



COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

Sarah Bernstein Jones
DIRECTOR

June 13, 2023

Leelee Thomas
DEPUTY DIRECTOR

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

Marin County Civic Center
3501 Civic Center Drive
Suite 308
San Rafael, CA 94903
415 473 6269 T
415 473 7880 F
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www.marincounty.org/plan

SUBJECT: Funding allocations from the Marin County Affordable Housing Trust Fund and matching funds from the Permanent Local Housing Allocation (PLHA) State Grant to affordable housing developments

Dear Board Members:

RECOMMENDATION:

1. Adopt a resolution a) approving funding allocations of Marin County's Affordable Housing Trust Fund in the amount of \$1,241,068, matched with Permanent Local Housing Allocation Funds in the amount of \$1,241,068, for a total amount of \$2,482,136, to three projects and administrative expenses; and b) authorizing President to execute, substantially in the form attached and subject to County Counsel approval, (i) Marin County Affordable Housing Trust Fund and Permanent Housing Allocation Fund Loan documents; (ii) Regulatory Agreement; and (iii) related documents (including Subordination Agreements) that may be required in the future by other sources of financing for each of the projects awarded Marin County Affordable Housing Trust Fund and Permanent Local Housing Allocation funds through this Resolution (Attachment 1).
2. Approve the related budget adjustments as detailed in the Fiscal Impact section.

SUMMARY:

For the 2023 program year, the County has \$1,179,015¹ in PLHA funds to distribute. Along with matching Marin County Affordable Housing Fund (HTF), these funds will support predevelopment, development, acquisition, and preservation of affordable housing, with an emphasis on projects serving

¹ This figure represents the total amount available to disperse after accounting for the allowable administrative set-aside.

those that earn an income at or under 60 percent Area Median Income (AMI), as stipulated in the PLHA Final Guidelines.

BACKGROUND:

The Permanent Local Housing Allocation Program (PLHA) is a state funding source through the Department of Housing and Community Development (HCD). The County of Marin is eligible for non-competitive PLHA funds as an Entitlement Community designated by the U.S. Department of Housing and Urban Development for the Community Development Block Grant (CDBG) program and because it has an approved Housing Element in compliance with the State Housing Law, at the time of application, and submits Annual Progress Reports approved by HCD. Funding recommendations are subject to final approval of PLHA funds by HCD.

On July 21, 2020, the Marin County Board of Supervisors passed a resolution to apply for PLHA grant funding through the non-competitive NOFA process. In August 2020, the Board approved a five-year expenditure plan for the funds. This plan was developed in consultation with the Board of Supervisors Housing Subcommittee and in alignment with the Countywide Priority Setting Committees' (PSC) approved 2020-24 Consolidated Plan and Assessment of Impediments to Fair Housing Choice (AI).

Under the five-year plan, PLHA funds match portions of funds placed into the HTF. This activity was recommended by staff to ensure effective and efficient deployment of PLHA funds. Marin HTF funds can be applied to projects in all jurisdictions of Marin and seeks collaborative funding from cities and towns where eligible projects are approved. When matched with PLHA, staff aim to distribute funding in each of the CDBG Planning Areas (County Other, San Rafael, and Novato) with funding levels dependent on the recommended project.

On Tuesday, April 25, 2023, Novato City Council passed a resolution approving PLHA funding recommendations for the 2023 calendar year. This recommendation is reflective of Novato City Council's March 14, 2023, \$350,000 funding approval from their affordable housing program fund towards this project (Attachment 3).

On Monday, May 1, 2023, San Rafael City Council passed a resolution approving the PLHA funding recommendations for the 2023 calendar year. In addition, San Rafael agrees to match PLHA funding for the approved project. This recommendation is contingent upon San Rafael funding their portion of the match. If this commitment is not executed, staff will reconsider funding (Attachment 4).

All project applications are evaluated based on their ability to meet PLHA criteria developed by HCD and the PSC's approved program goals.

HCD Project criteria includes:

- Demonstration of readiness, including site control for development projects, land use entitlements, environmental review, and commitments of other required funding and resources.
- Prioritization for projects that support those earning 60% AMI or below.

Readiness is a key factor identified by HCD. The County is not eligible to receive additional PLHA allocations if there are uncommitted formula funds.

In addition to the criteria set forth by HCD, the PSC approved the following PLHA program goals, which are informed by the HUD approved 2020-24 Consolidated Plan and Analysis of Impediments to Fair Housing Choice:

- Family Housing
- Rental Housing – Acquisition, New Construction, Rehabilitation
- Homeowner Housing – Acquisition, New Construction, Rehabilitation
- Special Needs Housing
- Land trust in eastern Marin that provides home ownership opportunities, with specific inclusion for Black/African Americans residents.

