manner materially and adversely affect the value of the Personal Property or the rights and remedies of Beneficiary with respect thereto; and (3) the removal of any of the Personal Property to a new location other than in the ordinary course of business and the removal of any records of Trustor relating to the Personal Property to any location other than the Land and Improvements.

(e) Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact to, after the occurrence and during the occurrence of an Event of Default: (1) perform any obligation of Trustor hereunder in Trustor's name or otherwise; (2) give notice of Beneficiary's rights in the Rights to Payment, to enforce the same, and make extension agreements with respect thereto; (3) release persons liable on the Rights to Payment and to give receipts and acquittances and compromise disputes in connection therewith; (4) release security for the Rights to Payment; (5) resort to security for the Rights to Payment in any order; (5) prepare, execute, file, record or deliver notes, assignments, schedules, designation statements, financing statements, continuation statements, termination statements, and other documents to perfect preserve or release Beneficiary's interest in the Rights to Payment; and (6) do all acts and things and execute all documents in the name of Trustor or otherwise, deemed by Beneficiary as necessary, proper and convenient in connection with the preservation, perfection or enforcement

of its rights hereunder. The power of attorney granted hereunder is coupled with an interest and is irrevocable.

Section 2.7. Financing Statement.

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

Section 2.8. Operation of the Security.

The Trustor agrees and covenants to operate the Security in full compliance with the Loan Agreement and the Debt Instruments.

Section 2.9. Inspection of the Security.

The Trustor covenants and agrees that at any and all reasonable times, the Beneficiary and its duly authorized agents, attorney's experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect all or any portion of the Security, including, but not limited to, the right to inspect and copy all reports and records pertaining thereto.

Section 2.10. Nondiscrimination.

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

Section 2.11. Subrogation and Waiver of Offset.

(a) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Security, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust; provided, however, that this waiver of subrogation shall not be effective with respect to any policy of insurance permitted or required by this Deed of Trust if (i) such policy prohibits, or if coverage thereunder would be reduced as a result of, such waiver of subrogation and (ii) Trustor is unable

to obtain from a carrier issuing such insurance a policy that, by special endorsement or otherwise, permits such a waiver of subrogation.

(b) Except as otherwise specifically provided herein, all amounts payable by Trustor pursuant to this Deed of Trust shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Security or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Security or any part thereof; (iii) any title defect or encumbrance or any eviction from the Security or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

Section 2.12. Utilities.

Trustor shall pay or cause to be paid when due all utility charges which are incurred for the benefit of the Security or which may become a charge or lien against the Security for gas, electricity, water, sewer services or other fees and charges for utilities furnished to the Security and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Security or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon.

Section 2.13. Actions by Beneficiary to Preserve Property.

If Trustor fails to make any payment or to do any act as and in the manner provided in this Deed of Trust, Beneficiary and Trustee, and each of them, each in its own discretion, without obligation to do so, without releasing Trustor from any Obligation, and subject only to the notice and cure provisions of the Loan Agreement, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general and other powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall each and are hereby given the right, but not the obligation: (i) to enter upon and take possession of the Security; (ii) to make additions, alterations, repairs and improvements to the Security which either of them consider necessary or proper to keep the Security in good condition and repair; (iii) to appear and participate in any action or proceeding which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers to pay necessary expenses, including

employment of counsel or other necessary or desirable consultants. Trustor shall reimburse Beneficiary on demand for all costs incurred by Beneficiary in connection with actions which Beneficiary deems advisable to protect its interest under the Loan Agreement and all such amounts shall bear interest at the Agreed Rate following demand and be secured hereby.

Section 2.14. Transfer of Property by Trustor.

Prior to repayment of the Note, Trustor agrees that Trustor shall not sell or transfer the Security or any interest therein or sell or transfer all or substantially all of the assets of Trustor or any of them except as may be provided in the Loan Agreement.

Section 2.15. Additional Security.

No other security now existing, or hereafter taken, to secure the Obligations secured hereby or the liability of any maker, surety guarantor or endorser with respect to such Obligations, or any of them, shall be impaired or affected by the execution of this Deed of Trust; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the Security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety, guarantor or endorser for the payment of said indebtedness. In the event Beneficiary at any time holds additional security for any of the Obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

Section 2.16. Liens.

Trustor shall not cause, incur suffer or permit to exist or become effective any lien, encumbrance or charge upon all or any part of the Property, the Improvements or any interest therein other than (a) easements, rights of way, covenants, conditions, restrictions, liens and other title limitations approved in writing by Beneficiary prior to the execution of this Deed of Trust, and (b) immaterial easements and rights of way which are required by governmental authorities as a condition to the use and operation of the Improvements which are approved in writing by Beneficiary after the execution of this Deed of Trust (the “**Permitted Encumbrances**”). Trustor shall pay and promptly discharge, at Trustor’s cost and expense, all liens, encumbrances and charges upon the Security, or any part thereof or interest therein other than the Permitted Encumbrances; provided, that the existence of any mechanic’s, laborer’s, materialman’s, supplier’s or vendor’s lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Trustor shall first deposit with the Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim or shall post a bond authorized by statute in lieu thereof, and provided further that Trustor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Trustor shall fail to remove and discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or charge nor into the existence of

any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in court a bond or the amount claimed, or otherwise giving security for such claim, in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Agreed Rate and, until paid, such sums shall be secured hereby.

Section 2.17. Beneficiary's Powers.

Without affecting the liability of any other person liable for the payment of any Obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Security not then or theretofore released as security for the full amount of all unpaid Obligations, Beneficiary may, from time to time and without notice: (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such Obligation (to the extent that Beneficiary is so allowed under the Loan Agreement), (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Security, (e) take or release any other or additional security for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto. By accepting payment or performance of any Obligation secured by this Deed of Trust after the payment or performance thereof is due or after the filing of notice of default and election to sell (other than satisfaction in full of the Obligations), Beneficiary shall not have thereby waived its right to require prompt payment or performance, when due, of all other Obligations secured hereby, or to declare a default for failure so to pay or perform, or to proceed with the sale under any notice of default and election to sell theretofore given by Beneficiary, or with respect to any unpaid balance of the indebtedness secured hereby. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due. Trustor's failure to pay the entire sum then due shall continue to be a default, notwithstanding the acceptance of partial payment, and, until the entire sum then due shall have been paid, Beneficiary or Trustee shall at all times be entitled to declare a default and to exercise all the remedies herein conferred, and the right to proceed with a sale under any notice of default and election to sell shall in no way be impaired, whether or not such amounts are received prior or subsequent to such notice. No delay or omission of Trustee or Beneficiary in the exercise of any other right or power hereunder shall impair such right or power or any other right or power nor shall the same be construed to be a waiver of any default or any acquiescence therein.

Section 2.18. Suits to Protect Property. Trustor agrees to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or any additional or other security for the obligations secured, the interest of Beneficiary of the rights, powers and duties of Trustee, and to pay all costs and expenses, including without limitation, cost of evidence of title and attorneys' fees, in any action or proceeding in which Beneficiary or Trustee may appear to be made a party, including, but not limited to, foreclosure or other proceeding commenced by those claiming a right to any part of the Property under subordinate liens, in any action to partition or condemn all or part of the Property, whether pursued to final judgment, and

in any exercise of the power of sale in this Deed of Trust, whether the sale is actually consummated.

ARTICLE III

TAXES AND INSURANCE; ADVANCES

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

(a) Trustor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other charges of any kind, including without limitation non-governmental levies or assessments such as maintenance charges, levies or other charges resulting from covenants, conditions and restrictions affecting the Security, which are assessed or imposed upon the Security or upon Trustor as owner or operator of the Security, or become due and payable, and which create or may create a lien upon the Security, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all the above collectively hereinafter referred to as "Impositions"); provided, however, that if, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same in installments (together with any interest charged) as the same become due and before any fine, penalty or cost may be added thereto for the nonpayment of any such installment. Notwithstanding the foregoing, Trustor shall have the right to diligently contest, in good faith and by appropriate proceedings, the validity of any Imposition, so long as Trustor demonstrates to Beneficiary that Trustor is maintaining sufficient reserves for the payment of all contested liabilities and so long as the security and value of Beneficiary's interest under this Deed of Trust are not impaired as a result of such contest.

(b) If at any time after the date hereof there shall be assessed or imposed (1) a tax or assessment on the Security in lieu of or in addition to the Impositions payable by Trustor pursuant to this Section 3.1 hereof, or (2) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in this Section and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency or if Trustor is prohibited by law from paying such Impositions, Beneficiary may at its option declare all Obligations secured hereby, together with all accrued interest thereon, immediately due and payable. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the Obligations secured hereby.

(c) Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof. Trustor shall not suffer, permit or initiate the joint assessment of any real and personal property which may constitute all or a portion of the Security and the personal property or suffer, permit or initiate any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied or charged to the Security as a single Lien. Trustor shall

cause to be furnished to Beneficiary a tax reporting service, covering the Property, of a type and duration, and with a company, reasonably satisfactory to Beneficiary.

(d) In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the greater of twelve percent (12%) per annum or the maximum rate permitted by law (hereinafter the "Agreed Rate"), shall become an additional Obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2. Insurance.

(a) Trustor agrees to provide insurance conforming in all respects to that required under the Loan Agreement at all times until all amounts secured by this Deed of Trust have been paid and all other Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed. All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense.

(b) All said insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to the Beneficiary and/or shall name Beneficiary as an additional insured, as Beneficiary may require, and shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policies notwithstanding any act or negligence of Trustor or any party holding under Trustor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim and deduction against Trustor. At Beneficiary's option, Trustor shall furnish Beneficiary with an original of all required policies of insurance and/or a certificate of insurance with all required endorsements for each required policy setting forth the coverage, the limits of liability, the deductible, if any, the name of the carrier, the policy number, and the period of coverage, which certificates and endorsements shall be executed by authorized officials of the companies issuing such insurance, or any agents or attorneys-in-fact authorized to issue said certificates and endorsements (in which event each such certificate and endorsements shall be accompanied by a notarized affidavit, agency agreement or power of attorney evidencing the authority of the signatory to issue such certificate on behalf of the insurer named therein), accompanied by a certificate from Trustor that the insurance satisfies the requirements of the Loan Agreement, and that Beneficiary may conclusively rely on such certificates. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location; provided, however, all such policies shall be in form and substance and issued by companies satisfactory to Beneficiary.

(c) At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust or the Loan Agreement. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and the insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended (which term shall

include any reduction in the scope, or limits of coverage) without at least thirty (30) days prior written notice to Beneficiary.

(d) In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance required by Section 3.2 hereof and any unearned premiums paid thereon shall, without further act, be assigned to and shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Property, and Trustor hereby appoints Beneficiary its lawful attorney-in-fact to execute an assignment thereof and any other document necessary to effect such transfer.

Section 3.3. Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Agreement, the Beneficiary, after at least twenty (20) days prior written notice to Trustor, may (but shall be under no Obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional Obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the Agreed Rate.

ARTICLE IV

DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1. Casualties.

