



REDEVELOPMENT AGENCY AGENDA REPORT

ITEM NO: IX. 1

MEETING DATE: 07/06/10

**SUBJECT: FUNDING COMMITMENTS OF AGENCY AND CITY TO USA PROPERTIES
FUND RELATING TO PROPOSED HARPER'S POINTE SENIOR
APARTMENT PROJECT**

DATE: JULY 6, 2010

FROM AND CONTACT: MURIEL ULLMAN, NEIGHBORHOOD IMPROVEMENT (714) 754-5167

RECOMMENDATIONS

Approve funding commitments by Agency and City to Developer as set forth in the Commitment Letter (Attachment No. 4), all contingent upon the receipt of 9% or 4% Low Income Housing Tax Credits and other fundings and the economic assumptions and analysis in the Keyser Marston Associates Report (Attachment No. 6), in connection with financing the new construction of the new construction 53-unit affordable project called Harper's Pointe Senior Apartments.

Redevelopment Agency

1. Approve recommended Agency funding commitment to make a 55-year residual receipts loan of up to \$990,000 to Harper's Pointe, L.P., a partnership created by USA Properties Fund ("Developer"), to fund the land acquisition and new construction of the 53-unit Harper's Pointe Senior Apartments ("Project") located at 845 West Baker Street, contingent upon the California Tax Credit Allocation Committee (TCAC) award of 9% or 4% Tax Credits to Developer for the Project and other funding commitments, including \$743,000 from the County of Orange (HOME funds) and \$757,000 under the auspices of the Mental Health Services Act Housing Program (MHSA) program, as set forth in the Commitment Letter (Attachment No. 4); and
2. Authorize the Executive Director to execute the Commitment Letter and to take necessary actions to effectuate the transaction contemplated by the Commitment Letter. Detailed terms and conditions of an Agency Loan Agreement and implementing documents, as defined in the Commitment Letter, are contingent upon review and approval by Special Counsel to the City and by the City Attorney and subject to the assumptions and analysis in the Keyser Marston Associates' ("KMA") economic report dated as of June 24, 2010 (Attachment No. 6) ("KMA Report").

City Council

1. Approve recommended City funding commitment to make a 55-year residual receipts loan of up to \$385,000 (funding source limited to HOME Program funds) to Developer to fund the land acquisition and new construction of the Project, contingent upon TCAC's award of 9% or 4% Tax Credits to Developer for the Project and other funding commitments, including \$743,000 from the County of Orange (HOME funds) and \$757,000 under the auspices of the MHSA program, as set forth in the Commitment Letter (Attachment No. 4); and;
2. Authorize the City Manager to execute the Commitment Letter and to take necessary actions to effectuate the transaction contemplated by the Commitment Letter. Detailed terms and conditions of a City Loan Agreement and implementing documents, as defined in the Commitment Letter, are contingent upon review and approval by Special Counsel to the City and by the City Attorney and subject to the assumptions and analysis in the KMA Report (Attachment No. 6).

BACKGROUND

Approximately 3 years ago, City Council directed staff to research the feasibility of partnering with the owner of Bethel Towers, Assemblies of God Church, to provide wet fire protection. The affordability covenants on Bethel Towers are scheduled to expire in 2017. This project was listed in the recently adopted Housing Element as a City sponsored at-risk preservation project. In consideration of any financial assistance, which this project received, the City was planning to ask for long term affordability covenants. Both the City Council and Redevelopment Agency set aside several thousand dollars in "seed money" for this affordable senior apartment complex.

In 2009, the Assemblies of God, cancelled negotiations with the City and declined public assistance. Since that time, the City has been working with USA Properties Fund to determine the feasibility of developing an affordable senior project on 845 West Baker Street. In point of fact, in February, 2010, both the City Council and Redevelopment Agency committed both Redevelopment Agency and HOME funds to this project and authorized staff to develop an Exclusive Right to Negotiate with the Developer. Staff has been working with USA Properties Fund since that time to develop a financing strategy and general business terms which are set forth in the Commitment Letter below.

The Developer, an affiliate of and limited partnership entity formed by USA Properties Fund, has acquired an option to purchase an approximately 37,766 square foot improved parcel located at 845 West Baker Street ("Site") (See Attachment No. 1 Site Map). The Site is bordered by the 73 Freeway on the west and south, the Shark's Club to the east, and a residential neighborhood consisting of condominiums, apartments and single-family homes on the north side of Baker Street. Developer plans to apply to the California Tax Credit Allocation Committee ("TCAC") in the July 2010 round for an allocation of 9% Tax Credits to build a new 53-unit affordable senior housing development, including 52 units of affordable rental housing plus one manager's unit, referred to as Harper's Pointe Senior Apartments. TCAC's July 2010 Round tax credit application deadline is July 7, 2010. In September 2010, TCAC is expected to award tax credit allocations for the July 2010 Tax Credit applications. Developer requests that (a) the Costa Mesa Redevelopment Agency ("Agency") commit monies for as a residual receipts loan up to \$990,000, of which \$575,000 will be disbursed to City to defray certain City development fees associated with the Project; and, (b) the City of Costa Mesa ("City") commit HOME Program funds for a separate residual receipts loan of up

to \$385,000. It is proposed that the Agency and the City provide the commitment of funds for Developer's application to TCAC relating to the two residual receipts loans pursuant to that certain "Commitment Letter" attached hereto as Attachment No. 4, which commitment is contingent upon Developer receiving for the Project a competitive TCAC award for the 9% tax credits or non-competitive TCAC award for 4% tax credits and further contingent upon Developer obtaining additional commitments for other funding sources sufficient to accomplish the acquisition of the Site and construction, development, completion and operation of the Project all as more fully set forth in the Commitment Letter. Each of the City's and Agency's commitments would be for a period that would allow Developer to apply for two 9% tax credit rounds: July 2010 Round #2 and, if necessary, Round #1 for 2011, but with no further commitment beyond Round #1 2011.

Interest on each of the Redevelopment Agency and City notes is subject to further negotiations, as is the maturity date for each loan. Developer has proposed to City and Agency a rate of 3% for each of the respective residual receipts loans.

Developer – USA Properties Fund is a for-profit, real estate development firm that specializes in the development of affordable housing. USA Properties Fund's financing experience includes use of: low-income housing Tax Credits, multi-family tax exempt bonds (with 4% Tax Credits), HOME Program funds, redevelopment agency funds, and private loans for construction and permanent financing. USA Properties Fund has provided the following information (as indented) concerning its operations:

USA Properties Fund, Inc., a California Corporation, is a privately owned real estate developer and builder specializing in residential construction since 1981. Since its inception, USA Properties Fund, Inc. (USA) has developed over 9,000 multi-family units in California and Nevada. USA has successfully completed and currently operates 70+ tax credit multi-family communities throughout California, including 38 senior communities totaling 6,250+ units.

USA employs a full-time Asset Manager who works closely with its property management company, USA Multifamily Management, Inc., to ensure that each property is maintained at the highest standards and runs at maximum efficiency. A full-time on-site manager screens prospective tenants and ensures that any tenant issues that may arise are addressed and resolved.

USA contracts with USA Multifamily Management, Inc. for professional property management services. Since 1993, USA Multifamily Management, Inc. has provided property management services for owners and developers of affordable housing. USA Multifamily Management, Inc. is dedicated to providing its clients with excellent service and experienced management representation with an emphasis on integrity, dependability and competence. USA Multifamily Management, Inc. currently manages 70+ properties (10,330+ units) in California and Nevada.

USA's experience includes 44 communities (5,799 residents) built in partnership with Riverside Charitable Corporation ("RCC"), a 501(c)3 Nonprofit Public Benefit Corporation founded in 1988 and committed to providing those who are unable to afford the necessities of life with safe, decent, supportive-service-enriched affordable housing.

It is the combined efforts of USA Properties Fund, its management team, Riverside Charitable Corporation and LifeSTEPS, its social service provider, that have ensured that all USA residents are an integrated part of an active, thriving community.