In alignment with the PSC’s efforts on fair housing and equity, all applications include:

- A demographic assessment (race/ethnicity, people with disabilities, families) of the applicants existing housing developments in Marin.
- Demographics of staff and board members of the applicant organization.

The Marin County Affordable Housing Fund was created in 1988 to increase the stock of permanently affordable homes in the County. The HTF provides a local funding source for financial and technical assistance to help non-profit affordable housing developers and local public agencies produce and preserve affordable housing for low-, very-low and extremely low-income households in Marin County. Projects anywhere in the County are eligible to apply for funding; however, projects in the unincorporated areas are given priority over projects located within cities and towns. Affordable Housing Fund monies are intended to advance the values of a balanced community by providing support for a variety of housing types available for households at a range of income levels.

DISCUSSION:

Between February 9 and March 17, 2023, the County released a Notice of Funding Availability (NOFA) application for \$2,358,030 in PLHA/Marin Housing Trust funds. A total of nine (9) PLHA/Marin Housing Trust applications were received for projects across the County totaling \$13,216,030 in requests.

- Bolinas Community Land Trust – 140 Maple Road (County Other)
- Community Land Trust Association of West Marin – 60 Third Street (County Other)
- EAH – 1 Hamilton Dr (County Other)
- Eden Housing – 3301 Kerner (San Rafael)
- Eden Housing – Oak Hill Apartments (County Other)
- Eden Housing – Point Reyes Coast Guard (County Other)
- Educational Housing Partners – Educator/County Employee Housing Oak Hill Apartments (County Other)
- Habitat for Humanity Greater San Francisco – Habitat Redwood Blvd. (Novato)
- Homeward Bound of Marin - Novato Veterans & Workforce Housing (Novato)

Project summaries are detailed in Attachment 2. The project applications and PLHA guidelines are available for review online at <https://www.marincounty.org/depts/cd/divisions/housing/affordable-housing/funding-opportunities>, under the “Permanent Local Housing Allocation (PLHA)” panel.

Funding Recommendations

In consideration of PLHA guidelines, Staff and the PSC recommend the following projects:

Project	PLHA/HTF Request	PLHA Recommendation	HTF Match	Total PLHA/HTF Recommendation	Planning Area Match (if applicable)
<i>Eden Housing, Inc. Oak Hill</i>	\$1,500,000	\$579,015	\$579,015	\$1,158,030	-
<i>Eden Housing, Inc. 3301 Kerner</i>	\$1,000,000	\$250,000	\$250,000	\$500,000	\$250,000*
<i>Habitat for Humanity Greater SF Redwood Blvd.</i>	\$2,000,000	\$350,000	\$350,000	\$700,000	\$350,000
Total	\$4,500,000	\$1,179,015	\$1,179,015	\$2,358,030	

**This funding match has not been finalized. As a result, the PLHA/HTF funding recommendation for this project is contingent upon San Rafael funding their portion of the match.*

CONCLUSION:

Award of these funds will allow the listed projects to develop needed affordable housing in Marin County, in line with the priorities and goals of PLHA, the Marin Affordable Housing Fund, and the Countywide Priority Setting Committee. The PLHA funds effectively double the impact of the Marin County Affordable Housing Fund. In turn, these local funds will be used to leverage additional state, federal and philanthropic dollars to increase the supply of affordable homes in Marin.

County Affordable Housing Fund and Permanent Housing Allocation Fund Loan documents and Regulatory Agreements, in substantially the forms of which are attached hereto as Attachment 5, will ensure that projects remain affordable over time. These form agreements will be adapted to reflect your Board’s decision on the proposed funding allocations described herein.

EQUITY IMPACT:

The projects detailed in the report above were reviewed and approved by the Countywide Priority Setting Committee, a group of local elected officials and community members representing members of the protected classes under federal fair housing laws, that oversee the distribution of federal funds in the County. Some members represent the protected classes, and others represent the interest of members of the protected classes.

When presented with the projects, the Committee added an additional recommendation to address equity goals, and tasked Staff with incorporating an affirmative marketing requirement and prioritizing projects that serve members of the protected classes, and that are led by members of the protected classes.