Trustor shall give prompt written notice to Beneficiary upon the occurrence of casualty to or in connection with the Security or any part thereof, whether or not covered by insurance. In the event of such casualty Trustor hereby absolutely and unconditionally assigns to Beneficiary all insurance proceeds which it may be entitled to receive and such proceeds shall be delivered to and held by Beneficiary to be applied to Beneficiary's expenses in settling, prosecuting or defending any insurance claim, and then to the restoration of any portion of the Security that has been damaged or destroyed to the same condition, character and value as existed prior to such damage or destruction so long as the following conditions are satisfied: (i) Trustor is not in default hereunder (other than any default resulting from such casualty), (ii) Beneficiary's security is not materially impaired, (iii) all income (from the Security or otherwise) required to pay all debt service and operating expenses of the Security during such restoration and thereafter will be equal to or greater than the income which was required to pay such debt service and operating expenses prior to the casualty, (iv) Trustor evidences to the satisfaction of Beneficiary that the insurance required to be maintained hereunder will be available to the Trustor during restoration and thereafter, (v) Beneficiary shall have approved the plans and specifications for such restoration, which approval shall not be unreasonably withheld or delayed, and (vi) in the event that in Beneficiary's sole judgment the insurance proceeds and any amounts deposited with a senior lender are not sufficient to accomplish restoration, Trustor deposits with the Beneficiary

or senior lender, as required by that senior lender pursuant to the terms of the senior Debt Instrument, within five days of demand by Beneficiary, the additional amounts necessary to accomplish restoration. Proceeds disbursed for restoration will be released to Trustor in accordance with Beneficiary's then current customary disbursement procedures. In the event any of the conditions set forth above are not satisfied or if the insurance proceeds shall not be applied to the restoration of the Security within thirty days after receipt of such proceeds by Beneficiary, Beneficiary may release such proceeds to Trustor without such release being deemed a payment of any indebtedness secured hereby, rather than apply such proceeds to the restoration of the Security. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If the Security is restored at a cost less than the available insurance proceeds, then such excess proceeds shall, if Trustor is not then in default hereunder, be paid over to Trustor. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims, proceeds and awards assigned to Beneficiary, but shall not be responsible for any failure to collect any claim, proceeds or award, regardless of the cause of the failure.

Section 4.2. Condemnation.

Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation or other taking for public or quasi-public use of the Security or any part thereof, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceedings, action, taking or damage, Trustor shall promptly notify Trustee and Beneficiary of such fact. Trustor shall then, if requested by Beneficiary, file or defend its right thereunder and prosecute the same with due diligence to its final disposition and shall cause any award or settlement to be paid to Beneficiary in accordance with the provisions of the Loan Agreement. At Beneficiary's option, Beneficiary or Trustor may be the nominal party in such proceeding but in any event Beneficiary shall be entitled, without regard to the adequacy of its security, to participate in, appear in, prosecute and settle, jointly with Trustor to control the same and to be represented therein by counsel of its choice, and Trustor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. Trustor and Beneficiary agree to act in good faith with respect to any consent, settlement, or award arising out of said prosecution. If the Security or any part thereof is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceedings, all compensation, awards, damages, rights of action proceeds and settlements payable to Trustor by virtue of its interest in the security shall be and hereby are assigned, transferred and set over into Beneficiary to be held by it, in trust, subject to the lien and security interest of this Deed of Trust. All such proceeds shall be first applied to reimburse Trustee and Beneficiary, for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such award or settlement, and then to the restoration of any portion of the Security that has been taken to the similar condition, character and value as existed prior to such taking so long as the following conditions are satisfied: (i) Trustor is not in default hereunder, (ii) Beneficiary's security is not materially impaired, (iii) all income (from the Security or otherwise) required to pay all debt service and operating expenses of the Security during such restoration and thereafter will be equal to or greater than the income which was required to pay such debt service and operating expenses prior to the casualty, (iv) Trustor evidences to the satisfaction of Beneficiary that the insurance

required to be maintained hereunder will be available to the Trustor during restoration and thereafter, (v) Beneficiary shall have approved the plans and specifications for such restoration, and (vi) in the event that in Beneficiary's sole judgment the insurance proceeds and any amounts deposited with a senior lender are not sufficient to accomplish restoration, Trustor deposits with the Beneficiary or senior lender, as required by that senior lender pursuant to the terms of the senior Debt Instrument, within five days of demand by Beneficiary, the additional amounts necessary to accomplish restoration. Application or release of proceeds as provided herein shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

ARTICLE V

ENVIRONMENTAL COVENANTS OF TRUSTOR

Section 5.1. Disclosures By Trustor. Except as disclosed in writing to, and acknowledged and accepted in writing by Beneficiary, Trustor represents and warrants that:

(a) during the period of Trustor's ownership of the Property

(1) there has been no use, generation, manufacture, storage, treatment, disposal, discharge, Release, or threatened Release of any Hazardous Substance by any person on or around the Property except in such small quantities as are customary and usual in the ordinary course of constructing, using and operating a residential housing business on the Property and in strict compliance with all Hazardous Substances Laws, and

(2) there have been no Hazardous Substances transported over or through the Property;

(b) after diligent inquiry, Trustor has no knowledge of, or reason to believe that, there has been:

(1) any use, generation, manufacture, storage, treatment, disposal, Release, or threatened Release of any hazardous waste or substance by any prior owners or prior occupants of the Property or by any third parties onto the Property, or

(2) any actual or threatened litigation or claims of any kind by any person relating to these matters;

(c) no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Hazardous Substance Laws are present in or about the Property or any nearby real property that could migrate to the Property;

(d) no Release or threatened Release exists or has occurred;

(e) no underground storage tanks of any kind are or ever have been located in or about the Property;

(f) the Property and all operations and activities at, and the use and occupancy of, the Property comply with all applicable Hazardous Substance Laws;

(g) Trustor is now in strict compliance with, every permit, license, and approval required by all applicable Hazardous Substance Laws for all activities and operations at, and the use and occupancy of, the Property;

(h) to the best of Trustor's knowledge, after diligent inquiry, there are no Hazardous Substance Claims pending or threatened with regard to Property or against Trustor;

(i) to its knowledge the Property has not been nor is it within 2,000 feet of any other property designated as "hazardous waste property" or "border zone property" pursuant to Health and Safety Code §§ 25220 et seq., and no proceedings for a determination of this designation are pending or threatened;

(j) to the best of its knowledge after diligent inquiry, there exists no occurrence or condition on any real property adjoining or within 2,000 feet of the Property that would cause the Property or any part of it to be designated as "hazardous waste property" or "border zone property" under the provisions of Health and Safety Code §§ 25220 et seq., and any regulation adopted in accordance with that section;

(k) that the use of the Property shall be residential housing;

(l) any written disclosure submitted by or on behalf of Trustor to Beneficiary concerning any Release or threatened Release, past or present compliance by Trustor or other person of any Hazardous Substance Laws applicable to the Property, the past and present use and occupancy of the Property, and any environmental concerns relating to the Property, was true and complete when submitted and continues to be true and complete as of the date of this Deed of Trust.

Section 5.2 Covenants of Trustor. Trustor agrees, except in the ordinary course of business and in strict compliance with all applicable Hazardous Substance Laws, as follows:

(a) not to cause or permit the property to be used as a site for the use, generation, manufacture, storage, treatment, Release, discharge, disposal, transportation, or presence of any Hazardous Substance;

(b) not to cause, contribute to, permit, or acquiesce in any Release or threatened Release;

(c) not to change or modify the use of the Property without the prior written consent of Beneficiary;

(d) to comply with and to cause the Property and every invitee or occupant of the Property to comply with all Hazardous Substance Laws;

(e) to immediately notify Beneficiary in writing of and to provide Beneficiary with a reasonably detailed description of:

Laws;

- (1) any noncompliance of the Property with any Hazardous Substance
- (2) any Hazardous Substance Claim;
- (3) any Release or Threatened Release;
- (4) not engage in any of the activities enumerated in Cal. Health & Safety Code section 25227 on land that is subject to a recorded land use restriction pursuant to former Health & Safety Code Section 25229, 25230, or 25398.7, as those sections read on January 1, 2012, or pursuant to Sections 25202.5, 25221, or 25355.5 of the same, unless the person obtains a specific approval in writing as required pursuant to Section 25227.

(f) if Trustor discovers a Release or the presence of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law, to:

- (1) notify Beneficiary of that discovery together with a reasonably detailed description;

- (2) engage promptly after a request by Beneficiary, a qualified environmental engineer reasonably satisfactory to Beneficiary to investigate these matters and prepare and submit to Beneficiary a written report containing the findings and conclusions resulting from that investigation, all at the sole expense of Trustor, and

- (3) take, at Trustor's sole expense, all necessary actions to remedy, repair, clean up, or detoxify any Release or Hazardous Substance, including, but not limited to, any remedial action required by any Hazardous Substance Laws or any judgment, consent, decree, settlement, or compromise in respect of any Hazardous Substance Claims, these actions to be performed:

- A. in accordance with Hazardous Substance Laws,
- B. in a good and proper manner,
- C. under the supervision of a qualified environmental engineer approved in writing by Beneficiary,

- D. in accordance with plans and specifications for these actions approved in writing by Beneficiary, and

- E. using licensed and insured qualified contractors approved in writing by Beneficiary;

(g) immediately furnish to Beneficiary copies of all written communications received by Trustor from any governmental authority or other person or given by Trustor to any person and any other information Beneficiary may reasonably request concerning any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law; and

(h) keep Beneficiary generally informed regarding any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law.

Section 5.3 Rights of Beneficiary. Upon Beneficiary's reasonable belief of the existence of a past or present Release or threatened Release not previously disclosed by Trustor in connection with the making of the Loan or the execution of this Deed of Trust or upon Beneficiary's reasonable belief that Trustor has failed to comply with any environmental provision of this Deed of Trust or any other Loan Document and upon reasonable prior notice (except in the case of an emergency) to Trustor, Beneficiary or its representatives, employees, and agents, may from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Property and every part of it (including all samples of building materials, soil, and groundwater and all books, records, and files of Trustor relating to the Property) and perform those acts and things that Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the Security of this Deed of Trust, for the purpose of determining:

(a) the existence, location, nature, and magnitude of any past or present Release or threatened Release,

(b) the presence of any Hazardous Substances on or about the Property in violation of any Hazardous Substance Law, and

(c) the compliance by Trustor of every environmental provision of this Deed of Trust and every other Loan Document.

In furtherance of the purposes above, without limitation of any of its other rights, Beneficiary may:

(1) obtain a court order to enforce Beneficiary's right to enter and inspect the Property under Civil Code § 2929.5; and

(2) have a receiver appointed under Code of Civil Procedure § 564 to enforce Beneficiary's right to enter and inspect the Property for the purpose set forth above.

All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, will be paid by Trustor. All costs or expenses incurred by Trustee and Beneficiary pursuant to this Section (including without limitation court costs, consultant's fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Agreed Rate from the date they are incurred until those sums have been paid in full. Except as provided by law, any inspections or tests made by Beneficiary or its representatives, employees, and agents will be for Beneficiary's purposes only and will not be construed to create any responsibility or liability on the part of Beneficiary to Trustor or to any other person. Beneficiary will have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could

constitute a breach of any of Trustor's obligations under any environmental provision contained in this Deed of Trust or any Loan Document.