Development Team

Role	Firm/Contact
Tax Credit Ownership Entity	Harper's Pointe Senior Apartments , LLC Contact: Ed Herzog USA Properties Fund, Inc. 2440 Professional Drive, 100 Roseville, CA 95661 916.773.6060 eherzog@usapropfund.com
Developer	Ed Herzog USA Properties Fund, Inc. 2440 Professional Drive, 100 Roseville, CA 95661 916.773.6060 eherzog@usapropfund.com
Architect	Hochhauser & Blatter Architecture Contact: Jan Hochhauser 122 E. Arrellaga Santa Barbara, CA 93101 805.962.2746 Jan@hbarchitects.com
Contractor	USA Construction Management, Inc. Michael McCleery 2440 Professional Drive Roseville, CA 95661 916.773.6060 mmcleery@usapropfund.com
Management Company	USA Multifamily Management, Inc. Contact: Karen McCurdy 2440 Professional Drive Roseville, CA 95661 916.773.6060 kmccurdy@usapropfund.com
Environmental Consultant	Krazen & Associates, Inc. Contact: 215 West Dakota Avenue Clovis, CA 93612 559.348.2200
Construction Lender	US Bank Lisa Gutierrez 621 Capitol Mall, Suite 800 Sacramento, CA 95814 916.498.3457 lisa.gutierrez@usbank.com

Tax Credit Equity Partner	WNC & Associates, Inc. Will Cooper, Jr. 17782 Sky Park Circle Irvine, CA 92614 714.662.5565 x 115 wcooperjr@wnc.inc.com
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A tax credit limited partnership entity, Harper’s Pointe Senior Apartments, LLC, has been formed and will be the ownership entity and “Developer” for the Agency Loan Agreement and the City Loan Agreement. The project architect will be Hochhauser & Blatter Architecture, Jan Hochhauser. Developer proposes to use as contractor USA Construction Management, Inc., an affiliate of Developer; Developer desires to use USA Construction Management, Inc. USA Multifamily Management will manage the development.

Project Development – Developer proposes to construct 53 housing units (51 one-bedroom and 2 two-bedroom units) on an approximately 37,766 square foot Site at 845 West Baker Street, Costa Mesa. Currently the Site is improved with a one-story cement building and a 30-foot tall pole sign. Developer would demolish the existing improvements and be solely responsible both financially and legally for relocation of all occupants at the Site. The Site and the proposed improvements are described in greater detail in the Planning Commission Agent Report for PA-09-18 (which Report is deemed incorporated herein by reference. Such Report may be accessed at <http://www.ci.costa-mesa.ca.us/council/planning/2010-06-14/061410PA0918.pdf>).

The proposed Harper’s Pointe Senior Apartments will include: three stories of apartments above one story consisting of approximately 4,980 square feet reserved for mixed-use. Of the 53 senior apartments, 51 are to be one-bedroom and 2 are two-bedroom (“Housing Units”). Excepting for one manager’s unit, all Housing Units will be rented to households with seniors (persons 55 years of age or older) and whose income is Very Low (50% of area median income or lower) or Lower Income (in this case, 60% of area median income or lower)). One-bedroom units will consist of approximately 532 square feet and two-bedroom units will consist of approximately 782 square feet. A total of 68 parking spaces will be provided, of which 45 spaces are allocated for residents and their guests and 21 spaces are allocated for commercial tenants and their customers. The apartments, as an affordable senior housing project, will help achieve the City’s Regional Housing Needs Assessment (RHNA) goals. The Housing Units, per Planning Commission condition of approval #6, will be subject to an affordable housing agreement to be recorded, and which will be enforceable by Agency and City. Such an agreement will include certain specific clauses (see Attachment No. 6, Particular Costa Mesa Agreement Provisions) and other provisions customarily utilized in agreements for affordable housing customarily adjusted by the Agency and/or the City.

AFFORDABLE HOUSING IMPACT:

The Agency’s commitment of funds for its residual receipts subordinate loan (“Agency Loan”) shall be a contingent loan and the City’s contingent plan to Developer would provide construction and permanent gap financing to construct the 53-unit Project. Agency affordable rent and occupancy restrictions would be recorded against the Site for not less than 55 years. The Housing Units are expected to be affordable to Area Median Income (AMI) levels ranging from 30% AMI to 60% AMI.

Attachment No. 2 summarizes the Project's 52 affordable units by type, proposed rents, and affordability. Area Median Income shall mean the median income for the area as most recently determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or, if programs under Section 8 are terminated, Median Income for the Area determined under the method used by the Secretary prior to such termination.

FISCAL CONSIDERATIONS:

Developer's estimated total development cost for the Project is estimated at \$14,508,000. Agency's investment and subsidy for the Project through the Agency Loan toward development the affordable senior rental housing Project would be \$990,000 (\$19,038 per affordable unit). City's investment and subsidy from HOME Program funds for the Project through the City Loan toward development of the Project would be \$385,000 (\$7,404 per affordable unit). The total investment and subsidy commit by the City and Agency, together, would be \$1,375,000 or \$26,442 per affordable unit. Each of the Agency loan and the City Loan is contingent upon TCAC's prior award of 9% Tax Credits to the Project as well as the demonstrated commitment of other moneys sufficient to defray the cost to acquire the Site and develop the improvements, and other funding commitments, including \$743,000 from the County of Orange (HOME funds) and \$757,000 under the auspices of the MHSA program. After the Project receives Tax Credits and demonstrates commitments for the remaining funds, terms of the Agency Loan would be a residual receipts structure bearing interest at a rate to be established; Developer has proposed 3%. Each of the Agency Loan and the City Loan is expected to be secured by a trust deed recorded against the Site; final lien priority of such deeds of trust is to be negotiated. The Agency Loan would be recourse until the timely completion of the Project, after which it would become non-recourse (as required by the TCAC Rules).

The following table outlines the various estimated funding sources for the Project:

Project Estimated Permanent Sources of Funds	Amount
Private Bank Loan	\$2,710,000
Costa Mesa Redevelopment Agency	\$990,000
MHSA Funds	\$757,000
County HOME	\$743,000
City HOME	\$385,000
Deferred Developer Fee	\$636,000
General Partner Loan	\$400,000
Tax Credit Equity	\$7,887,000
Estimated Total Sources of Funds	\$14,508,000

Pro formas presented by the Developer have been based upon the award of 9% Tax Credits; however, Developer desires flexibility to seek and utilize 4% Tax Credits. In the event further analysis is required to be undertaken concerning a revised pro forma or modifications to financing to the Project, including without limitation the use of 4% Tax Credits, the Agency's and City's third party consulting costs shall be borne by the Developer. In the event the Project is financed with 4% Tax Credits, selection of bond counsel and the remainder of the bond financing team shall be subject to concurrence by both Developer and City.

PREVIOUS ACTIONS – None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

A noticed public hearing was conducted by the Planning Commission on Monday, June 14, 2010 with all persons given the opportunity to speak for and against the proposed project. The public notice consisted of a postcard mailer to property owners within 500 feet of the subject property, newspaper publication, and a sign posting. The Planning Commission approved this project on a 4-0 vote (Commissioner McCarthy voting No).

ENVIRONMENTAL REVIEW:

The project is considered exempt from the provisions of the California Environmental Quality Act under Section 15332 for In-fill Development Projects. Should any HOME Program funds be used to make the loan, a Request for Release of Funds shall be approved by the Department of Housing and Urban Development (HUD) and the release of funds shall be conditioned upon satisfaction of all federal rules, laws, and regulations applicable to the property, including compliance with the provisions of the National Environmental Policy Act (NEPA). This conditional commitment does not provide the recipient, sub-recipient or contractor any legal claim to any amount of HOME Program funds to be used for the Project or Site unless and until the Site has received environmental clearance.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Stakeholders include: USA Properties Fund as the Developer, the property seller Red Mountain Retail Group, the neighborhood including and adjacent to 845 West Baker Street, and the City of Costa Mesa as this Project furthers implementation of the City's Housing Element and the Agency's Implementation Plan, specifically to increase affordable housing in the community.

Respectfully submitted,

Muriel Ullman, Neighborhood Improvement
Manager

Kimberly Brandt, Development Services
Director

Tom Hatch, Assistant City Manager

Attachments:

1. [Location Map](#)
2. [Development Summary](#)
3. [Development Timeline](#)
4. [Commitment Letter from Agency and City to Developer](#)
5. [Particular Costa Mesa Agreement Provisions](#)
6. [Keyser Marston Associates' Economic Analysis and Report dated as of June 24, 2010](#)

ATTACHMENT NO. 1

LOCATION MAP

ATTACHMENT NO. 2

**DEVELOPMENT SUMMARY
HARPER'S POINTE APARTMENTS
July 6, 2010**

Unit Affordability:

Total # of units: 53 units.
 Restricted units: 52 units.
 Percent of AMI: The restricted units will be affordable to Area Median Income (AMI) levels ranging from 30% AMI to 60% AMI, with initial rents as follows:

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Unit Type	Unit Size (sq. ft.)	No. of Units	Restricted Monthly Rent -- Net of Utility Allowance [g – f]	AMI *	Monthly Utility Allowance	Monthly (Gross) Housing Cost	Monthly Market Rent **	Monthly Rent Savings vs. Market Rate
1br/1ba	532	7	\$228	30%/MHSA	\$25	\$253	\$1,742	\$1,514
1br/1ba	532	8	\$672	40%	\$25	\$697	\$1,742	\$1,070
1br/1ba	532	6	\$759	45%	\$25	\$784	\$1,742	\$983
1br/1ba	532	13	\$846	50%	\$25	\$871	\$1,742	\$896
1br/1ba	532	16	\$1,021	60%	\$25	\$1,046	\$1,742	\$721
	Subtotal	50						
2br/1ba	782	1	\$597	30%	\$30	\$627	\$2,092	\$1,495
2br/1ba	782	1	\$951	50%	\$30	\$981	\$2,092	\$1,141
	Subtotal	2						
1br/1ba	532	1	Manager					
Total		53						

* - Estimated percent of Area Median Income (rounded).