FISCAL/STAFFING IMPACT:

The total PLHA grant request of \$1,241,068 includes \$62,053 for program administration, the allowed 5% of the total award. Approval of this recommendation will increase revenue and expenditure budgets in the Miscellaneous Fund 1010, project 40PLHA, by \$62,053, fully offset with funding from the PLHA grant. Administrative expenditures will include \$60,000 for salary reimbursement, which may result in a reduction of the salary expense in General Fund 1000 and Fund 2100; and the remaining \$2,053 in miscellaneous office expenses.

The current available balance in Fund 2070 is \$6,428,779. Your Board's approval of this action will result in a remaining fund balance of \$5,249,764.

REVIEWED BY:

- | | |
|--|---|
| <input type="checkbox"/> Department of Finance | <input checked="" type="checkbox"/> N/A |
| <input type="checkbox"/> County Administrator's Office | <input checked="" type="checkbox"/> N/A |
| <input type="checkbox"/> County Counsel | <input checked="" type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

SIGNATURE:



Aline Tanielian
Planner



Leelee Thomas
Deputy Director

Munis BA #483 (2023/12).

ATTACHMENTS:

1. Board of Supervisors Resolution to approve funding allocations
2. Project Summaries
3. Novato City Council Resolution
4. San Rafael City Council Resolution
5. PLHA Form Agreements

RESOLUTION NO. 2023-__
RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS

WHEREAS, the Department of Housing and Community Development (“Department”) is authorized to provide up to \$335 million under the SB 2 Permanent Local Housing Allocation Program Formula Component from the Building Homes and Jobs Trust Fund for assistance to Cities and Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)));

WHEREAS the State of California (the “State”), Department issued a Notice of Funding Availability (“NOFA”) dated 8/17/2022 under the Permanent Local Housing Allocation (PLHA) Program;

WHEREAS the County of Marin is an eligible Local government who has applied for program funds to administer one or more eligible activities, or a Local or Regional Housing Trust Fund to whom an eligible Local government delegated its PLHA formula allocation;

WHEREAS, in July 2020, the Marin County Board of Supervisors passed a resolution to apply for PLHA grant funding through the non-competitive NOFA process;

WHEREAS, in August 2020, the Marin County Board of Supervisors approved a 5-year expenditure plan for the funds;

WHEREAS, in September 2021, the Countywide Priority Setting Committee approved program goals for projects;

WHEREAS, in 2023, the County received nine (9) applications for the use of Affordable Housing Funds and matching PLHA funds throughout the County; and

WHEREAS, the County reviewed the submitted applications in accordance with the required selection process for applications for the Marin County Affordable Housing Fund (AHF) and the Permanent Local Housing Allocation (PLHA).

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby approves a loan in the amount of \$1,158,030, with \$579,015 from Marin County’s Affordable Housing Fund, matched with \$579,015 of Permanent Local Housing Allocation funds, to Eden Housing, Inc. for affordable housing construction located on a State-owned surplus land site in unincorporated Larkspur.

BE IT FURTHER RESOLVED that the Marin County Board of Supervisors hereby approves a loan in the amount of \$700,000, with \$350,000 from Marin County’s Affordable Housing Fund, matched with \$350,000 of Permanent Local Housing Allocation funds, to Habitat for Humanity Great San Francisco for affordable housing construction located at 8161 Redwood Boulevard, in accordance with PLHA recommendations provided by the Novato City Council regarding the Novato Planning Area for Calendar Year 2023.

BE IT FURTHER RESOLVED that the Marin County Board of Supervisors hereby approves a loan in the amount of \$500,000, with \$250,000 from Marin County’s Affordable Housing Fund, matched with \$250,000 of Permanent Local Housing Allocation funds, to Eden Housing, Inc. for construction of permanent supportive housing located at 3301 Kerner

Boulevard, in accordance with PLHA recommendations provided by the San Rafael City Council regarding the San Rafael Planning Area for Calendar Year 2023. This approval is contingent upon San Rafael funding their portion of the match. If this commitment is not executed, this funding will be reconsidered.

BE IT FURTHER RESOLVED that the Marin County Board of Supervisors hereby authorizes President to execute, substantially in the form attached hereto as Exhibit A and subject to County Counsel approval, (a) County Housing Fund and Permanent Housing Allocation Fund Loan documents; (b) Regulatory Agreement; and (c) related documents (including Subordination Agreements) that may be required in the future by other sources of financing for each of the funding loans granted herein.