Section 5.4 Waiver and Indemnity. Trustor:

(a) releases and waives any future claims against Beneficiary for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any Hazardous Substance Laws or under any Hazardous Substance Claim;

(b) agrees to reimburse Beneficiary, on demand, for all costs and expenses incurred by Beneficiary in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Deed of Trust together with interest, after demand, at the Agreed Rate; and

(c) agrees to indemnify, defend, and hold Beneficiary and Trustee harmless from all losses, costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, attorney fees and other legal expenses, costs of evidence of title, cost of evidence of value, and other expenses (collectively, "**Expenses**"), including, but not limited to, any Expenses incurred or accruing after the foreclosure of the lien of this Deed of Trust, which either may suffer or incur and which directly or indirectly arises out of or is in any way connected with the breach of any environmental provision either in this Deed of Trust or in any Loan Document or as a consequence of any Release or threatened Release on the presence, use, generation, manufacture, storage, disposal, transportation, Release, or threatened Release of any Hazardous Substance on or about the Property, including the soils and groundwater, caused or permitted by Trustor, any prior owner or operator of the Property, any adjoining landowner or any other party, including, without limitation, the cost of any required or necessary repair, cleanup, remedy, or detoxification of any hazardous Substance and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Deed of Trust. Trustor's obligations will survive the satisfaction, release, or cancellation of the indebtedness, the release and reconveyance or partial release and reconveyance of this Deed of Trust, and the foreclosure of the lien of this Deed of Trust or deed in lieu of the Deed of Trust.

Section 5.5 Additional Covenants of Trustor.

(a) Trustor and Beneficiary agree that:

(1) this Section is intended as Beneficiary's written request for information and Trustor's written response concerning the environmental condition of the Property as provided by Code of Civil Procedure § 726.5; and

(2) each representation, warranty, covenant, or indemnity made by Trustor in this Article or in any other provision of this Deed of Trust or any Loan Document that relates to the environmental condition of the Property is intended by Trustor and Beneficiary to be an "environmental provision" for purposes of Code of Civil Procedure § 736 and will survive the payment of the indebtedness and the termination or expiration of this Deed of Trust and will not be affected by Lender's acquisition of any interest in the Property, whether by full credit bid at foreclosure, deed in lieu of that, or otherwise. If there is any transfer of any portion of

Trustor's interest in the Property, any successor-in-interest to Trustor agrees by its succession to that interest that the written request made pursuant to this Article will be deemed remade to the successor-in-interest without any further or additional action on the part of Beneficiary and that by assuming the debt secured by this Deed of Trust or by accepting the interest of Trustor subject to the lien of this Deed of Trust, the successor remakes each of the representations and warranties in this Deed of Trust and agrees to be bound by each covenant in this Deed of Trust, including, but not limited to, any indemnity provision.

(b) Even though Trustor may have provided Beneficiary with an environmental site assessment or other environmental report together with other relevant information regarding the environmental condition of the Property, Trustor acknowledges and agrees that Beneficiary is not accepting the Property as security for the Loan based on that assessment, report, or information. Rather, Beneficiary has relied on the representations and warranties of Trustor in this Deed of Trust, and Beneficiary is not waiving any of its rights and remedies in the environmental provisions of this Deed of Trust or any other Loan Document.

(c) Beneficiary or its agents, representatives, and employees may seek a judgment that Trustor has breached its covenants, representations, or warranties in Article II of this Deed of Trust or any other covenants, representations, or warranties that are deemed to be "environmental provisions" pursuant to Code of Civil Procedure § 736 (each an "**Environmental Provision**"), by commencing and maintaining an action or actions in any court of competent jurisdiction pursuant to Code of Civil Procedure § 736, whether commenced prior to or after foreclosure of the lien of this Deed of Trust. Beneficiary or its agents, representatives, and employees may also seek an injunction to cause Trustor to abate any action in violation of any Environmental Provision and may seek the recovery of all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary (collectively, "**Environmental Costs**") incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action required by any Hazardous Substances Law or any Hazardous Substance Claim, or which Beneficiary believes necessary to protect the Property. It will be conclusively presumed between Beneficiary and Trustor that all Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action of or to the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this Section (including without limitation court costs, consultant fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Agreed Rate from the date of expenditure until those sums have been paid in full. Beneficiary will be entitled to bid, at any trustee's or foreclosure sale of the Property, the amount of the costs, expenses, and interest in addition to the amount of other indebtedness.

(d) Beneficiary or its agents, representatives, and employees may waive its lien against the Property or any portion of it, including but not limited to the Improvements, to the extent that the Property or any portion of the Security is found to be environmentally impaired in accordance with Code of Civil Procedure § 726.5, and to exercise all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including, but not limited to, seeking an attachment order under Code of Civil Procedure § 483.010. As between Beneficiary and Trustor, for purposes of Code of Civil Procedure § 726.5, Trustor will have the burden of

proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) was not in any way negligent in permitting the Release or threatened Release of the Hazardous Substances.

ARTICLE VI

ASSIGNMENTS OF RENTS, ISSUES AND PROFITS

Section 6.1. Assignment.

Trustor hereby absolutely, irrevocably and unconditionally assigns to Beneficiary, as security for the Obligations, all rents, profits, deposits, royalties, income and other issues and similar benefits derived from the Security (collectively, the “**Rents**”), and hereby confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in its name or in the name of Trustor, for all Rents, and apply the same to the Obligations secured hereby; provided, however, that Trustor shall have the right, as between Trustor and Beneficiary, to collect the Rents but not more than one (1) month in advance of the date due unless the written approval of Beneficiary has first been obtained, with the exception of security deposits and “first and last months’ rent” collected from tenants in connection with Trustor’s ordinary leasing of residential apartments within the Property), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing.

Section 6.2. Collection Upon Default.

While any Event of Default remains uncured, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations hereby secured, enter upon and take possession of the Security, or any part thereof, and, with or without taking possession of the Security or any part thereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid Rents and all other monies which may have been or may hereafter be deposited with Trustor by any tenant to secure the payment of any Rent or for any services thereafter to be rendered by Trustor for any other obligation of any tenant to Trustor arising under any lease, and Trustor agrees that, upon the occurrence of any Event or Default hereunder, Trustor shall promptly deliver all Rents and other moneys to Beneficiary), and Beneficiary may apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys fees, whether or not suit is brought or prosecuted to judgment, against any indebtedness or Obligation of Trustor secured hereby, and in such order as Beneficiary may determine notwithstanding that said indebtedness or the performance of said Obligation may not then be due. The collection of Rents, or the entering upon and taking possession of the Security, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make Beneficiary a mortgagee-in-possession of the Security or any portion thereof.

Section 6.3. Further Assignments.

Upon demand of Beneficiary, Trustor shall, from time to time hereafter, execute, and deliver to Beneficiary recordable assignments of Trustor's interest in any or all leases, subleases, contracts, rights, licenses and permits now or hereafter affecting the Security or any portion thereof. Such assignments shall be made by instruments in form and substance satisfactory to Beneficiary; provided, however, that no such assignment shall be construed as imposing upon Beneficiary any obligation with respect thereto. Beneficiary may, at its option, exercise its rights hereunder or under any such specific assignment and such exercise shall not constitute a waiver of any right hereunder or under any such specific assignment.

ARTICLE VII

DEFAULTS

Section 7.1. Events of Default.

Each of the following shall constitute Events of Default: (1) the occurrence of an "Event of Default" as defined in the Loan Agreement or as defined in any Debt Instrument; or (2) the failure to make any payment or perform any of Trustor's other Obligations now or hereafter secured by this Deed of Trust (subject to any applicable cure period).

Section 7.2. Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default, the unpaid Principal of the Note and any other indebtedness and other Obligations secured hereby shall immediately become due and payable without presentment, protest notice or demand, all of which are hereby expressly waived, upon written notice by the Beneficiary to the Trustor and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

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

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Security, or part thereof or interest therein, increase the income therefrom or protect the security thereof and, with or without taking possession of the Security, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including without limitation attorneys fees, against any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Security the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default, and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in

this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

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

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

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

Section 7.4. Foreclosure by Power of Sale.

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

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

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (1) the unpaid Principal amount of the Note; (2) all other sums then secured hereby; and (3) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Security by public announcement at such time and place of sale, and from time to time thereafter, and without

further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

Section 7.5. Receiver

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

Section 7.6. Application of Funds After Default.

Except as otherwise herein provided, upon the occurrence of an Event of Default hereunder, Beneficiary may, at any time without notice, apply any or all sums or amounts received and held by Beneficiary to pay insurance premiums, Impositions, or either of them, or as Rents or income of the Security, or as insurance or condemnation proceeds, and all other sums or amounts received by Beneficiary from or on account of Trustor or the Security, or otherwise, against any indebtedness or Obligation of the Trustor secured hereby, in such manner and order as Beneficiary may elect. The receipt, use or application of any such sum or amount shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust, or any of the rights or powers of Beneficiary under the terms of the Loan Agreement, this Deed of Trust or the Note, or any of the Obligations of Trustor or any guarantor under any other instruments or documents now or hereafter delivered in connection with the Loan Agreement or to cure or waive any default or notice of default under the Loan Agreement or any such instruments or documents; or to invalidate any act of Trustee or Beneficiary.

Section 7.7. Costs of Enforcement.

If any Event of Default occurs, Beneficiary and Trustee, and each of them, may employ an attorney or attorneys to protect their rights hereunder. Trustor promises to pay to Beneficiary, on demand, the fees and expenses of such attorneys and all other costs of enforcing the Obligations secured hereby, including, without limitation, recording fees, the expense of a trustee, sale guarantee, Trustee's fees and expenses, receivers fees and expenses, and all other expenses, of whatever kind or nature, incurred by Beneficiary and Trustee, and each of them, in connection with the enforcement of the Obligations secured hereby, whether or not such enforcement includes the filing of a lawsuit. Until paid, such sums shall be secured hereby and shall bear interest at the Agreed Rate.

Section 7.8. Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such

right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.9. No Waiver.

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

(b) If the Beneficiary (1) grants forbearance or an extension of time for the payment of any sums secured hereby, (2) takes other or additional security or the payment of any sums secured hereby, (3) waives or does not exercise any right granted in the Loan Agreement, (4) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Agreement, (5) consents to the granting of any easement or other right affecting the Security, or (6) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.10. Suits to Protect the Security.

The Beneficiary shall have power to: (1) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (2) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (3) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.11. Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property,

the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Amendments.

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

Section 8.2. Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey, without warranty, the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3. Notices.

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

(1) if intended for Beneficiary shall be addressed to:

Orange County Housing Finance Trust
1 League #62335, Irvine, CA 92602
Attn: Adam B. Eliason

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

[TRUSTOR TO PROVIDE]

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the

return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

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

[courtesy notices]

Section 8.4. Successors and Joint Trustors.

All Obligations of Trustor secured by this Deed of Trust, shall also apply to and bind any permitted transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an Obligation of the Trustor and a transferee, such Obligation shall be deemed to be a joint and several Obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all Obligations of Trustor shall be deemed to be a joint and several Obligation of each and every entity and person comprising Trustor.

Section 8.5. Captions.

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

Section 8.6. Invalidity of Certain Provisions.