** - Estimated.

Development Cost (Estimated):

Total development cost (estimated): \$ 14,508,000
 Agency loan amount: \$ 990,000
 City loan amount: \$ 385,000
 Total development cost per unit: \$ 274,000
 Redevelopment Agency cost per affordable unit: \$ 19,038
 City cost per affordable unit: \$ 7,404

Sources of Funds (Estimated):

Bank Loan \$ 2,710,000
 Agency Loan \$ 990,000
 City HOME Loan \$ 385,000
 County HOME Loan \$ 743,000
 MHSA Loan \$ 757,000
 Deferred Developer Fee \$ 636,000
 General Partner Loan \$ 400,000
 Tax Credit Equity +\$ 7,887,000
 Est. Total Sources of Funds \$ 14,508,000

ATTACHMENT NO. 3

**ESTIMATED APPROVAL TIMELINE
PROPOSED AGENCY LOAN AND CITY LOAN TO DEVELOPER FOR
HARPER'S POINTE SENIOR APARTMENTS**

July 6, 2010	Loan Commitments by Redevelopment Agency and City Council for consideration and action; if approved, Commitment Letter (Attachment No. 4) executed by Agency Executive Director and City Manager and, respectively
July 7, 2010	Tax Credit Application to TCAC
September, 2010	Estimated Tax Credit Award/Reservation Issued by TCAC
Spring 2011	Estimated Construction Start (within 150 days of TCAC award; 2 nd TCAC Round for 2010 or 1 st TCAC Round for 2011).
Summer 2011	Estimated Construction Completion and Occupancy.

ATTACHMENT NO. 4

[Final form on City/Agency letterhead]

**COMMITMENT LETTER FROM
COSTA MESA REDEVELOPMENT AGENCY, CITY OF COSTA MESA, CALIFORNIA
AND CITY OF COSTA MESA**

July 6, 2010

Ed Herzog
USA Properties Fund, Inc.
2440 Professional Drive
Roseville, CA 95661

Re: Harper's Pointe, L.P. ; Costa Mesa Redevelopment Agency and City of Costa Mesa
Residual Receipts Loans for New Construction of Harper's Pointe Senior Apartments

Dear Mr. Herzog:

We are pleased to offer these commitments of funds on behalf of and from the Costa Mesa Redevelopment Agency, City of Costa Mesa, California ("Agency") and the City of Costa Mesa ("City") by this Commitment Letter (herein, "Commitment Letter") to USA Properties Fund and its affiliate Harper's Pointe, L.P. ("Developer") for Developer's consideration and acceptance, subject, however, to the approval of this Commitment Letter by the City Council of the City of Costa Mesa ("City Council" and "City, respectively) and the governing board of the Costa Mesa Redevelopment Agency, City of Costa Mesa, California ("Agency") of the terms and conditions of that certain "Agency Loan" and that certain "City Loan", respectively, as more fully detailed herein (together, "Loans").

The Agency is a redevelopment agency organized, operating, and existing pursuant to the California Community Redevelopment Law, Health & Safety Code Section 33000, *et seq.* ("CRL"). City is a California municipal corporation and general law city. Pursuant to the CRL, the Agency maintains a low to moderate income housing to improve, increase and preserve the community's supply of low to moderate income housing available at an affordable housing cost ("Housing Fund"). City is a participating jurisdiction with the United States Department of Housing and Urban Development that has received funds from HUD pursuant to the federal HOME Investment Partnerships Act and HOME Investment Partnerships Program, 42 U.S.C. Section 12701, *et seq.*, and the implementing regulations thereto set forth in 24 CFR § 92.1, *et seq.* for the purposes of strengthening public-private partnerships to provide more affordable housing, particularly decent, safe, sanitary, and affordable housing, with primary attention to housing for Very Low Income and Lower Income households in accordance with the HOME Program.

The Loans, as approved by Agency and City Council, respectively and subject to their amendment of this Commitment Letter, if any, will be provided to you upon the following terms and conditions:

ATTACHMENT NO. 4

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- 1. Developer/Borrower** USA Properties Fund (or its approved affiliate) shall be the developer with Harper's Pointe, L.P., as the borrower and sole owner and operator ("Developer"). Harper's Pointe, L.P., a California Limited Liability Company, (hereinafter the "LLC" or "Borrower"), and/or to be formed California limited partnership, with USA Harper's Pointe, Inc., a California corporation as its Administrative General Partner and Riverside Charitable Corporation, a California nonprofit public benefit corporation as Managing General Partner, as approved by Agency. The identity of each limited partner of the partnership and/or member of the LLC and their respective roles and responsibilities, as member(s), general and/or limited partner(s), for the Project are subject to the approval of Agency and City. The documentation of the Borrower is subject to the approval by Agency, City and their respective Special Counsel and General Counsel(s). Hereinafter, the Borrower and Developer are referred to as "Developer".

- 2. Amount of Loans**

Agency Loan: A deferred payment residual receipts loan not to exceed an original principal amount of \$990,000, a portion of which will be funded with moneys from the Agency's Housing Fund per CRL Sections 33334.2, 33334.6, *et seq.* The Agency Loan shall be disbursed in accordance with a schedule to be approved by the Agency and stated in formal loan documentation for such loan (to be negotiated after allocation by the California Tax Credit Allocation Committee ("TCAC") of Tax Credits to Developer for the Project, "Agency Loan Agreement").

City Loan (HOME Program Funds): A deferred payment (residual receipts) loan not to exceed \$385,000. The City Loan shall be disbursed in accordance with a schedule to be approved by the City Council and stated in the loan documentation for such loan (to be negotiated after allocation of Tax Credits for the Project, "City Loan Agreement").

Both the Agency Loan and the City Loan are expressly contingent upon the TCAC's award of 9% or 4% Tax Credits to Developer for the Project and Developer's securing other funding commitments including \$743,000 from the County of Orange (HOME Program funds) and \$757,000 under the auspices of the Mental Health Services Act Housing Program (MHSA) program.

- 3. Project** New construction of a 53-unit senior apartment project referred to as *Harper's Pointe Senior Apartments* located at 845 West Baker Street, Costa Mesa, California as described in and such Project received a land use entitlement from the City's Planning Commission on June 14, 2010 ("Project").

- 4. Term of Affordability** Not less than fifty-five (55) years.

ATTACHMENT NO. 4

**5. Affordability
Restrictions**

Fifty-two (52) of the fifty-three (53) units shall be affordable to and occupied by persons and or households at or below the Area Median Income (AMI) referenced in Attachment No. 2 to the staff report included with the City Council and Agency's consideration and approval of this Commitment Letter, in a mix of fifty (50) one-bedroom and two (2) two- bedroom units. The fifty-third (53rd) unit may be occupied by management personnel and need not be rent or occupancy restricted. A Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions ("Regulatory Agreement") and a Notice of Affordability Restrictions per CRL Section 33334.3 restricting rents and occupancy of fifty-two (52) of the fifty-three (53) units for not less than fifty-five (55) years shall be recorded against the Site in favor of each of City and Agency. Such Regulatory Agreement and Notice of Affordability Restrictions shall be in a form and format acceptable to Agency, City and Special Counsel in her sole discretion. The Affordable Rent and occupancy restrictions shall include the following:

- Seven (7) units affordable to residents with incomes at or below 30 percent (30%) of Area Median Income (AMI);
- Eight (8) units affordable to residents with incomes at or below 40 percent (40%) of AMI;
- Six (6) units affordable to residents with incomes at or below 45 percent (45%) of AMI;
- Fifteen (15) units affordable to residents with incomes at or below 50 percent (50%) of AMI; and
- Sixteen (16) units affordable to residents with incomes at or below 60 percent (60%) of AMI.