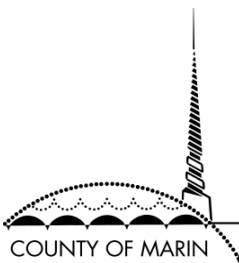
PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this ___th day of _____ 2023, by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK



COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

Attachment 2 – Project Summaries

Bolinas Community Land Trust – 140 Maple Road

Bolinas Community Land Trust, a nonprofit community land trust committed to the creation and preservation of affordable housing for low-income residents, requests \$500,000 in County Housing Trust/PLHA funds to support rehabilitation and legalization of a 4-unit property at 140 Maple Road in Bolinas. The request would go toward general renovations to the buildings and a new septic system. To better support project completion, staff recommend providing larger funding amounts to fewer projects and do not recommend funding for this project at this time.

Community Land Trust Association of West Marin – 60 Third Street

Community Land Trust Association of West Marin, a nonprofit community land trust committed to providing stable and permanently affordable homes in the communities surrounding Tomales Bay, requests \$200,000 in County Housing Trust/PLHA funds to support rehabilitation of a single residential unit at 60 Third Street in Point Reyes Station, including septic system installation and development of an Accessory Dwelling Unit (ADU). The request would go directly toward construction costs. To better support project completion, staff recommend providing larger funding amounts to fewer projects and do not recommend funding for this project at this time.

EAH Inc. – 1 Hamilton Drive

EAH, a nonprofit affordable housing organization committed to expanding the range of opportunities for all by developing and managing quality affordable housing, requests \$1,000,000 in County Housing Trust/PLHA funds to support the development of a 45-unit affordable residential complex on land owned by the City of Mill Valley. The request would go toward predevelopment expenses. To better support project completion, staff recommend providing larger funding amounts to fewer projects and do not recommend funding for this project at this time.

Eden Housing, Inc. – 3301 Kerner Boulevard

Eden Housing, a nonprofit affordable housing developer committed to developing, acquiring, or rehabilitating affordable homes, requests \$1,000,000 in County Housing Trust/PLHA funds to support the adaptive reuse of a three-story office building in San Rafael to 40 permanent supportive housing apartments for those experiencing homelessness. The request would be applied to unanticipated design changes required to address a portion of the building that is situated in a floodplain. This project meets the regulatory requirements set forth by the PLHA program including readiness and site control. In addition, the project meets two of the program goals approved by the PSC, including the creation of new rental housing and housing that serves a special needs

population. Staff recommend \$250,000 in Housing Trust funds and \$250,000 matching PLHA funds (\$500,000 total). This recommendation is contingent upon San Rafael funding their portion of the match. If this commitment is not executed, staff will reconsider funding.

Eden Housing, Inc. – Oak Hill Apartments

Eden Housing, Inc., a nonprofit affordable housing developer committed to developing, acquiring, or rehabilitating affordable homes, requests \$1,500,000 in County Housing Trust/PLHA funds to support the development of 115 affordable units on State-owned surplus land near San Quentin in unincorporated Larkspur. The request would go toward general development and construction expenses. This project meets the regulatory requirements set forth by the PLHA program including readiness and site control. In addition, the project meets PSC approved program goal to create new rental housing. Staff recommend \$579,015 in Housing Trust funds and \$579,015 matching PLHA funds (\$1,158,030 total).

Eden Housing, Inc. – Point Reyes Coast Guard

Eden Housing, Inc., a nonprofit affordable housing developer committed to developing, acquiring, or rehabilitating affordable homes, requests \$2,300,000 in County Housing Trust/PLHA funds to support the rehabilitation existing buildings to 53 residential units at the former Coast Guard site in Point Reyes Station. The request would be applied to predevelopment, general development, and construction expenses. To better support project completion, staff recommend providing larger funding amounts to fewer projects and do not recommend funding for this project at this time.

Educational Housing Partners – Oak Hill Educator/County Employee Housing

Education Housing Partners, Inc., a nonprofit public benefit corporation committed to developing affordable workforce housing, requests \$2,358,000 in County Housing Trust/PLHA funds to support the development of 135 apartments for teachers/staff of local school districts and County employees on State-owned surplus land near San Quentin in unincorporated Larkspur. The request would go toward general development and construction expenses. To better support project completion, staff recommend providing larger funding amounts to fewer projects and do not recommend funding for this project at this time.

Habitat for Humanity Greater San Francisco – Habitat Redwood Blvd

Habitat for Humanity Greater San Francisco, a nonprofit affordable housing developer committed to building quality homes for homeownership, requests \$2,000,000 in County Housing Trust/PLHA funds to support development of 80 affordable single-family homes on a surplus land site in Northern Novato. The request would go directly toward general development and construction expenses. Staff recommend \$350,000 in Housing Trust funds and \$350,000 matching PLHA funds (\$700,000 total).