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

Section 8.7. Governing Law and Venue.

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

Section 8.8. Gender and Number.

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

Section 8.9. Deed of Trust, Mortgage.

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

Section 8.10. Actions.

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

Section 8.11. Substitution of Trustee.

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

Section 8.12. Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceedings in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.13. Conflicts.

If any term or provision of this Deed of Trust conflicts with any term of provision of the Loan Agreement, the term or provision of the Loan Agreement shall control to the extent of such conflict.

Section 8.14. Statements by Trustor.

Trustor shall, at its cost, within ten (10) days after notice thereof from Beneficiary, deliver to Beneficiary a written statement setting forth to the best of its knowledge and information, the amounts then unpaid and secured by this Deed of Trust and stating whether Trustor is aware of any offset or defense against such amounts.

Section 8.15. Beneficiary Statements.

For any statement or accounting requested by Trustor or any other entitled person pursuant to Section 2943 or Section 2954 of the California Civil Code or pursuant to any other

provision of applicable law, or for any other document or instrument furnished to Trustor by Beneficiary, Beneficiary may charge the maximum amount permitted by law at the time of the request therefor, or if there be no such maximum, then in accordance with Beneficiary's customary charges therefor or the actual cost to Beneficiary therefor, whichever is greater.

Section 8.16. Statute of Limitations.

Except insofar as now or hereafter prohibited by law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

Section 8.17. Trust Irrevocable; No Offset.

The Trust created hereby is irrevocable by Trustor. No offset or claim that Trustor now has or may in the future have against Beneficiary shall relieve Trustor from paying the indebtedness or performing any other Obligation contained herein or secured hereby.

Section 8.18. Corrections.

Trustor shall, upon request of Beneficiary, promptly correct any defect, error or omission which may be discovered in the contents hereof or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Beneficiary to carry out more effectively the purposes thereof, to subject to, the lien and security interest hereby created any of Trustor's properties, rights or interests covered or intended to be covered hereby, or to perfect and maintain such lien and security interest.

Section 8.19. Further Assurance.

Trustor, Beneficiary and Trustee agree to do or cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements, powers and instruments, as any of them may reasonably require or deem advisable to keep valid and effective the charges and liens hereof, to carry into effect the purposes of this Deed of Trust or to better assure and confirm unto any of them their rights, powers and remedies hereunder; and, upon request by Beneficiary, shall supply evidence of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

Section 8.20. Waiver of Jury Trial.

Unless prohibited by Federal, State or local laws, each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising

out of or in any way connected with this Deed of Trust and/or any claim of injury or damage to the fullest extent permitted by applicable law.

Section 8.21. Department of Housing and Community Development Underwriting Standards

The Beneficiary attests that the underwriting standards being utilized for this transaction are those that have been submitted and approved by the Department of Housing and Community Development.

**ARTICLE IX
WAIVERS**

Section 9.1. Waivers and Related Matters

(a) To the fullest extent allowed by law, Trustor hereby waives: (i) presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of every kind that would otherwise be available in connection with this Deed of Trust, and (ii) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Obligation and marshaling in the event of foreclosure of the liens hereby created.

(b) Trustor hereby authorizes Beneficiary, at any time and from time to time without notice and without affecting this Deed of Trust in any way, to: (i) accept new or additional instruments, documents, agreements, security or guaranties in connection with all or any part of the Obligations; (ii) accept partial payments on the Obligations; and (iii) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Obligations and any security or guaranties therefor, and apply any such security and direct the order or manner of sale thereof and bid and purchase at any such sale.

(c) Trustor hereby waives any right to require Beneficiary to (i) proceed against any person; (ii) proceed or exhaust any collateral held from any person; or (iii) pursue any other remedy in Beneficiary's power. Upon the occurrence of any Event of Default, Beneficiary is hereby expressly given the right, at its option, to proceed in the enforcement of this Deed of Trust, independently of any other remedy or security Beneficiary may at any time hold in connection with the Obligations, and Beneficiary shall not in any way be obligated or otherwise required to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Deed of Trust.

(d) Trustor hereby waives any defense arising by reason of: (i) any disability or other defense of Trustor or any other person; (ii) the cessation from any cause whatsoever, other than full payment and performance of the Obligations, of the Obligations of Trustor or any other person; or (iii) any act or omission by Beneficiary which directly or indirectly results in or aids in the discharge or release of Trustor, or any other person, any Obligation, or any collateral by operation of law or otherwise.

The waivers set forth in this Article 9 shall also apply, to the fullest extent permitted by law to all other real and/or personal property of Trustor now or hereafter assigned to Beneficiary as security for the Obligations. Trustor warrants and agrees that each, of the waivers set forth above are made with Trustor's full knowledge of their significance and consequences, with the understanding that events giving rise to any defense waived may diminish, destroy or otherwise adversely affect rights which Trustor otherwise may have against Beneficiary or others, or against collateral, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of the waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective to the maximum extent permitted by law.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

Signature to Follow

TRUSTOR:

By: [NEED SIGNATURE BLOCK]

APPROVED AS TO FORM
TRUST COUNSEL

By _____
Trust Counsel

Dated _____

Exhibit A

LEGAL DESCRIPTION

[LEGAL DESCRIPTION TO BE PROVIDED]

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

Orange County Housing Finance Trust
1 League #62335, Irvine, CA 92602
Attn: Adam B. Eliason

ASSIGNMENT OF LESSOR'S INTEREST IN LEASES, RENTS AND PROFITS

THIS ASSIGNMENT (“**Assignment**”) is dated for reference purposes only as of [MONTH] _____, 2020 and is made by the ORANGE COUNTY HOUSING FINANCE TRUST, a California public agency formed pursuant to California Government Code section 6500 et. seq. (the "**Trust**") and [XXX] [BORROWER TO CONFIRM PARTY AND ORG IDENTITY], (the "**Borrower**").

RECITALS

A. Borrower proposes to borrow from the Trust the principal sum of the Loan as such term is defined in that separate Loan Agreement between Borrower and the Trust of even date herewith. The Loan is evidenced by a Promissory Note ("**Note**") executed by Borrower payable to the Trust in the principal amount of the Loan and is secured by, among other things, a Deed of Trust, Assignment of Rents and Security Agreement ("**Deed of Trust**"), encumbering certain real property and improvements currently on such property or which are to be constructed thereon, described in Exhibit "A" attached hereto and incorporated herein by this reference ("**Property**"), by the security interests granted under this Assignment and by other security instruments specified in the Note, Deed of Trust or other Loan Documents entered into relating to the Loan. Unless otherwise noted, all defined terms used in this Assignment shall have the same meaning ascribed to them under said Loan Agreement.

B. Borrower has entered into and will hereafter be entering, into Leases, as defined hereafter, regarding the Property.

C. The Trust Note and Deed of Trust, as well as all rights interests and remedies with respect to Leases, Rents and other collateral described in this Assignment shall at all times be subject and subordinate to the senior collateral rights and interest in such items as provided for in the Permanent Deed of Trust (as defined in the Loan Agreement).

NOW, THEREFORE, in consideration of the Trust's agreement to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower covenants and agrees as follows:

1. **Assignment**. Borrower absolutely and unconditionally grants and assigns to the Trust as of the date hereof:

(a) all of Borrower's right, title and interest in, to and under all leases, licenses and other rental agreements of any kind relating to the use or occupancy of the Property and any portion thereof, which are currently in effect for the Property or are entered into on or after the date of this Assignment (collectively referred to as "**Leases**" and each individually as a "**Lease**"). The Leases shall include (i) all guarantees of and security for lessees' performance under any and all Leases and (ii) all amendments, extensions, renewals or modifications thereto which are permitted hereunder; and

(b) all rents (and payments in lieu of rents), and tenant expense reimbursements at any time payable under any and all Leases, any and all security deposits received or to be received by Borrower pursuant to any and all Leases, and all rights and benefits accrued or to accrue to Borrower under any and all Leases (collectively, "**Rent**").

2. **Obligations Secured.** This Assignment secures the payment and performance of all present and future obligations of Borrower to the Trust under the Note, the Deed of Trust, any Loan Documents that are executed by Borrower and under any other agreement, which recites that, it is secured hereby.

3. **License.** This Assignment shall constitute a present and absolute assignment to the Trust. However, Borrower shall have the right under a license (the "**License**") granted hereby to collect and use at the time of, but not prior to, the date provided for payment, all of the Rent and to retain and use the same in accordance with the terms and provisions of the Note, Deed of Trust, and other Loan Documents; provided, that such license shall be revoked automatically upon the occurrence of a Default as defined below. The Trust shall not revoke the License prior to an Event of Default.

4. **Covenants.** Borrower covenants and agrees as follows:

(a) at Borrower's sole cost to: (i) perform the duties and obligations of lessor under the Leases and to enforce performance by the lessees of the obligations contained in the Leases; (ii) enforce all remedies available to Borrower in case of default by the lessees under any of the Leases and prosecute and defend any action, arbitration or other controversy relating to any of the Leases or to Borrower's interest in any of the Leases in the ordinary course of Borrower's business; (iii) give the Trust prompt notice of any material default by Borrower which occurs with respect to any of the Leases, and complete copies of any notice of default; (iv) exercise Borrower's best efforts to keep all portions of the Property designated as lease property leased at all times; (v) upon the Trust's request, deliver to the Trust a fully executed photocopy and a counterpart original of each and every Lease; (vi) execute and record such additional assignments of any Lease, in form and substance reasonably acceptable to the Trust, as the Trust may request; and (vii) execute and deliver such additional documents and instruments as the Trust may reasonably request from time to time to carry out the purpose of this Assignment; and

(b) except with the Trust's prior written consent, which consent will not be arbitrarily withheld, not to either orally or in writing: (i) enter into any Leases after the date of this Assignment which are not in compliance with the applicable provisions of the Loan Agreement, Regulatory Agreement and other Loan Documents; (ii) execute any other assignment

relating to any of the Leases or collect the rent in advance, other than to collect one (1) month in advance of the time when it becomes due; (iii) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge any lessee from any obligations thereunder; (iv) consent to any assignment or subletting by any lessee of the Leases; or (v) do or permit anything to be done to impair the validity or enforceability of any of the Leases. Any such attempted action in violation of the provisions of this Paragraph 4(b) shall be null and void.

(c) to duly observe, perform, and discharge the obligations, terms, covenants, conditions and warranties of the Loan Agreement, Note and Deed of Trust or other Loan Documents entered into relating to the Loan.

5. **Representations and Warranties.** Borrower hereby represents and warrants

(a) Borrower is and will be the sole owner of lessor's interest in each Lease;

(b) each Lease, when executed and delivered, will be valid and enforceable in accordance with its terms, will constitute the entire agreement between the lessee named therein and Borrower, and there will be no amendments, written or oral, to such agreements except in the ordinary course of business, without the Trust's prior written consent; and

(c) none of the lessor's interests in, and no Rent under, any of the Leases has been transferred or assigned except as expressly provided for in the Loan Agreement; and

(d) Borrower is the owner of the Property, and has good title to the Leases, any contracts of sale that exist or may be made relating to the sale of a portion of the Property, and any Rent, money, rights or claims under the Leases or contracts of sale, and no other person firm, or corporation has any right, title, or interest in them.