6. Loan Terms/Repayment *Agency Loan:* The Agency Loan shall be evidenced by a Promissory Note in the amount of \$990,000 and shall be secured by a Deed of Trust recorded against the Site. The Agency Promissory Note shall provide for a scheduled annual repayment of a pro rata share of residual receipts taking into account the funding participation by Agency, City, County and under the MHSa Program. The first payment shall commence at the end of the first fiscal year following the date of the issuance of a Release of Construction Covenants by Agency.

City Loan: The City Loan shall be evidenced by a Promissory Note in the amount of \$385,000 and shall be secured by a Deed of Trust recorded against the Site. The City Promissory Note shall provide for a scheduled annual repayment of a pro rata share of

ATTACHMENT NO. 4

residual receipts taking into account the funding participation by Agency, City, County and under the MHSA Program. The first payment shall commence at the end of the first fiscal year following the date of the issuance of a Release of Construction Covenants by City.

Provisions Common to Agency Note and City Note: Interest on each Promissory Note shall be 3% simple interest (or such other interest rate as may be established by mutual agreement). Interest shall accrue from the first disbursement and all payments shall be applied first to accrued interest then to principal. The Promissory Note shall contain due on sale and further encumbrance clauses and shall be in a form and content as approved by Special Counsel for the Agency and the City, respectively.

All principal and accrued interest shall be due and payable upon repayment in full of the permanent financing, except for a repayment resulting from a pre-approved refinancing of the permanent financing, in which no cash or other consideration is received by the Developer as a result of such refinancing.

7. Security

Agency Loan: The Agency Loan shall be secured by a Deed of Trust, which Deed of Trust may, upon specific approval thereof by the governing board of the Agency, will be subordinated, to the construction and permanent financing and in a form and format acceptable to the Agency and its Special Counsel in their sole discretion.

City Loan: The City Loan shall be secured by a Deed of Trust, which Deed of Trust may, upon specific approval thereof by the City Council, will be subordinated, to the construction and permanent financing and in a form and format acceptable to the City, acting through its City Council, and its Special Counsel in their sole discretion.

8. Pro Forma/Expenses

All expenses of this Project shall be approved by Agency and City in their reasonable discretion. The Developer's pro forma for the Project has been submitted to and reviewed by Keyser Marston Associates ("KMA"), Agency's and City's economic advisor. KMA's report on the Project, including assumptions, analysis and warranted subsidy, is based on the Developer's pro forma and such "KMA Report" is incorporated herein and appended hereto as Attachment No. 6, and is a substantive and material basis under which both Agency and City are providing their commitments to make the Agency Loan and City Loan, respectively.

- 9. Reserves** Subject to the approval of the construction and/or permanent lender(s), Developer shall deposit a minimum of \$500 per unit per year (\$26,500 per year) into a dedicated capital replacement reserve account as part of its annual operating expenses. Use of capital replacement reserves shall be subject to the approval of Agency and City.
- 10. Recourse** The Agency Loan shall be recourse until the timely completion of the Project, when it shall become non-recourse. The City Loan shall be recourse until the timely completion of the Project, when it shall become non recourse
- 11. Notice/Cure Assumption Rights** Each of Agency and City shall have the right, but not the obligation to cure, after notice of default, any and all defaults in any senior encumbrances. All subordination agreements shall be subject to the sole approval of Agency and City and shall include extended cure rights, separate notice to, and rights to assume senior encumbrances.
- 12. Management Plan** The Management Plan shall be subject to periodic approval by each of Agency and City, in their reasonable discretion.
- 13. Management Approval** Each of Agency and City reserves the right to declare Developer in default of the Agency Loan Agreement or the City Loan Agreement after an uncured ninety (90) day written notice of malfeasance and/or misfeasance in management of the Project.
- 14. Time of Funding** Agency will fund the Agency Loan upon satisfaction of all conditions set forth in the Agency Loan Agreement. All documentation, including any senior loan documents, shall be subject to review and approval of the governing board of the Agency. City will, from HOME Program funds, fund its loan upon satisfaction of all conditions set forth in the City Loan Agreement. All documentation, including any senior loan documents, shall be subject to review and approval of the City Council.
- 15. Construction Contract** Funding of each of the Agency Loan and the City Loan is subject to Agency and City approval of a guaranteed maximum “not-to-exceed” contract for the construction work. Developer shall comply, and shall cause its contractor and all subcontractors to comply, with all state and federal program limitations and requirements, including without limitation those requirements commonly referred to as “Section 3”, including all reporting, meetings, and other compliance requirements thereof.

- 16. Evidence of Financing; Other Loans; Tax Credit Equity** Each of Agency and City shall have right to review and approve all evidence of financing, including the construction loan and the permanent loan documentation, along with solicitation for and selection of a tax credit equity investor, and in particular the provisions of any subordination of the Agency Loan and/or the City Loan to any such senior encumbrances.
- 17. Partnership Related Fees** The Partnership Related Fees, including management fee, asset management, general partner and/or limited partnership fees, shall not exceed an amount to be approved by Agency and City.
- 18. Developer Fee** The Developer Fee for the Project shall not exceed those limitations as stated in the California Tax Credit Committee Regulations. The currently estimated Developer Fee is \$1,271,839 and Developer's application to TCAC shall itemize the Developer Fee at not more than that amount which is allowed under TCAC's regulations. The Developer Fee shall be available for and shall be used, as necessary, to pay for any and all cost overruns in the construction of the Project prior to and as a condition to any disbursement thereof to Developer. Developer Fee disbursements shall be in increments as specified in the Tax Credit Partnership Agreement and shall be subject to approval by Agency, City and respective designees.
- 19. Prevailing Wages** If required by federal and/or state law or as a condition of obtaining funding, the Developer shall comply with the requirements for payment of both Federal Labor Wage Rates (Davis Bacon Act) and State Prevailing Wages (California Labor Code) and shall pay the higher of the two in the event of a conflict on a trade-by-trade basis.
- 20. Time of Performance** Construction shall commence within the timeframe required by TCAC. Construction shall be completed according to the schedule outlined in the Agency Loan Agreement and the City Loan Agreement (up to 18 months) and stabilized occupancy shall be achieved according to the requirements of TCAC and the other funding sources.
- 21. Funds** Agency may fund the Agency Loan from various sources including the Housing Fund, tax increment not held in the Housing Fund or any other local, State, and/or federal funding source. If funded from tax increment, then all applicable requirements of the CRL shall apply and construction and operation of the Project and the Project shall be subject to all applicable provisions of the CRL. City intends to fund the City Loan only from available HOME Program funds; therefore, because federal funds will be a source of funding then

construction and operation of the Project shall be subject to all applicable federal program limitations, rules, and regulations.

- 22. ALTA Lender's Policies:** Developer shall cause to be issued to City and Agency, at Developer's sole cost and expense, ALTA Lender's Policies for each of the Agency Loan and the City Loan, with endorsements acceptable to Agency and City and respective Special Counsel.
- 23. Updated Appraisal** Prior to funding, Developer shall cause to be prepared and shall submit to each of Agency and City for their respective approval, an updated, as constructed, appraisal, as a condition to funding. Appraised value shall reflect the then-current value of the appraised property in the Site's then-current condition.
- 24. Contract Approval** The funding of each of the Agency Loan and the City Loan is also subject to Agency's and City's approval of the necessary handicap accessibility design compliance provisions being stated within the project architect's contract.
- 25. Assumption of Loan** The Agency Loan and the City Loan may not be assumed without the prior written consent of each of Agency and City. It is contemplated that City and Agency will agree that such loans may be assumed by tax credit limited partnership, provided that the limited partnership is approved by each of Agency and City, provided that Developer (or Borrower as its approved affiliate) will be the general partner of the limited partnership, and further provided that such tax credit limited partnership shall agree to be further bound by the terms contained in a comprehensive transactional agreements, the Agency Loan Agreement and the City Loan Agreement and all implementing documents thereof, to be entered into among Developer, Agency and City.
- 26. TCAC** Each of the Agency Loan and the City Loan is contingent upon TCAC award of the necessary 9% or 4% Tax Credits for the Project. Developer shall submit to TCAC and to the City and Agency all documents necessary to complete the Tax Credit application towards consideration and receipt of an allocation of Tax Credits. Developer is and shall be expressly limited to two (2) 9% applications to TCAC (1) the first for the July 2010 round, and (2) the second for the first round in 2011, and no further or additional applications are authorized or intended hereunder. Prior to funding, Developer shall submit to Agency and City a complete, legible copy of TCAC's letter acknowledging that Developer has satisfied all applicable 150-day submittal requirements together with evidence of funding commitments demonstrating funding is committed sufficient for the development of the Project with affordability covenants of not less than 55 years.