Homeward Bound of Marin – Novato Workforce Housing

Homeward Bound of Marin, a nonprofit homeless housing and service provider committed to ending homelessness, requests \$2,358,000 in County Housing

Trust/PLHA funds to support construction and site improvements for 26 workforce rental housing units in Novato. The request would go directly toward general development and construction expenses. To better support project completion, staff recommend providing larger funding amounts to fewer projects and do not recommend funding for this project at this time.

ORIGINAL

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. 2023-026

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NOVATO RECOMMENDING PERMANENT LOCAL HOUSING ALLOCATION (PLHA) FUNDING FOR CALENDAR YEAR 2023 TO THE MARIN COUNTY BOARD OF SUPERVISORS

WHEREAS, in September 2017, the Governor signed into law the Building Homes and Jobs Act; and

WHEREAS, in February 2020, the California Department of Housing and Community Development (HCD) released the PLHA Program Notice of Funding Availability (NOFA) for ongoing local government provision of housing financing through real estate fees; and

WHEREAS, in July 2020, the Marin County Board of Supervisors passed a resolution to apply for PLHA grant funding through the non-competitive NOFA process; and

WHEREAS, in August 2020, the Marin County Board of Supervisors approved a 5-year expenditure plan for the funds; and

WHEREAS, in September 2021, the Countywide Priority Setting Committee approved program goals for projects; and

WHEREAS, on April 25, 2023, the City Council reviewed the submitted applications in accordance with the required selection process.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato hereby:

Recommends to the Marin County Board of Supervisors that the \$350,000 in PLHA funds available for allocation by the City of Novato be distributed to Habitat for Humanity’s Redwood Blvd. Recommendations are subject to adjustments necessary to accommodate any changes in the County of Marin’s final allocation from the California Department of Housing and Community Development (HCD).

* * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 25th day of April 2023, by the following vote, to wit:

- AYES: Councilmembers Eklund, Farac, Milberg, O’Connor, Wernick
- NOES: Councilmembers
- ABSTAIN: Councilmembers
- ABSENT: Councilmembers

Yana McDowell
City Clerk of the City of Novato

Approved as to form:

Gary B. Bell
City Attorney of the City of Novato

RESOLUTION NO. 15203

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL RECOMMENDING
PERMANENT LOCAL HOUSING ALLOCATION (PLHA) PROJECT FUNDING FOR
THE FISCAL YEAR 2023-24 TO THE MARIN COUNTY BOARD OF SUPERVISORS**

BE IT RESOLVED by the Council of the City of San Rafael as follows:

WHEREAS in September 2017, the Governor signed into law Senate Bill 2, the “Building Homes and Jobs Act”; and

WHEREAS in February 2020, the California Department of Housing and Community Development (HCD) released the PLHA Program Notice of Funding Availability (NOFA) for ongoing local government provision of housing financing through real estate fees; and

WHEREAS in July 2020, the Marin County Board of Supervisors passed a resolution to apply for PLHA grant funding through the non-competitive NOFA process; and

WHEREAS in August 2020, the Marin County Board of Supervisors approved a 5-year expenditure plan for the funds; and

WHEREAS in September 2021, the Countywide Priority Setting Committee approved program goals for projects; and

WHEREAS on May 1, 2023, the City Council reviewed the submitted applications in accordance with the required selection process;

NOW, THEREFORE IT IS HEREBY RESOLVED that the City Council recommends to the Marin County Board of Supervisors that the \$250,000 in PLHA funds available for allocation by the City of San Rafael be distributed to Eden Housing’s 3301 Kerner project, subject to adjustments necessary to accommodate any changes in the County of Marin’s final allocation from the California Department of Housing and Community Development (HCD).