6. **Default.** "Default" shall mean (i) the failure to perform any obligation hereunder or the failure to be true of any representation or warranty of Borrower herein, or (ii) the existence of any "Event of Default" as defined in and under the Note, Deed of Trust, or any of the other Loan Documents. Any breach or Default by Borrower under this Assignment shall constitute an Event of Default under the Note, Deed of Trust, and related Loan Documents.

7. **Remedies.** In addition to the remedies contained in the Note, Deed of Trust, and other Loan Documents, the Trust shall have the following rights and remedies upon Default:

(a) to demand, receive and enforce all Rent and other amounts arising or accruing under the Leases, and any and all amendments to each Lease, or from the Property;

(b) to collect, sue for, settle, compromise and give acquittances or releases for all of the rent and pursue all remedies for the enforcement of the Leases and Borrower's rights in and under the Leases as Borrower might have pursued, but for this Assignment;

(c) to take possession of the Property, and have, hold, manage, lease and operate the same on such terms and for such period of time as the Trust may deem proper and,

either with or without taking possession of the Property, in its own name, make from time to time all alterations, renovations, repairs or replacements thereto as the Trust deems proper.

The Trust may exercise the foregoing rights and remedies (i) at Borrower's cost and expense, and in the name of Borrower or the Trust as the latter may determine in its sole discretion; (ii) prior to, simultaneously with or subsequent to the exercise of any rights or remedies under the Note, Deed of Trust, or any of the other Loan Documents; (iii) either in person or by its agent; (iv) with or without bringing any action or proceeding or having a receiver appointed; (v) without regard to the adequacy of any security held by the Trust for the obligations secured hereby; (vi) without notice or remand on Borrower except as otherwise provided herein; and (vii) without releasing Borrower from any obligations under this Assignment, the Note, Deed of Trust, or any of the other Loan Documents.

8. **Tenants Entitled to Rely on the Trust's Requests.** Borrower hereby irrevocably authorizes and directs each tenant and any successor to the interest of each tenant under the Leases, upon receipt of any written request of the Trust stating that a Default or Event of Default exists in the payments due under, or in the performance of any of the terms, covenants or conditions of, this Assignment, the Note, the Deed of Trust, or any other Loan Document to pay to the Trust the rents, royalties, issues and profits due and to become due under the Leases. Borrower agrees that such tenant shall have the right to rely upon any such statement and request by the Trust that such tenant shall pay such rents, royalties, issues and profits to the Trust without any obligation or right to inquire as to whether such Default or Event of Default actually exists notwithstanding any notice from or claim of Borrower to the contrary and that Borrower shall have no right or claim against such tenant for any such rents, royalties, issues and profits so paid by such tenant to the Trust. Upon the curing of all Defaults and Events of Default, the Trust shall give written notice thereof to such tenant and thereafter, until the possible receipt of any further similar written request of the Trust, such tenant shall pay the rents, royalties, issues and profits to Borrower.

9. **Proceeds.** The Trust shall apply any and all Rent collected by it, and any and all sums, which the Trust may receive or collect pursuant to this Assignment, in the following manner:

(a) First, to pay the portion of the obligations secured by this Assignment attributable to the costs and expenses of operation and collection;

(b) Second, to pay all other obligations secured by this Assignment in any order and proportions as the Trust in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it. The Trust shall have no liability for any funds, which it does not actually receive.

10. **Indemnification and Reimbursement.** Borrower hereby indemnifies, defends and agrees to hold the Trust harmless from and against any and all costs, expenses and attorneys' fees, including allocated costs for services of the Trust's in-house professionals, arising out of: (a) any liability the Trust may incur under any Lease or by reason of this Assignment; (b) the

Trust's defense of any claims or demands arising under any Lease or by reason of this Assignment; or (c) actions taken by the Trust which it deems necessary to conserve the value of the Property.

11. **Effect of Assignment.** This Assignment shall not cause the Trust to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees or any other parties, any dangerous or defective condition of the Property, any environmental condition or occurrence on or affecting the Property, or any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. the Trust shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (i) the exercise of the rights, remedies or powers granted to the Trust in this Assignment; (ii) the failure or refusal of the Trust to perform or discharge any obligation, duty or liability of Borrower arising under the Leases or this Assignment; or (iii) any loss sustained by Borrower or any third party resulting from the Trust's failure to lease the Property after the occurrence of a Default or Event of Default or from any other act or omission of the Trust in managing the Property after the occurrence of a Default or Event of Default unless such loss is caused by the gross negligence, willful misconduct or bad faith of the Trust, and no such liability shall be asserted against or imposed upon the Trust, all such liability being expressly waived and released by Borrower.

12. **Foreclosure.** Upon issuance of any deed pursuant to any judicial or nonjudicial foreclosure of the Deed of Trust or any deed in lieu of foreclosure, all right, title and interest of Borrower in and to the Leases and the rents shall, by virtue of this Assignment, vest in and become the absolute Property of the grantee or grantees of any such deed without any further act or assignment by Borrower. Borrower hereby irrevocably appoints the Trust, and its successors and assigns, as its attorney-in-fact, to: (i) execute all instruments of assignment or further assurance in favor of any such grantee of any deed, as may be necessary or desirable for such purpose; and (ii) after a Default under this Assignment, take any other action permitted under Paragraph 7 hereof; provided, however, that the Trust as such attorney-in-fact shall only be accountable for such funds as are actually received by the Trust. Nothing contained in this Assignment shall prevent the Trust at the Trust's sole discretion from terminating any subordinate Lease through such foreclosure.

13. **Release.** The Trust may take or release security for the performance of the obligations referred to in Paragraph 2 and the Trust may release any party primarily or secondarily liable for the performance of any such obligations, all without prejudice to any of the Trust's rights under this Assignment.

14. **Definitions.** The terms "lessor" and "lessors" as used in this Assignment shall include all owners, landlords, licensors and other parties in a similar position with respect to the Leases. The terms "lessee" and "lessees" shall include any tenants, licensees, occupants and any other parties in a similar position and shall also include any guarantors of or other obligors under the Leases. Any reference in this Assignment to "Lease" or "Leases" shall be construed as

including any extension, renewals, amendments or modifications thereto. The term "including" shall mean "including but not limited to."

15. **Integration.** This Assignment and the other Loan Documents contain the entire agreement of the parties and supersede any and all prior negotiations. In the event of any conflict between the terms of this Assignment and the terms of the Deed of Trust, the Deed of Trust shall control.

16. **Waiver.** No delay or omission to exercise any power or remedy accruing to the Trust upon any breach or Default of Borrower under this Assignment shall impair any such right, power or remedy of the Trust, nor shall such delay or omission be construed as a waiver of any such breach or Default or an acquiescence therein or in any similar breach or Default thereafter occurring; nor shall any waiver of any single breach or Default be deemed a waiver of any other previous or subsequent breach or Default. Any waiver, permit, consent or approval of any kind or character on the part of the Trust of any provision or condition of this Assignment must be in writing and shall be effective only to the extent specifically set forth in the writing. All remedies, either under this Assignment, by law or otherwise, afforded to the Trust, shall be cumulative and not alternative.

17. **Term.** This Assignment shall become effective as of the date of its recordation in the Official Records of Orange County and shall remain in effect until it is terminated in writing by the Trust or the Loan is repaid in full, whichever occurs first.

18. **Successors and Assigns.** This Assignment is binding on Borrower, its heirs, successors and assigns and shall inure to the benefit of the Trust, its successors and assigns. Notwithstanding the foregoing, this Assignment is subject to restrictions on assignment by Borrower as set forth in the Loan Documents.

19. **Prevailing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law rules of that state. In the event of any legal action to enforce or interpret this Assignment, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

20. **Waiver of Jury Trial.** Each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Assignment and/or any claim of injury or damage to the fullest extent permitted by applicable law.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the date first above written.

BORROWER:

[BORROWER SIGNATURE BLOCK]

By:

TRUST:

ORANGE COUNTY HOUSING FINANCE TRUST, a California public agency formed pursuant to California Government Code section 6500 et. seq.

By: _____
Adam B. Eliason, Housing Manager
Orange County Housing Finance Trust

APPROVED AS TO FORM
TRUST COUNSEL

By _____
Trust Counsel

Dated _____

EXHIBIT A
Legal Description
[TO BE PROVIDED]

PROMISSORY NOTE SECURED BY DEED OF TRUST,

(\$[XXXXXX])

_____, 2020

FOR VALUE RECEIVED, the undersigned [XXXXXXXXXX][BORROWER TO CONFIRM PARTY AND ORG IDENTITY] (“**Borrower**”) promises to pay to the ORANGE COUNTY HOUSING FINANCE TRUST, a California public agency formed pursuant to California Government Code section 6500 et. seq. (the "**Trust**") or order at Santa Ana, California or such other place as the Trust may designate in writing, the principal sum of [AMOUNT SPELLED OUT] (\$XXX) plus interest on the terms specified below.

1. Agreement. This Note is given in accordance with that certain Loan Agreement executed by and between the Trust and the Borrower of even date herewith (the “**Loan Agreement**”), and in connection with that certain Regulatory Agreement executed by and between the Trust and the Borrower dated as of the same date as this Note (the “**Regulatory Agreement**”). The obligations of the Borrower under this Note shall be subject to the terms of the Loan Agreement, the Deed of Trust of even date herewith which secures performance under this Note, the Assignment of Leases, the Regulatory Agreement, and the other Loan Documents, all of which are hereby incorporated by reference. Capitalized terms used but not defined herein shall have the meaning as set forth in the Loan Agreement.

2. Interest and Repayment.

(a) Borrower promises to pay simple interest recalculated annually based upon the outstanding principal amount at the rate of three percent (3%) per annum. Such simple interest shall begin to accrue the date escrow closes on Loan Agreement.

(b) Borrower promises to repay the indebtedness during the Permanent Term (defined in the Loan Agreement) of the Loan as follows:

(1) Commencing on the date six (6) months after closing of the Borrower’s previous year’s books and every one year anniversary date thereafter during the Permanent Term, Borrower shall make annual payments to Trust of the then available Residual Receipts (hereinafter defined), but only to the extent said Residual Receipts are available; and

(2) At the expiration of the Permanent Term, as set forth in the Loan Agreement, the then outstanding principal amount of this Note together with all accrued, but unpaid interest thereon shall become all due and payable.

(c) Notwithstanding anything to the contrary set forth in this Paragraph 2, during the Permanent Term for so long as Borrower (i) timely makes the payments required under this Note, (ii) is not in breach of any of the terms, covenants or conditions of this Note, and (iii) there is no uncured Event of Default under the Loan Agreement or any other Loan Document, Trust agrees that then available Residual Receipts otherwise payable in their entirety to the Trust shall be [XXXXXXXX] percent ([XX]%). This Paragraph 2(c) shall have no further

force or effect immediately (x) upon an occurrence of any failure by Borrower to make timely payments hereunder, (y) a breach of any term, covenant or condition hereunder or (z) an Event of Default under any Loan Document which continues to remain uncured after the expiration of any cure period. In the event the Loan is timely reinstated in full as permitted under California law prior to foreclosure with all outstanding monies, costs, and expenses owed to the Trust paid in full, then in such event the Residual Receipts sharing agreement stated hereinabove in this Paragraph 2 (c) shall also be reinstated.