- 27. Documentation** All documentation of this transaction shall be subject to the approval of each of City and Agency acting through their respective governing boards.
- 28. Additional Conditions** Each of City and Agency reserves the right to impose such additional conditions, both conditions precedent and conditions subsequent, in the Agency Loan Agreement and the City Loan Agreement, and all attachments thereto, and other final documentation of the transaction as are reasonably necessary to protect the interests of the City and the Agency and fulfill the intent of this Commitment Letter. Included as additional conditions are the completion of a comprehensive transactional agreements, Agency Loan Agreement and City Loan Agreement, to be prepared by Agency and City and Special Counsel (as approved also by Agency General Counsel and City Attorney) containing terms customary to similar agreements by Agency and City and including, without limitation, provisions for: (i) demonstration of available and committed moneys sufficient (with the City Loan and the Agency Loan) for the acquisition of the Site and the construction through completion and lease-up of the Project; (ii) annual financing reports; (iii) satisfaction of Section 3 and other HOME Program requirements; (iv) bidding procedures and construction costs acceptable to each of Agency and City; (v) land acquisition cost acceptable to each of Agency and City; (vi) a leasing agreement form, tenant selection process, and reporting/monitoring program acceptable to City and Agency; and (vii) insurance and indemnity conforming to requirements of Agency and City as set forth in Attachment No. 2 to the staff report for this Commitment Letter and also conforming to certain Agency/City requirements regarding insurance and indemnity as set forth in Attachment 5 to such staff report.
- 29. Tax Credit Investor** Agency and City must receive an acceptable binding commitment from a Tax Credit investor limited partner, that its Tax Credit investment and contribution to the Project will be not less than \$7,887,000. A Tax Credit commitment of less than the estimated \$7,887,000 will be subject to the sole approval of each of Agency and City. The Tax Credit Partnership Agreement shall be subject to approval by each of Agency and City.
- 30. Possible Reduction to Agency Loan** Should the cost of the Project be decreased, or should the funding sources increase from those anticipated herein (cost and source amounts as referenced in the staff report presented to the Agency and City Council on July 6, 2010) and/or should the contingency not be utilized, then the amount of increased sources and/or savings shall be allocated first to reduction of the General Partner's loan and deferred Developer fee then 50% to Participant

and 50% as between Agency and City; the allocation as between Agency and City shall be determined by Agency and City.

31. No Other Funds from City or Agency

Agency and City are not hereby committing to provide any further funds to this Project beyond those referenced in this Commitment Letter or without satisfaction of any and all conditions contained herein (and specifically including the limitation that the City will use no moneys other than HOME Program funds in making the City Loan). Any need to purchase the Site prior to TCAC allocations must be and shall remain within Developer's sole responsibility and decision and with no obligation of Agency or City to provide any funds whatsoever for such early acquisition. Cost overruns, if any, must be addressed by use of the Developer Fee and/or other funding sources and/or other assets of the Developer and in no event from additional monies from the City and/or Agency.

32. Other Terms

Each of Agency and City reserves the right to impose any additional conditions in the Agency Loan Agreement and/or the City Loan Agreement and other implementing loan documents that may be necessary, in the discretion of City or Agency, as applicable, to protect the interests of Agency and City and fulfill the intent of this Commitment Letter. Such documentation shall be approved by the Agency and the City Council. The provision by Participant of an appraisal supporting a land value (based upon an unimproved state) within ten percent (10%) of that amount reflected for land cost in that pro forma on file with the City and designated in writing by City staff as the "Final Commitment Letter Pro Forma" shall be a condition to the Agency and/or City considering a comprehensive transactional agreement, Agency Loan Agreement and City Loan Agreement, as referenced in paragraph 28 hereof.

This commitment of funds to provide the Agency Loan and the City Loan as set forth in this Commitment Letter is conditional upon Developer receiving commitments from its other sources of financing, including the County of Orange and necessary Tax Credit allocations from the State of California Tax Credit Allocation Committee.

If you are willing to proceed on the terms and conditions referenced herein, please execute this Commitment Letter and return it to the undersigned on or before July 1, 2010 so that the executed form thereof might be attached to the staff report accompanying this Commitment Letter.

Commitment Letter
July 6, 2010

Even after your execution, the Commitment Letter shall not be effective, unless and until approved by both the Agency and the City.

Sincerely,

Allan L. Roeder, City Manager

Kimberly Brandt, Agency Executive Director

Commitment Letter
July 6, 2010

Agreed to and accepted this ____ day of _____, 2010 by:

USA Properties Fund, Inc.
Authorized Representative

ATTACHMENT NO. 5

PARTICULAR COSTA MESA AGREEMENT PROVISIONS

[Numbering of sections within this Attachment No. 5 is illustrative, only]

4.5 Insurance Requirements. In addition to the separate and severable indemnification covenants and provisions provided by the Developer to Agency and City hereinafter in this Section 4.5, *et seq.*, the Developer shall provide insurance according to these requirements. The Developer shall maintain the following coverages on behalf of Agency and City and any and all of their elected officials, boards, officers, employees, and agents for all claims, damages to property and injuries to persons, including death (including attorneys' fees and litigation costs), which may be caused by any of Developer's activities under this Agreement or related in any respect whatsoever to the Development, regardless of whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and regardless of whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall cause all requirements of this section, and the construction insurance requirements hereafter for such construction insurance, to be obtained and maintained until the completion of the Improvements.

The parties acknowledge and agree that the Loan Agreement includes and requires the Developer to obtain and maintain specific insurance regarding the Development. To the extent the insurance requirements of the Loan Agreement provide for and require policies of insurance coverage with and in amounts, types, and endorsements that exceed the requirements provided hereunder, then the Developer shall provide such increased coverage to the Agency and City and any and all certificates and endorsements therefor shall include both the Agency and City as more specifically set forth in this Section 4.5, *et seq.*

4.5.1 Categories of Coverage for the Development. The following insurance categories shall be caused to be provided by the Developer for the Development and evidence of such coverage and endorsements shall be provided by the time set forth herein.

(a) Commercial General Liability Insurance. Commercial General Liability Insurance shall be provided on Insurance Services Office CGL policy form No. CG 00 01 11 85 or equivalent policy form approved by City's risk management department. Policy limits shall be no less than Two Million Dollars (\$2,000,000) per occurrence for all coverages and not less than Five Million Dollars (\$5,000,000) in general aggregate. There shall be no cross liability exclusion. Coverage shall apply on a primary non contributing basis in relation to any other insurance or self insurance (primary or excess) available to City, Agency, and any and all of their boards, officials, employees or agents. City, Agency, and any and all of their boards, officials, employees and agents shall be added as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word "ongoing" before "operations" in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or the Developer may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion.

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(b) Business Auto Coverage. Business Auto Coverage shall be written on Insurance Services Office Business Auto Coverage form CA 00 01 06 92 including owned, non owned and hired autos. Limits shall be no less than One Million Dollars (\$1,000,000) per accident and not less than Two Million Dollars (\$2,000,000) in general aggregate. If the Developer owns no autos, a non owned auto endorsement to the General Liability policy described above is acceptable.

(c) Workers' Compensation/Employer's Liability. Workers' Compensation/Employer's Liability shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than One Million Dollars (\$1,000,000) per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City and Agency and any and all of their boards, officials, employees or agents.

(d) General Conditions Pertaining to Provision of Insurance Coverage by the Developer. The Developer agrees to the following provisions regarding insurance provided by the Developer for the Development:

(i) The Developer agrees to provide insurance in accordance with the requirements set forth herein. If the Developer uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, the Developer agrees to amend, supplement or endorse the existing coverage to do so. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Agency will be promptly reimbursed by the Developer.

(ii) The coverage required here will be renewed annually by the Developer as long as the Developer continues to provide any services under this or any other contract or agreement with Agency. The Developer agrees to maintain liability coverage after the term of this Agreement so long as such coverage is reasonably available.

(iii) No liability insurance coverage provided to comply with this Agreement shall prohibit the Developer, or the Developer's employees, or agents, from waiving the right of subrogation prior to a loss. The Developer waives its right of subrogation against Agency and City.

(iv) The provisions of any workers' compensation or similar act will not limit the obligations of the Developer under this agreement. The Developer is and shall at all times be considered an Independent Contractor, and expressly agrees not to use any statutory immunity defenses under such laws with respect to Agency or City and their employees, officials and agents.

(v) No liability policy shall contain any provision or definition that would serve to eliminate so called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured.

(vi) All insurance coverage and limits provided by the Developer and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Agency or its operations limits the application of such insurance coverage.

(vii) Unless otherwise approved by Executive Director, insurance provided pursuant to these requirements shall be written by insurers authorized to do business in the State of California and with a minimum “Best’s” Insurance Guide rating of A:VII. Self insurance will not be considered to comply with these insurance specifications.

(viii) Any “self insured retention” must be declared and approved by Agency. Self funding, policy fronting or other mechanisms to avoid risk transfer are not acceptable. If the Developer has such a program, the Developer must fully disclose such program to Agency.

(ix) The Developer shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from the Developer’s insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Agency within five (5) days of the expiration of the coverages.

(x) The Developer agrees to provide evidence of the insurance required herein, satisfactory to Executive Director and the City’s “Risk Manager”, consisting of: certificate(s) of insurance evidencing all of the coverages required and, an additional insured endorsement to the Developer’s general liability policy using Insurance Services Office endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or the Developer may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. The Developer agrees, upon request by Executive Director or City Risk Manager to provide complete, certified copies of any policies required by this section, within ten (10) days of such request. Any actual or alleged failure on the part of Agency or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of Agency or any additional insured, in this or any other regard.

(xi) Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to Agency of any cancellation of coverage. The Developer agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.

(xii) The Developer agrees to require all Contractors, subcontractors, or other parties hired for this Development to provide workers’ compensation, general liability and automobile liability insurance, unless otherwise agreed to by Agency with minimum liability limits of One Million Dollars (\$1,000,000). The Contractor’s general liability insurance shall add as additional insureds Agency and City and their designee(s), and any and all of their boards, officials, employees and agents using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or the Developer may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. The Developer agrees to

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obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here.

(xiii) Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(xiv) The Developer agrees to provide notice within ten (10) days to Executive Director and City's Risk Manager of the Developer's receipt of any claim or loss against the Developer that includes Agency or City as a defendant and of any claim or loss arising out of the work performed under this agreement in which the demand or probable ultimate cost exceeds \$10,000. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Agency.

(xv) The insurance requirements set forth in this section are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

(xvi) The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.

4.6 Construction Insurance Requirements; Contractor for Construction Contract. From the period commencing upon the earliest to occur of (i) the effective date of the Construction Contract between the Developer and Contractor for the Development, or (ii) the date the Contractor enters onto the Site, or (iii) the date of any work on the Site has been completed (without regard to whether the Agency has issued a Certificate of Completion), the Developer shall cause its Contractor to provide and maintain at no expense to Agency (or City), insurance policies meeting the requirements set forth in this Section 4.6. The insurance shall protect Contractor, Contractor's agents, representatives, employees, vendors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, and said insurance is in addition to the insurance provided by the Developer hereunder. The Developer, Agency and City and their officers, employees, and agents shall be named as additional insureds on such policies, which shall be evidenced in endorsements or certificates that meet the requirements of Section 4.5 above for additional insureds, or as otherwise approved by the City's Risk Manager.

4.6.1 Contractor Insurance Submittals. Developer shall cause USA Construction Management Inc. ("Contractor") to provide insurance according to the requirements set forth here. Contractor will maintain the following coverages on behalf of City and Agency and any and all of their boards, officials, employees and agents.

(a) Commercial General Liability. Commercial General Liability Insurance shall be provided on Insurance Services Office CGL policy form No. CG 00 01 11 85 or equivalent policy form approved by City's risk management department. Policy limits shall be no less than Two Million Dollars (\$2,000,000) per occurrence for all coverages and not less than Five Million Dollars (\$5,000,000) in general aggregate. There shall be no cross liability exclusion. Coverage shall apply on a primary non contributing basis in relation to any other insurance or self insurance (primary or

excess) available to City, Agency, and any and all of their boards, officials, employees or agents. General liability insurance will not be limited to coverage for the vicarious liability or the supervisory role of the additional insureds. There shall be no contractor's limitation endorsement. Coverage for the additional insureds shall apply to the fullest extent permitted by law excepting only the active negligence of the City or Agency, not caused or contributed to by the Developer, as established by agreement between the parties or by the findings of a court of competent jurisdiction. City, Agency, and any and all of their boards, officials, employees and agents shall be added as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word "ongoing" before "operations" in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide an additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion.

(b) Business Auto Coverage. Business Auto Coverage shall be written on Insurance Services Office Business Auto Coverage form CA 20 26 1185 including owned, non owned and hired autos. Limits shall be no less than One Million Dollars (\$1,000,000) per occurrence for all coverages and not less than Two Million Dollars (\$2,000,000) in general aggregate. the Developer may submit, and City risk management department may review and approve, another policy form and/or another form of additional insured endorsement, so long as the review and approval of such form of policy and/or endorsement is within City risk management department's sole, reasonable discretion. If Contractor owns no autos, a non owned auto endorsement to the General Liability policy described above is acceptable.

(c) Workers' Compensation/Employer's Liability. Workers' Compensation/Employer's Liability shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than One Million Dollars (\$1,000,000) per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City, Agency, and any and all of their boards, officials, employees or agents.

(d) Course of Construction (Builder's Risk) Insurance. Course of Construction (Builder's Risk) Insurance shall be provided by Contractor (or by the Developer) and shall include City, Agency, and any and all of their boards, officials, employees and agents as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word "ongoing" before "operations" in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. Coverage shall be for the full completed value of the project. Any deductible amounts shall be the responsibility of the first named insured on the policy and shall not be the responsibility of Agency or City. The policy shall cover all real and personal property for "all risks" of loss for all buildings, structures, fixtures, materials, supplies, machinery and equipment to be used in or incidental to the construction at the Site, off site, or in transit, for the full replacement value of such property, but expressly excluding the perils of floods and earthquakes. Coverage shall be included for property of others in the care, custody or control of the insured for which any insured may be liable.

(e) General Conditions Pertaining to Provision of Insurance Coverage by Contractor. Contractor must agree to the following provisions regarding insurance provided by Contractor:

(i) Contractor agrees to provide insurance in accordance with the requirements set forth here. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Contractor agrees to amend, supplement or endorse the existing coverage to do so. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, Agency has the right to order contractor to discontinue work until suitable replacement coverage is obtained.

(ii) The coverage required here will be renewed annually by Contractor as long as Contractor continues to provide any services under this or any other contract or agreement with the Developer or Agency. Contractor agrees to maintain this coverage after the term of this Agreement so long as such coverage is reasonably available.

(iii) No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Agency and/or City.

(iv) No liability policy shall contain any provision or definition that would serve to eliminate so called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor. Contractor expressly agrees not to use any statutory immunity defenses under workers' compensation or related laws with respect to Agency and/or City, their respective employees, officials and agents, to avoid Contractor's indemnity obligation for such third party action over claims.

(v) All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Agency or its operations limits the application of such insurance coverage.

(vi) Unless otherwise approved by Agency, insurance provided pursuant to these requirements shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of A:VII.

(vii) Any "self insured retention" must be declared and approved by Agency. Agency reserves the right to require the self insured retention to be eliminated, reduced, or replaced by a deductible. Self funding, policy fronting or other mechanisms to avoid risk transfer shall be fully disclosed to Agency before any notice to proceed is issued.

(viii) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Agency within five (5) days of the expiration of the coverages.

(ix) Contractor agrees to provide evidence of the insurance required herein, satisfactory to Agency, consisting of: a) certificate(s) of insurance evidencing all of the coverages required and, b) additional insured endorsement to Contractor's liability policy using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word "ongoing" before "operations" in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide additional insured endorsement form No. CG 20 26 1185 or equivalent that is not restricted to Contractor's "ongoing operations", and/or or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. Contractor agrees, upon written request by Agency to provide complete, certified copies of any policies required by this section, within ten (10) days of such request. Any actual or alleged failure on the part of Agency or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of Agency or any additional insured, in this or any other regard.

(x) Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to Agency of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

(xi) Contractor agrees to require all subcontractors or other parties hired for this project to provide workers' compensation, general liability and automobile liability insurance, unless otherwise agreed to by Agency with minimum liability limits of \$1 million. The subcontractor's general liability insurance shall add City and Agency as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word "ongoing" before "operations" in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. Contractor agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here.