(d) In the event that the Trust is dissolved prior to the repayment of the Loan in full, repayment of the LHTF Program Funds, as defined in the Loan Agreement, shall be made to the California Department of Housing and Community Development in accordance with the Loan Agreement.

(e) For purposes of this Note, the terms listed below are defined as follows:

(1) **“Residual Receipts”** means the Annual Project Revenue less (A) Annual Operating Expenses (hereinafter defined), (B) obligated debt service on the Senior Construction/Permanent Loan (as defined in the Loan Agreement) and on any other loan(s) for the Project senior to the Trust’s Loan approved in writing by the Trust at the closing of the Loan, (C) payment obligations (e.g. partnership management fees, and deferred developer fees) approved in writing by the Trust at the closing of the Loan, (D) scheduled deposits to reserves approved in writing by the Trust at the closing of the Loan, and (E) required deposits under the Loan Agreement for Operating Reserves and Replacement Reserves.

(2) **“Annual Project Revenue”** means all annual revenue generated by the Project, including, but not limited to, rent payments, governmental assistance housing payments, laundry and other vending machine and pay telephone income.

(3) **“Annual Operating Expenses”** means all regular and customary annual expenses incurred in relation to the operation of the Project as reflected on the annual budget for the Project that Borrower shall prepare and abide by each year during the Term (as defined in the Loan Agreement) of this Loan. Said Annual Operating Expenses shall include reasonable property management and administrative fee, as approved by the Trust, utility charges, operating and maintenance expenses, Project property taxes, Project insurance premiums and the Trust annual loan monitoring fees, as set forth in the Loan Agreement. Director reserves the right to at any time to review and approve each or any annual budget during the Term hereof and any changes to any said annual budget requested by the Trust Manager shall be promptly implemented by Borrower. Notwithstanding the foregoing, in no event shall Annual Operating Expenses include any costs, fees, fines, charges, penalties, awards, judgments or expenses (including, but not limited to legal and accounting fees and expenses) which are due to or arising out of the Borrower’s (A) breach or default of this Loan, any Loan Document or any Mortgage Loan Document (B) fraudulent acts or willful misconduct or (C) breach or default under any other contract, lease or agreement pertaining to the Project. Annual Operating Expenses shall also not include other expenses not related to the Project’s operations such as depreciation, amortization, accrued principal and interest expense on deferred payment debt and capital improvement expenditures.

3. Payments.

(a) All amounts due and payable under the Note are payable at the address provided to the Borrower by the Trust, or at such other place or places as the Trust may designate to the Borrower in writing from time to time. Any payment under this Note shall be paid in advance, on the first day of the month in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts and which on the respective dates on which such payments are due shall be in immediately available funds.

(b) All payments and prepayments received by the Trust pursuant to the terms hereof shall be applied in the following manner: first, to the payment of all expenses, charges, costs and fees incurred by or payable to the Trust by Borrower pursuant to the terms of the Loan Documents; second to the payment of all interest accrued to the date of such payment; and third, to the payment of the outstanding principal until paid in full. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of an Event of Default (as such term is defined in the Loan Agreement), all amounts received by the Trust from any party shall be applied in such order as the Trust, in its sole discretion, may elect.

4. Prepayments. Borrower may prepay all or part of the principal balance and accrued interest due under this Note without penalty.

5. Term. The term shall be 55 years or more to match the term of the Regulatory Agreement on rental properties

6. Security. This Note is secured by, among other things, a Deed of Trust covering real and personal property including, but not limited to, the Property and the Project (as such terms are defined in the Loan Agreement).

7. Waivers.

(a) Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the Trust's sole discretion and that the Trust may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the Trust with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change, or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights:

(1) to offset, deduct, or withhold any payments or charges due under this Note for any reasons whatsoever;

(2) of presentment for payment, demand, protest and notices of dishonor and protest; and

(3) of diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and interests in and to properties securing payment of this Note.

8. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

9. Joint and Several Obligations. This Note is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

10. Acceleration. If any of the payments required by the terms hereof shall not be paid when the same becomes due, or if the payment due on the maturity date of this Note is not paid when due, whether by acceleration or otherwise, or if an Event of Default (as defined in the Loan Agreement) occurs under the Loan Agreement or other default under any other Loan Document occurs, then, or at any time thereafter, the whole of the unpaid principal and interest owing on this Note shall, at the option of the Trust and without notice, become immediately due and payable. This option may be exercised at any time after any such event and the acceptance of one or more installments or other payments from any person thereafter shall not constitute a waiver of the Trust's option. The Trust's failure to exercise said option in connection with any particular event or series of events shall not be construed as a waiver of the provisions hereof as regards that event or any subsequent event. The Loan Agreement and other Loan Documents may also contain provisions, which provide for the automatic acceleration of amounts owing under this Note upon the occurrence of certain specified events. The Trust shall have, and be entitled to exercise, upon the occurrence of any Event of Default or other event described above, all rights and remedies available to the Trust under the Loan Agreement, this Note, the other Loan Documents or at law or in equity. All such rights and remedies shall be cumulative.

11. Prohibition Against Transfer of Interest. The Borrower shall not make any sale, assignment or conveyance, or transfer in any other form, nor any further pledge, encumbrance, or mortgaging of the Property and/or the Project or any part thereof or of any of its interest therein, other than in accordance with the terms of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust and the other Loan Documents.

12. Default Interest; Default Under Other Loan Documents. All covenants, conditions, and agreements contained in this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust and the other Loan Documents are hereby made a part of this Note, and the Borrower agrees that the unpaid balance of the then principal amount of this Note, together with all accrued interest thereon and charges owing, shall, at the option of the Trust hereof, become immediately due and payable, and thereafter until paid bear interest at the rate of

twelve percent (12%) per annum (which rate shall in no event exceed the highest interest rate then permitted at law and if it does, it will be reduced to said lower amount) (the “Default Rate”), compounded annually upon the failure of the Borrower to make any payment hereunder as and when due (after expiration of any cure period); upon the failure of the Borrower to perform or observe any other term or provision of this Note; or upon the occurrence of any event (whether termed default, event of default, or similar term) which (after the expiration of any cure period) under the terms of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust or other Loan Document shall entitle the Trust to exercise rights or remedies thereunder.

13. Definitions. Capitalized terms not defined in this Note shall have the same meanings as defined in the Loan Agreement, the terms of which are incorporated into this Note by this reference.

14. Governing Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

15. Severability. If any provision of this Note shall be judicially determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

16. Captions. The captions and headings in this Note are merely for convenience and substantively are not part of this Note.

17. JURY TRIAL WAIVER; VENUE. UNLESS PROHIBITED BY FEDERAL, STATE OR LOCAL LAWS, IN ANY JUDICIAL ACTION OR PROCEEDING ARISING FROM OR RELATING TO THE LOAN OR THE LOAN DOCUMENTS, INCLUDING ANY ACTION OR PROCEEDING INVOLVING A CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, BORROWER HEREBY WAIVES ANY RIGHT IT OR THEY MAY HAVE TO REQUEST OR DEMAND A TRIAL BY JURY. VENUE FOR ANY ACTION RELATED TO THE LOAN OR LOAN DOCUMENTS SHALL BE IN AN APPROPRIATE COURT IN ORANGE COUNTY, CALIFORNIA SELECTED BY COUNTY TO WHICH BORROWER HEREBY CONSENTS.

18. Joint and Several Liability. If Borrower consists of more than one person or entity, each shall be jointly and severally liable for the performance of Borrower’s obligations under this Note.

19. Notices. All notices to be given pursuant to this Note shall be given as provided in the Loan Agreement.

20. Calculation of Interest. Interest hereunder shall be calculated on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days each, except that interest due and payable for a period less than a full month shall be calculated by dividing (a) the product of (i) the actual number of days elapsed in such period, (ii) the outstanding principal balance hereunder during that period and (iii) the Note interest rate in effect hereunder during that period by (b) 360.

21. Number and Gender. In this Note the singular shall include the plural and the masculine gender shall include the feminine and neuter genders, and vice versa, if the context so requires.

22. Time. Time is of the essence in this Note.

23. No Waiver by the Trust. No waiver of any breach, default, or failure of condition under the terms of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust or any other Loan Document or the obligations secured thereby shall be implied from any failure of the Trust to take, or any delay by the Trust in taking, action with respect to such breach, default or failure, or any form of previous waiver of any similar or unrelated breach, default or failure; and waiver of any term of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust or any other Loan Document or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

24. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Borrower and the Trust. The parties agree and acknowledge that the Trust must obtain the approval of any amendments or modifications to this Note from the California Department of Housing and Community Development prior to signing any such amendments.

25. Non-Recourse. The Trust will neither seek nor obtain judgment against the Borrower for payment of principal or interest under the Note or for other obligations under the Loan Documents following a judicial foreclosure (or to the extent permitted by law, a nonjudicial foreclosure of the Deed of Trust), and the Trust's sole recourse against the Borrower for any default in the payment of principal or interest is limited to the Property and the Project and any other collateral of the Loan; provided, however, nothing in this Paragraph 24 will be deemed to limit or prejudice the rights of the Trust to:

(a) foreclose the Deed of Trust or enforce any of its other rights or remedies under the Loan Documents; or

(b) name the Borrower or the general partners of Borrower as a party defendant in any action, proceeding or arbitration, subject to the limitations of this Section; or

(c) assert any unpaid amounts on the Loan as a defense or offset to or against any claim or cause of action arising out of or pertaining to the Project made or alleged against the Trust by the Borrower or any of its general partners; or

(d) exercise self-help remedies such as set off or nonjudicial foreclosure against or sale of any real or personal property collateral or security; or

(e) proceed against any entity or person, including Borrower and the general partners of Borrower with respect to the enforcement of any leases, bonds, policies of insurance, or other agreements (other than the Loan Documents); or

(f) recover damages against Borrower or the general partners of Borrower for fraud, breach of warranty, failure to maintain insurance, waste, or material misrepresentation; or

(g) recover any condemnation proceeds or insurance proceeds or other similar funds or payments attributable to the Property and/or the Project that under the terms of the Loan Documents should have been paid to Lender; or

(h) recover any tenant security deposits, prepaid rents, or other similar sums paid to or held by Borrower or any other entity or person in connection with the Property and the Project; or

(i) recover the value of any personalty or fixtures removed by Borrower from the Project after the occurrence of an Event of Default

(j) recover the rents and profits of the Property and the Project accruing from and after the occurrence of an Event of Default that have not been applied to pay any portion of the Loan, operating, and maintenance expenses of the Property and/or the Project, insurance, premiums, impositions, deposits into a reserve for replacement, or other sums required by the Loan Documents; or

(k) recover any amounts owing to the Trust under indemnity provisions (including indemnity provisions pertaining to Hazardous Materials as such term is defined in the Loan Agreement) in the Loan Documents; or

(l) recover funds to reimburse the Trust for sums expended by the Trust for the protection or preservation of the Property, the Project or the Trust's interest therein (including, without limitation, payment of any real property taxes, assessments or other charges which would create liens on any portion of the Property or Project

The limitation of liability set forth in this Section 24 shall be deemed void and have no force or effect if Borrower or any general partner of Borrower attempts to materially delay any foreclosure of or on the Deed of Trust or any other collateral for the Loan, or if the Borrower or any of its general partners claim that this Agreement or any related documents are invalid or unenforceable to an extent that would preclude foreclosure. Notwithstanding anything to the contrary set forth in the immediately preceding sentence, in the event Borrower contests any foreclosure proceeding in good faith and Borrower prevails in such action, or in the event Borrower and the Trust agree to a settlement of any such action which gave rise to the foreclosure proceeding, the Loan shall remain nonrecourse. Any liability of Borrower or any of the general partners of Borrower for any obligations arising in connection with the matters set forth in clauses (a) through (l) inclusive will be personal liability, and may be asserted against and recovered from its or their interest in the Property and/or Project as well as against any of its and their other assets. Nothing contained in this Section impairs the validity of this Note or any related documents or any lien or security interest created or perfected by it.