(xii) Contractor agrees to require design professional liability insurance from any design professional engaged for the Development in an amount no less than \$1 million per claim and \$2 million in general aggregate. Contractor agrees to require that no contract, standard form or otherwise, used by any party in any way connected with this Agreement, or contracts Contractor enters into on behalf of Agency, will reserve the right to charge back to Agency the cost of insurance required by this or any other agreement.

(xiii) Contractor agrees that upon request, any agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of Agency, will be submitted to Agency for review. Failure of Agency to request copies of such agreements will not impose any liability on Agency, or its employees.

(xiv) Requirements of specific coverage features or limits contained in this Section 4.6.1 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is

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for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(xv) Contractor agrees to provide immediate notice to Agency of any claim or loss against Contractor that includes Agency or City as a defendant and of any claim or loss arising out of the work performed under this agreement in which the demand or probable ultimate cost exceeds \$10,000. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Agency.

(xvi) The insurance requirements set forth in this Section 4.6.1 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

(xvii) The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.

For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

4.7 Knowledge of Claim. If at any time the Developer (or its Contractor) becomes aware of a claim or a potential claim, the Developer (or its Contractor) shall immediately provide written notice ("Claim Notice") to Agency which sets forth the nature of the claim or potential claim and the date on which the Developer became aware of such claim or potential claim and shall provide Agency with copies of any documents relating to such claim or potential claim.

4.8 Notice of Change in Coverage. If, at any time, the Developer (or its Contractor) becomes aware that any of the coverages provided above are going to be canceled, limited in scope or coverage, terminated, or non renewed, then the Developer (or its Contractor) shall provide Agency with fifteen (15) days written notice ("Insurance Notice") of such cancellation, limitation, termination or non renewal.

(a) Upon the receipt of the Insurance Notice or the Claim Notice, or at any time when Agency has knowledge of (i) the cancellation, limitation, termination or non renewal of one or more of the Developer's (or its Contractor's) insurance policies enumerated above or (ii) a claim or potential claim under one or more of such policies, then, in addition to its other rights and remedies pursuant to this Agreement, Agency shall have the right to suspend Agency's obligations under this Agreement until such time as the Developer (or its Contractor) furnishes, or causes to be furnished to Agency, duplicate originals or appropriate certificates of insurance for coverages in the amounts not less than those specified above or until the time such claim or potential claim has been resolved to the reasonable satisfaction of Agency, respectively.

4.9 Waiver of Subrogation. The Developer (and its Contractor) hereby waives all rights to recover against Agency and/or City (or any officer, employee, agent or representative of Agency or City) for any loss incurred by the Developer (or its Contractor) from any cause insured against or required by any Project Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder

would be materially reduced or impaired as a result. The Developer (and its Contractor) shall use its best efforts to obtain only policies that permit the foregoing waiver of subrogation.

4.10 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to the provisions below, if the Development shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by the Developer, the Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, if and to the extent the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and the Developer shall complete the same as soon as possible thereafter so that the Improvements can be occupied in accordance with this Agreement. Subject to enforced delays as set forth in Section 7.10 herein, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date the Developer obtains insurance proceeds unless Executive Director, in his reasonable discretion, approves a longer period of time. Agency shall cooperate with the Developer, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, the Developer may elect not to repair, replace, or restore the Improvements by giving notice to Agency (in which event Developer will be entitled to all insurance proceeds but the Developer shall be required to remove all debris from the applicable portion of the Site) or the Developer may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction.

4.11 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If the Improvements are completely destroyed or substantially damaged by a casualty for which the Developer is not required to (and has not) insured against, then the Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so, subject to any requirements of HUD and the Maker of the Primary Construction Loan by providing Agency with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, and subject to there being funds available after satisfying the Primary Construction Loan and all other senior debt, the Developer shall concurrently repay the full outstanding balance of the Agency Loan (as theretofore disbursed) to Agency and the full outstanding balance of the City HOME Loan (as theretofore disbursed) to City. As used in this Section 4.11, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Improvements. In the event the Developer does not timely elect not to repair, replace, or restore the Improvements as set forth in the first sentence of this Section 4.11, the Developer shall be conclusively deemed to have waived its right not to repair, replace, or restore the Improvements and thereafter the Developer shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Improvements in accordance with Section 4.10 above.

4.12 Indemnification.

4.12.1 General Indemnification. The Developer shall defend, indemnify, assume all responsibility for, and hold the Agency, the City and their elected officials, officers, employees, attorneys, and agents (together, "Indemnitees"), harmless from all claims, demands, damages,

defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the validity, applicability, interpretation or implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury to the extent occasioned by the negligence or willful misconduct of Agency or City or their agents or employees. The Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that the Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case the Developer shall compromise or settle such action in a way that fully protects Agency and City from any liability or obligation. In this regard, the Developer's obligation and right to defend shall include the right to hire attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against the Developer, Agency, or City. If the Developer defends any such action, as set forth above, and except as provided to the contrary above: (i) the Developer shall indemnify and hold harmless Indemnitees from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Agency shall be entitled to settle any such claim only with the written consent of the Developer and any settlement without the Developer's consent shall release the Developer's obligations under this Section 4.12.1 with respect to such settled claim. Notwithstanding the foregoing, as long as the Primary Construction Loan is insured or held by HUD, the Developer's obligation to honor this indemnification obligation shall be limited to Residual Receipts.

4.12.2 Indemnity Re Challenge to Agreement. The Developer shall, at its expense, defend, indemnify, and hold harmless Agency and City and their elected officials, officers, employees, agents, attorneys and consultants harmless from any and all losses, liabilities, claims, lawsuits, causes of action, judgments, settlements, court costs, attorneys' fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other damages of whatsoever nature, including without limitation those (i) arising out of the validity or interpretation of, Agency's and/or City's authority to enter into, or payment by Agency and/or City to the Developer under this Agreement, (ii) arising out of the applicability or inapplicability of state and/or federal prevailing wage and public works requirements related to the Development, or (iii) arising out of, in connection with, or relating in any manner to any act or omission of the Developer or its agents, employees, contractors and subcontractors of any tier and employees thereof in connection with or arising from the Developer's performance or nonperformance of its obligations under this Agreement, the Developer's ownership of the Site, or the completion of the Development, except that arising from the sole gross negligence or intentional misconduct of Agency or City and their elected officials, officers, agents, employees or representatives.

(a) Joint Defense on Certain Claims and Lawsuits. The parties acknowledge and agree that for certain types of claims or lawsuits that may be asserted against the Developer, Agency, and/or City as described in (i) and (ii) of Section 4.12.2 above ("Joint Defense Claim"), there may be a common interest and mutual concern in the subject matter of such Joint Defense Claim and that a favorable resolution of a Joint Defense Claim related to (i) and (ii) described above would be mutually beneficial. Therefore, in the event of a Joint Defense Claim related to (i) or (ii) in

Section 4.12.2 above against the Developer or Agency and/or City (including their elected officials, officers, employees, agents, attorneys and consultants), the parties agree to cooperate in the resolution of such Joint Defense Claim and desire to set forth certain joint defense rights and obligations in the course of coordination of the defense thereof by this Section 4.12.2(a).

(i) In the course of coordinating their defense of the Joint Defense Claim, the parties might engage in communications and exchange information, documents and other materials (“Communicated Information”) and such Communicated Information may include confidential attorney client communications, attorney work product, and other information and materials that are protected from disclosure to third parties by the attorney client communication privilege, the work product doctrine or other applicable privileges. The parties wish to insure that the exchange and disclosure of Communicated Information in furtherance of a joint defense effort and the parties’ common interest does not diminish in any way the confidentiality of the Communicated Information and does not constitute a waiver of any privileges otherwise applicable.

(A) All Communicated Information shall be used solely in connection with the Joint Defense Claim, and shall be and remain confidential and privileged and may not be disclosed or made available to persons other than to the Developer, Agency and/or City and their respective counsel, and such counsels’ employees and agents without the written consent of all of the other parties unless disclosure of such Communicated Information is required by order of court after the privilege and work product doctrines are asserted. Each person to whom Communicated Information is disclosed will also be made aware of the existence of this Section 4.12.2(a) and any implementing joint defense agreement among the Developer, Agency and City and that Communicated Information is privileged, confidential, and not to be disclosed unless ordered by a court to be disclosed.

(B) If any other person or entity requests or demands, by subpoena or otherwise, any Communicated Information from the Developer, Agency, City, or their counsel, such party or counsel receiving said request or demand shall immediately notify all parties and their attorneys, provide them with a copy of said request or demand, assert all applicable rights, privileges and objections with respect to such requests or demands, and cooperate fully with the other party in making every reasonable effort to prevent or limit the disclosure of said Communicated Information.

(C) In the event the Developer, Agency or City enters into any agreement with any third party that is inconsistent with the continued sharing of information under this Section 4.12.2(a) or other implementing joint defense agreement, and/or with any continued joint defense effort, including without limitation any settlement agreement or dismissal, such party or its counsel shall: (a) immediately inform the other parties of the terms of such agreement or dismissal; (b) promptly return to the other parties hereto all copies of all documents provided by such other party pursuant hereto; and (c) refrain from disclosing to a third party any Communicated Information.

(D) In the event that a party enters into a settlement agreement or dismissal, such party is not to be relieved of its obligations hereunder to maintain the privileged nature and confidentiality of all Communicated Information.

(E) At the conclusion of the Joint Defense Claim or earlier termination of this Agreement, and upon the request of any counsel for a party who has furnished

Communicated Information pursuant hereto, all such materials and copies, summaries or information referring to, memorializing or derived from Communicated Information shall be either returned to that counsel or destroyed, at said counsel's option, and counsel returning or destroying such materials as requested shall promptly certify to the requesting counsel that this has been done.

(ii) Nothing in this Section 4.12.2(a) shall be construed as subjecting a party to the effect of any judgment, verdict or other determination on the merits in any lawsuit in which that party is not a party, whether by res judicata, collateral estoppel, law of the case, or otherwise.

(iii) All previously privileged communications between the Developer and Agency (or City) with respect to the Joint Defense Claim and all Communicated Information previously exchanged between counsel for the parties are subject to this Section 4.12.2(a) it having been understood that the Developer, Agency and City shared a common interest in pending or threatened litigation arising out of a Joint Defense Claim related to (i) or (ii) in Section 4.12.2 above.

(iv) The joint defense made possible by and Communicated Information shared hereunder shall not be grounds for any later disqualification of counsel for any party.

(v) A breach of this Section 4.12.2(a) or any implementing joint defense agreement may not adequately be remedied by an action for damages, and injunctive relief, both temporary and permanent, would be the appropriate remedy for any such breach, although all other equitable and legal remedies are reserved and are not waived.

(vi) Nothing contained herein shall limit the right of any counsel to disclose any documents or information independently obtained for his/her respective clients and not subject to a claim of privilege by another party.

(b) Cooperation in Defense of Claims or Lawsuits. The Developer, as indemnitor of Agency (and City) under Section 4.12.2(a) shall have the right to control and manage the defense of any Joint Defense Claim or other claim or lawsuit covered under the indemnity provided in Section 4.12.2(a) above. The Developer shall keep Agency (and City) through their counsel informed of all significant developments in such claim or lawsuit, including without limitation the date(s) for hearings on significant motions, discovery demands requiring the cooperation or participation of Agency or City officials and employees, settlement negotiations, the trial date, and any situations requiring the attendance of Agency or City officials or employees.

(c) Covenant Not to Sue. The following covenant relating to the Developer's obligation not to sue regarding the Development or the Site or any issues ancillary thereto is a material incentive for and a part of the consideration to Agency to provide to the Developer the Agency Loan and for the City to provide the City HOME Loan. Therefore, the Agency Loan proceeds and the proceeds of the City HOME Loan shall in no event be due, payable, or required, and the performance obligations of Agency under this Agreement shall automatically terminate, in the event from and after the Date of Agreement and until the close of escrow for the Developer's acquisition of the Site, the Developer, or any of its partners, officers, directors, employees, agents, representatives, consultants, attorneys, or any person acting at the direction of the Developer, undertakes any act to oppose, or to commence, participate in, prosecute, or otherwise object to, or to litigate, directly or indirectly, any permit or discretionary decision of Agency, City, City's Planning

Commission, any other City board or commission relating to the Site and Development of whatever form or nature.

(i) Notwithstanding the foregoing portion of this Section 4.12.2(b), nothing set forth in this Section 4.12.2(b) shall prevent the Developer from asserting its rights relating to the performance and enforcement of this Agreement or due to the abuse of discretion by a governmental entity considering and acting upon a future discretionary decision related to the parameters of this covenant. Further, nothing in the foregoing covenant shall prevent the Developer from asserting the Developer's rights with respect to prospective action or future conduct by any person who interferes, opposes, or delays implementation and completion of the Development. Further, nothing in the foregoing covenant shall prevent the Developer from asserting the Developer's property rights pertaining to the Site; provided any such assertion of property rights does not interfere with nor impede any agreement(s) to which the Agency or City is a party (other than this Agreement).

4.12.3 Indemnity by the Developer of Agency and City Relating to Relocation. The Developer hereby covenants and agrees to indemnify, save, protect, hold harmless, and defend Agency and City and their respective representatives, volunteers, officers, employees, agents, and consultants (collectively, "Indemnitees") from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation penalties, fines, and monetary sanctions), losses, costs, or expenses, including without limitation consultants' and attorneys' fees, or relocation benefits claimed or payable under the Relocation Laws (for purposes of this Section 4.12.3, the foregoing shall be referred to as "Liabilities") which may now or in the future be incurred or suffered by Indemnitees by reason of, or resulting from, in full or in part, or in any respect whatsoever from the Relocation of residents of the Property pursuant to this Agreement.

The Developer, on behalf of itself and its affiliates, and any and all successors and assigns hereby fully and finally releases each of City, Agency and their past and present elective and appointive boards, commissions, officials and employees, representatives and agents from any and all manner of actions, causes of action, suits, obligations, liabilities, judgments, executions, debts, claims and demands of every kind and nature whatsoever, known and unknown, which the Developer and any of its affiliates, successors or assigns may now have or hereafter obtain against Agency and/or City or their past and present elective and appointive boards, commissions, officials and employees, representatives and agents by reason of, arising out of, relating to, or resulting from in full or in part, the election of the Developer to proceed with the Project pursuant to this Agreement (collectively, "Claims"), which release shall include but not be limited to any Claims for Relocation benefits under federal laws or any other applicable laws. The parties agree that, with respect to the release of Claims as set forth above, all rights under Section 1542 of the California Civil Code and any similar law of any state or territory of the United States are expressly waived. Section 1542 reads as follows:

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

4.12.4 Environmental Indemnification. The Developer shall save, protect, pay for, defend (with counsel acceptable to Agency), indemnify and hold harmless Agency and City and their

officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (for purposes of this Section 300, the foregoing shall be collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by Agency or City or their officers, employees, representatives or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership of all or any part of the Property, (ii) any act or omission on the part of the Developer, or its agents, employees, representatives, agents, contractors, occupants, or invitees, (iii) the presence on, under, or about, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination, (iv) the environmental condition of the Property, and (v) any Liabilities incurred under any Governmental Requirements relating to Hazardous Materials. The Developer's obligations hereunder shall survive after the issuance of the Certificate of Completion, and shall be a covenant running with the land in perpetuity, binding on all successors and assigns of the Developer's interest in either this Agreement or any part of the Property. The Developer may assign its obligations hereunder to the successor or assign of the Developer's interest in this Agreement or the Property for those events or conditions related to the requirements in this Section that may occur subsequent to the Developer's conveyance to such successor or assign, provided that the Developer shall remain liable for all of its obligations hereunder.

4.13 Rights of Access. Prior to the issuance of the Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as Agency representatives comply with all safety rules. Agency representatives shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section 4.13.

4.14 Compliance With Laws. Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable state labor standards (including without limitation provisions for payment of prevailing wages in connection with all construction of the Improvements to the extent applicable), the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* (and 24 C.F.R. Part 100), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* Developer, including but not limited to its contractors and subcontractors, shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages (the "Prevailing Wage Law") with regard to the construction of the Improvements, to the extent such sections are applicable to the development of the Improvements. Developer shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Law, and the Agency or City make no final representation as to the applicability or non-applicability of the Prevailing Wage Law to the Improvements, or any part thereof. Developer hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold the Agency and the City, its officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from,

arising out of, or based upon Developer's acts or omissions pertaining to the compliance with the Prevailing Wage Law for the Improvements.

The Developer shall comply with the MHSA Agreement, the County HOME Loan Agreement and the Tax Credit Regulatory Agreement.

Without limitation as to Section 4.12 of this Agreement, Developer shall indemnify, protect, defend and hold harmless the Agency and its officers, employees, contractors and agents, with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 4.14, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Improvements by the Developer.

ATTACHMENT NO. 6

**KEYSER MARSTON ASSOCIATES ECONOMIC ANALYSIS AND REPORT RE
PROJECT**

ATTACHMENT NO. 6