Signature Page to follow

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

BORROWER:

[NEED SIGNATURE BLOCK]

By:

APPROVED AS TO FORM
TRUST COUNSEL

By _____
Trust Counsel

Dated _____

ATTACHMENT B OCHCA MHSA SUBMISSION REQUIREMENTS

Orange | Housing
County | Finance
Trust

*Mental Health Services Act
Expression of Interest*

FOR FUNDS TO ACQUIRE, CONSTRUCT, AND/OR
REHABILITATE PERMANENT SUPPORTIVE HOUSING
FOR HOMELESS INDIVIDUALS WITH SERIOUS MENTAL
ILLNESS WHO ARE HOMELESS, CHRONICALLY
HOMELESS OR AT-RISK OF HOMELESSNESS

February 2022

**ATTACHMENT ONE (1): ORANGE COUNTY MHSA Expression of Interest
DEVELOPMENT SUMMARY FORM**

Developer:

Sponsor:

Name of Project:

Project Address (including parcel #):

Supervisor/Council District:

Form of Site Control:

Entitlement Status and Time Estimate to complete Entitlements:

Anticipated Construction Start Date:

Anticipated Date of Certificate of Occupancy:

Community Planning Group:

**Any Contact made yet with local neighbors or planning group? If yes,
please specify meeting dates and times.**

**Community Process Plan including potential meeting dates with
community groups**

PAGE TWO OF TWO

Total number of units and bedroom types:

Total number of MHSAs units and bedroom types:

Square footage by bedroom of MHSAs units:

Type of Development New Construction Acquisition/Rehab

Total Cost of the Development:

Total Cost of MHSAs Units:

MHSAs Capital Request:

Will you be requesting non-MHSAs funded operating subsidies, such as project-based vouchers? (Please check one) Yes No

If so, what type and from which agency? _____

Other Funding Sources:

4% or 9% Tax Credit – Round _____, 20_____

Other: Land donation, City funds, etc. _____

Additional Comments:

Contact Information:

Name: _____

Company: _____

Phone: _____

Fax: _____

Email: _____

ATTACHMENT TWO (2): CONTACTS FOR FORM SUBMITTAL

Please send an e-mail with Expression of Interest information to:

Michelle Zdeba
Housing Development Manager, OCCR/Housing & Community Development
michelle.zdeba@occr.ocgov.com

(714) 480-2994

Submit a copy to:

Lisa Row
Program Manager, Health Care Agency
ERow@ochca.com

(714) 796-0200

Project Requirements and Desirable Features

Orange County continues to update its planning for Project Requirements and Desirable features, including feedback heard from clients and peers. As needed, the County will issue updated guidance for applications for MHSA Program funds. In order to ensure that the projects developed with MHSA Program funds in Orange County meet the needs expressed by people with lived experience, the following requirements will be applicable to projects:

- All units must incorporate full kitchens, full baths, and adequate storage and closet space within each apartment.
- Buildings shall be well designed and well maintained, include on-site laundry services, and have cable access and internet/computer access. Projects must be located close to transportation, shopping and services.¹
- To meet consumer need for safety and security, projects applying for funds will be required to document how they incorporate considerations for the safety of tenants on the property and surrounding neighborhood.
- Buildings shall include security design features such as architectural and landscape security design configurations, cameras in common areas, and/or security services.
- Project designs shall be non-institutional in feeling and blend in with the community. Designs shall include a case management office and adequate space for resident activities. The size of the community/resident activity space and case management office is particularly important for projects with unit sizes that are smaller.
- Services shall be available either on or accessible off site.
- Projects shall include dedicated services space and community rooms, with kitchens if possible.
- All units shall include air conditioning.
- All units shall have microwave ovens.
- At least 5% of units must be accessible to the physically disabled and at least 2% of units must be accessible to the sensory disabled.
- All units shall be furnished with standard furnishings applicable to the unit type.

In addition, the following recommended amenities or features are encouraged to better meet the needs of the target population:

- Clients prefer to reside one-bedroom apartments.
- There should be planned smoking areas for projects that have non-smoking units.
- Units are encouraged to be at least 450 square feet, with the consideration for tenant space needs such as service animals, space to store a bike within the unit, and accessibility needs for aging clients/tenants.

¹ At minimum, public transit that comes with reasonable frequency must be accessible within 0.5 mile. It is preferred that, where possible, other services be walkable within 0.5 mile (e.g. not including physical barriers that prevent access by foot or public transit).

**ATTACHMENT C MENTAL HEALTH SERVICES ACT (MHSA)
FUNDING TERM SHEET**

MENTAL HEALTH SERVICES ACT (MHSA) FUNDING TERM SHEET

General Loan Terms and Conditions

All of the policies and lending practices set forth within the NOFA shall apply to all projects funded with MHSA funds. **The following additional requirements shall apply to all of the MHSA funded units:**

- The population to be served shall include extremely low income (30% of Area Median Income for Orange County), homeless individuals who has a serious mental disorder as defined in WIC 5600.3, verified by a State Licensed Mental Healthcare Professional and has been deemed to meet the MHSA Housing Program eligibility (MHSA Certified) by Health Care Agency MHSA Housing Program staff.
- Restricted rents for the MHSA funded units shall not exceed 30% of the HUD-published 30% Area Median Income (AMI) levels for Orange County, adjusted for designated household size (less a utility allowance unless included in the rent) with the **tenants rent portion not to be more than 30% of their Social Security Income/Social Security Pension (SSI/SSP) or not more than 30% of their total gross household income (if additional income beyond SSI/SSP is received)**. If federally funded Project Based Vouchers are provided, the developer shall comply with the federal regulations for maximum rent and tenant rent portions.
- To the greatest extent feasible, the Developer shall utilize the local coordinated entry system to identify referrals for the MHSA Units.
- Housing units and building features must meet the needs of the MHSA tenants to be served at the development, including privacy, housing activities and community interaction. There shall be no requirement for non-related, single, adult tenants to share bedrooms. There shall be adequate number of bedrooms to accommodate the housing composition. Units are encouraged to have at least one-bedroom and be at least 450 square feet.
- Rental homes must have an identifiable and private living area, sleeping area, full kitchen area and a full bathroom, including air conditioning. The kitchen area shall at a minimum include a full size sink, full size refrigerator, cupboard/cabinet space for storage, counter area for food preparation, microwave or oven, and a two burner stove or built-in cook top.
- All units should be furnished with standard furnishings applicable to the unit type.

- Developers are encouraged to provide units that are pre-wired for high technology and internet access.
- The building must include common space, such as a community room that can accommodate a variety of activities and where tenants can choose to interact with one another.
- The building must include a designated office space to provide services to MSHA tenants.
- The design and operation of the housing shall incorporate features designed to increase efficiency and reduce ongoing expenses.
- The housing shall incorporate appropriate and feasible green design practices, such as the use of ENERGY STAR rated energy-efficient appliances and water-conserving fixtures and products.
- The housing must also utilize durable materials chosen to reduce future maintenance costs and renewable building supplies.
- Tenants shall be provided with information to assist them to participate in environmentally friendly practices such as energy and water conservation, recycling and use of non-toxic household products.

Required Operating, Replacement and Subsidy Reserves

All developments using MSHA funds must provide for the following reserves:

Capitalized operating expense reserve, at a minimum, shall equal 25% of the first year's approved operating and reserve budget.

Capitalized replacement reserve for rehabilitation projects shall be based on a physical needs assessment and/or one or more Building Inspection Reports and a Replacement Reserve Needs Analysis. New construction projects shall have a capitalized replacement reserve of at least \$500 per unit/annually for all units in a project, increasing by 5% every five years.

Capitalized operating subsidy reserve ("COSR") shall be required for projects without rental assistance vouchers (or other rental subsidies) to subsidize operating costs for the MSHA Regulated Units. COSR's must be funded to allow for operating cost subsidies for a minimum of 17 full years.

Tenant Rent & Utility Reserve may be required by the Trust to be funded by the Developer by Certificate of Occupancy for the development. This Reserve is used to assist MSHA eligible clients with rent and utility payments while waiting to get approved for SSI/SSP and/or rental assistance. The Reserve should provide 2 to 3 years rental income for the MSHA-assisted units (assuming rents that include utilities at 30% of SSI/SSP). This Reserve is held by Borrower as a revolving fund and is intended to be replenished over time from tenant rent back payments once the tenants qualify for SSI/SSP.

Developer/Borrower is required to continually seek future commitments of rental or operating subsidies for the MHSA Regulated Units (e.g., project-based Section 8 vouchers) for the life of the MHSA Loan.

MHSA Expression of Interest

The initial step in the Orange County process for developers interested in applying for MHSA funding and project-based rental assistance (Section 8 vouchers) is to submit an Expression of Interest (EOI).

The preliminary EOI information consists of the following items:

- The Development Summary Form (Attachment One)
- A narrative description of the proposed project and the experience of the sponsor and must provide a thorough discussion of the project, including, at a minimum, the service goals of the project, characteristics of tenants to be served, the type of housing that will be provided, how the building(s) in which housing and services will be provided (location, building type, layout, features, etc.) will meet the housing and service needs of the tenants, the primary service provider(s) and other project/development partners, and project financing.
- Site plan, floor plans, elevations and renderings, if available
- A current project budget/proforma

Submit one (1) copy of the information listed above to Michelle Zdeba at michelle.zdeba@occr.ocgov.com AND one (1) copy to Lisa Row at erow@ochca.com, no later than February 22, 2022.

Once the applicant submits the EOI and required information, HCA/Housing and Supportive Services and OCCR/Housing & Community Development will do any or all of the following:

- OCCR/Housing & Community Development staff will arrange a meeting between the developer, HCA/Housing and Supportive Services and OCCR/ Housing & Community Development to discuss the project concept/proposed development and determine if the project could meet County priorities and objectives;
- Provide input and suggested revisions intended to improve the proposed development and application;
- Request that the applicant make certain revisions to the proposal in order to reconsider providing a supportive services commitment for the application submission.

Application and Loan Commitment Notes

Upon review of the borrower application and a decision to loan MHSA funds, the following will be determined by the Trust and set forth in a commitment letter: 1) the per regulated unit loan amount; 2) the percent of MHSA regulated units as it relates to the entire Project; 3) the size of the regulated units to best meet MHSA client needs (bedroom count); 4) any permissible occupancy preferences (adults; seniors; transition age youth); 5) the maximum COSR (if applicable) to carry the project through the first 17 years of operations; 6) any permissible

developer fees for non-tax credit transactions; and 9) permissible overlaying occupancy, rent or income restrictions from other financing or tax credit sources.

Supportive services provisions and a Social Services Plan and operating budget from the primary or lead service provider(s) shall be provided as part of the application for Trust Funds.

All units assisted with MHSA funding through this NOFA shall additionally include supportive services provided by the Orange County Health Care Agency. The developer shall work with HCA/Housing and Supportive Services to develop and provide a supportive services plan that meet and address the needs of the MSHA tenants for the term of the Trust Loan.

Primary supportive services shall be provided on site to meet the specific needs of the population to be served.

All MHSA tenants must be MHSA Certified by HCA MHSA Housing Program staff as outlined in the MHSA Certification and Referral Process. It is important to note that in no event shall a person be required to be a client of the Orange County Behavioral Health department or a recipient of mental health or other services in order to qualify for or to remain in an Assisted MHSA Unit.

NOTE: This term sheet is subject to change.

ATTACHMENT D UNDERWRITING ASSUMPTIONS

Orange County | Housing Finance Trust

Loan Application Underwriting Criteria

- Max project loan amount:
 - \$2,500,000.
- Maximum loan amount per non-MHSA unit:
 - Zero-bedroom: \$90,000.00.
 - One-bedroom: \$100,000.00.
 - Two-bedroom+: \$110,000.00.
- Maximum loan amount per MHSA unit:
 - Zero-bedroom: \$177,145.
 - One-bedroom: \$177,145.
 - Two-bedroom+: \$177,145.
- Maximum marketing costs:
 - \$1,500/unit.
- Maximum common area furnishing cost:
 - \$1,000/unit.
- Maximum contractor overhead, profits, and general requirements:
 - 14% of total construction costs.
- Developer fee
 - within TCAC limits for tax credit projects or in accordance with HCD 2017 UMR for projects without tax credits.
- Capitalized operating subsidy reserve for MHSA units.
 - Minimum 17 years of operating costs or rental subsidy (Project Based Vouchers or another rental subsidy).
- Replacement reserve:
 - \$350/unit/year (non-MHSA units), \$500/unit/year increasing 5% every 5 years (MHSA units).

- Vacancy rate:
 - 5%.
- Rent inflation rate:
 - 2.5%.
- Misc. income inflation rate:
 - 3.0%.
- Expense inflation rate:
 - 3.5%.
- Debt coverage ratio:
 - between 1.1 and 1.2.
- Residual receipts
 - to repay loan over loan term.
- Appraisal to support the cost of land.
- Min projected operating expenses.
 - Total Operating Expenses (not including property taxes or the approved costs of on-site service coordination) shall not be less than those specifically listed in California Code of Regulations, Title 4, Section 10327 as minimum Operating Expenses (without the reduction allowed by those regulations for bond-financed projects). The OCHFT may project higher Operating Expenses where warranted by the experience of comparable properties and particular building characteristics, such as the nature of the tenant population or the level of rehabilitation. Prior to loan closing, the OCHFT may approve total Operating Expenses that are less than those specified in Section 10327, supra, only if the Project has Uniform Multifamily Regulations 11/15/2017 Page 18 of 35 an extraordinary design feature, such as its own electrical generation system, which results in a quantifiable operating cost savings as documented by a qualified third party.
 - All Operating Expenses, including property management fees, shall be within the normal market range, as periodically determined by the OCHFT in surveys or based on costs observed in its portfolio.
- Contingency
 - Where OCHFT is providing construction-period financing, the minimum budgeted construction contingency shall be 5 percent of construction costs for new construction projects and 7.5 percent of construction costs for rehabilitation and conversion projects.

- Positive cash flow
 - The Project must demonstrate a positive cash flow for 15 years, using income and expenses increase rate assumptions specified in California Code of Regulations, Title 4, Section 10327. If projected Project income includes rental assistance or operating subsidy payments under a renewable contract, the OCHFT may assume that this contract will be renewed, where the renewal of the rental assistance or operating subsidy is likely.
- Subordination Policy
 - OCHFT may execute and cause to be recorded a subordination agreement subordinating the OCHFT lien so long as the subordination does not increase the OCHFT's risk beyond that contemplated in the Program loan or grant commitment, as may be amended from time to time, and so long as the subordination would further the interest of the Program.
- Senior lender loan types and junior lender loan types
 - Balloon payments are not allowed on senior debt. Balloon payments are allowed on junior debt during the term of the Trust's loan only where the Trust determines that the balloon payment will not jeopardize project feasibility.
- Leasehold security requirements
 - The Regulatory Agreement, Deed of Trust, Assignment of Leases, and any subordination agreements shall be recorded against both the Sponsor's interest in the Project and the fee interest in the land, and the lease shall have a term remaining at the time of recordation at least equal to the term of the Trust' loan.

ATTACHMENT E ONLINE APPLICATION FORM REFERENCE

Below is a printscreen of the online application tool for the Second Round 2022 OCHFT NOFA. Please use this reference to help understand the application requirements prior to beginning the application.

Orange County | Housing Finance Trust
2022 Notice of Funding Availability

Second Round 2022 OCHFT NOFA

Submit one application per project using the form below. All responses are due no later than 5:00 pm, December 16, 2022. The NOFA document and attachments can be found on the OCHFT website at <https://ochft.org/2022-notice-of-funding-availability>

ghenninger@ochft.org [Switch account](#)

The name and photo associated with your Google account will be recorded when you upload files and submit this form. Your email is not part of your response.

* Required

General Application

Applicant Name *

Your answer

Applicant Legal Structure *

Corporation

General Partnership

Limited Partnership

Limited Liability Company

Other: _____

Non-Profit Status *

Non-Profit

For-Profit

Applicant Address *

Your answer _____

Point of Contact *

Your answer _____

Phone Number *

Your answer _____

Project Name *

Your answer

Project Street Address *

Your answer

Project City *

Your answer

Project Zip Code *

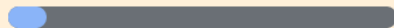
Your answer

Type of Project *

New Construction

Aquisition rehab

Next



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Second Round 2022 OCHFT NOFA

ghenninger@ochft.org [Switch account](#)



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* Required

Project Narrative

A narrative description of the project is required. The project narrative must include:

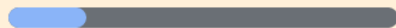
1. The purpose and the scope of the project.
2. Identify the neighborhood the project will serve.
3. Summarize the condition of the housing stock in the neighborhood.
4. Document neighborhood services (public transportation, schools, shopping, etc.)
5. Discuss the process and timing to receive entitlement approvals.

Project Narrative *

Your answer

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* Required

Project Vicinity Map


A map showing the project site is required. The map should clearly show the project site boundaries and the surrounding neighborhood. In addition, the vicinity map must clearly show all service enriched amenities for which the applicant is seeking points for project scoring. The map should be uploaded as a single-page PDF.

Project Vicinity Map *

 [Add file](#)

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* Required

Project Financing

Provide a completed project proforma in Excel. A blank project proforma is provided on the Orange County Housing Finance Trust's website at <https://ochft.org/2022-notice-of-funding-availability>

Provide a brief narrative regarding each of the expected funding sources and their expected timing and other details indicating likelihood of award.

Project Proforma *

 Add file

Financial Notes and Assumptions *

Your answer

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* Required

Project Schedule

Provide a project schedule that includes funding milestones (anticipated application and award dates for all other funding sources), anticipated construction loan closing date, construction duration, and anticipated placed in service date.

Project Schedule *

Add file

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* Required

Development Team Members

Provide a list of Development Team Members. Include the name, address, contact person, telephone number, e-mail address, and resumes for all members of the proposed project team. Provide a single PDF no larger than 100MB in size with all required information.

Provide a brief description of the Applicant Experience developing Permanent Supportive and Affordable Housing.

Development Team Members *

 [Add file](#)

Applicant Experience *

Your answer

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* Required

Applicant Financial Strength

Provide the most recent audited financial statements and a schedule of real estate owned. A template for the Schedule of Real Estate Owned is provided on the Orange County Housing Finance Trust's website at <https://ochft.org/2022-notice-of-funding-availability>, other formats that include similar information will be accepted.

Audited Financial Statements *

Add file

Schedule of Real Estate Owned *

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Health Care Agency Acknowledgement Letter

Applicants seeking MHSa funding for their project must submit the project to the Orange County Health Care Agency and meet with them prior to December 5th, 2022 to be considered for this NOFA. The Health Care Agency requirements for submission are included as Attachment B. The Health Care Agency will provide the applicant with a letter of acknowledgement that they are working with the applicant to develop a Social Service Plan and that the project meets the requirements for MHSa funding.

Health Care Agency Acknowledgement Letter *

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Social Services

Provide a Social Services Plan demonstrating how social services appropriate to the needs of the homeless residents will be provided. The Plan shall include provisions specified in Section 3.03 and Attachment A of the NOFA and provide a description of the proposed social services to be provided, including:

- Target Population
- Types of Services to be provided
- Agency which will provide the services and their experience
- Location of the services (on or off-site, and if off-site, where and provide travel plan for clients)
- Proposed source of funding for services
- Status of funding for services
- Any fees to be charged for services

Social Services Provider *

Your answer

Provide a Social Services Plan demonstrating how social services appropriate to the needs of the homeless residents will be provided. The Plan shall include provisions specified in Section 3.03 and Attachment A of the NOFA and provide a description of the proposed social services to be provided, including:

- Target Population
- Types of Services to be provided
- Agency which will provide the services and their experience
- Location of the services (on or off-site, and if off-site, where and provide travel plan for clients)
- Proposed source of funding for services
- Status of funding for services
- Any fees to be charged for services

Social Services Provider *

Your answer

Social Services Plan *


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Social Services Operating Budget

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* Required

Levine Act Statement

Provide a signed Levine Act Statement as a PDF. The Levine Act Statement is available as Attachment F to the NOFA.

NOTE: Once you press submit, it may take up to several minutes for your application to be saved.

Levine Act Statement *

Add file

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ATTACHMENT F LEVINE ACT STATEMENT

*****PRIME APPLICANT AND SUBAPPLICANTS MUST SUBMIT A SIGNED LEVINE ACT STATEMENT*****

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires a member of the Orange County Housing Finance Trust Board of Directors who has received such a contribution to disclose the contribution on the record of the proceeding.

Orange County Housing Finance Trust Board of Directors as of the date of this Notice of Funding Availability are as follows:

Lisa Bartlett, Don Barnes, Doug Chaffee, Stephen Faessel, Jamey Federico, Shari Freidenrich, Fred Jung, David Peñaloza, and Ed Sachs.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any Orange County Housing Finance Trust Director in the 12 months preceding the date of the issuance of this Notice of Funding Availability?

_____ YES__NO

If yes, please identify the Director: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any Orange County Housing Finance Trust Director in the three months following the award of the contract?

_____ YES__NO

If yes, please identify the Director: _____

Answering yes to either of the two questions above does not preclude Orange County Housing Finance Trust from awarding a contract to your firm. It does, however, preclude the identified Director from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)