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 1st day of May 2023, by the following vote:

AYES: Councilmembers: Bushey, Hill, Llorens Gulati & Mayor Kate
NOES: Councilmembers: None
ABSENT: Councilmembers: Kertz



Lindsay Lara, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Marin
3501 Civic Center Drive
San Rafael, California 94903
Attention: Community Development Director
and County Administrator

No fee for recording pursuant to
Government Code Section 27383

DEED OF TRUST,
SECURITY AGREEMENT, AND FIXTURE FILING
(Forgivable Housing Trust and PLHA)

THIS DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is dated as of _____, 202_ (the "Effective Date"), by and among _____ ("Trustor"), to _____ Title Company, a California corporation ("Trustee"), and the County of Marin, a political subdivision of the State of California, as the Manager of the Marin County Affordable Housing Fund ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located _____, in the County of Marin, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

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

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

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of Trustor now or hereafter affixed to or placed upon the Property;

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

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

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

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or will be, attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

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

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (together, the "Secured Obligations"):

A. Payment to Beneficiary of all sums at any time owing under or in connection with (i) the Note (defined in Section 1.4 below) until paid in full or cancelled, and (ii) any other amounts owing under the Loan Documents (defined in Section 1.3 below). Subject to forgiveness of the Loan as provided in the Loan Documents, principal and other payments are

due and payable as provided in the Note or other Loan Documents, as applicable. The Note and all its terms are incorporated herein by reference, and this conveyance;

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents; and

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

ARTICLE 1 DEFINITIONS

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

Section 1.1 The term "Loan" means the loan made by Beneficiary to Trustor in the amount of _____ Dollars (\$_____,000). [Note- Make consistent with Recital D Loan Agreement.]

Section 1.2 The term "Loan Agreement" means that certain Loan Agreement between Trustor and Beneficiary relating to the Loan.

Section 1.3 The term "Loan Documents" means this Deed of Trust, the Loan Agreement, the Note, the Regulatory Agreement, and any other agreements, debt, loan or security instruments between Trustor and Beneficiary relating to the Loan.

Section 1.4 The term "Note" means the promissory note in the principal amount of _____ Dollars (\$_____) of even date herewith, executed by Trustor in favor of Beneficiary, as it may be amended or restated, the payment of which is secured by this Deed of Trust. The terms and provisions of the Note are incorporated herein by reference.

Section 1.5 The term "Principal" means the amounts required to be paid under the Note.

ARTICLE 2 MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, the Trustor will, at the Trustor's own expense, maintain, preserve, and keep the

Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary has no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security or any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary exercises its rights as agent of Trustor only in the event that Trustor fails to take, or fails to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary specifies upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained requires Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of the County of Marin, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

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

ARTICLE 3 TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company that are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor is not required to pay and discharge any such tax, assessment, charge or levy so long as the legality thereof is promptly and actively contested in good faith and by appropriate proceedings. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments, or charges can be paid in installments, Trustor

may pay in such installments. The provisions of this Section may not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges, and levies.

In the event that Trustor fails to pay any of the items required by this Section to be paid by Trustor, Beneficiary may (but is under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within the cure periods set forth in the Loan Agreement. Any amount so advanced therefor by Beneficiary will become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide the insurance as required by the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid, all Secured Obligations secured hereunder have been fulfilled, and this Deed of Trust has been reconveyed.

Section 3.3 Advances.

In the event the Trustor fails to maintain the full insurance coverage required by this Deed of Trust or fails to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but is under no obligation to) (i) take out the required policies of insurance and pay the premiums on the same, and (ii) make any repairs or replacements that are necessary and provide for payment thereof. All amounts so advanced by the Beneficiary will become part of the Secured Obligations (together with interest as set forth below) and will be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, will bear interest from the date of the advance at the Default Rate.

ARTICLE 4 DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

Subject to the rights of senior lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of: (1) the taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property (collectively, the "Funds") are hereby assigned to and are to be paid to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them to any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary determines at its sole option. If the Beneficiary applies the Funds in an amount equal to or less than the principal amount of the Loan, the Beneficiary will forgive the Loan, cancel the Note, and reconvey the Deed of Trust. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition.

The Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that the Funds provide sufficient funds to rebuild the improvements in substantially the form that existed prior to the casualty or condemnation.

ARTICLE 5
AGREEMENTS AFFECTING THE PROPERTY; FURTHER
ASSURANCES; PAYMENT OF PRINCIPAL

Section 5.1 Other Agreements Affecting Property.

Trustor shall duly and punctually perform all terms, covenants, conditions, and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

Should legal action be brought by either party for breach of this Deed of Trust or to enforce any provision, the prevailing party in such action, as determined by a court of competent jurisdiction, will be entitled to attorneys' fees, court costs and other litigation expenses, including, without limitation, expenses incurred for preparation and discovery, and on appeal. Any such amounts paid by the Beneficiary will be added to the Secured Obligations, and will bear interest from the date such expenses are incurred at the Default Rate.

Section 5.3 Payment of the Principal.

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

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust is deemed to be fixtures and part of the real property and this Deed of Trust constitutes a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust constitutes a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

If the Beneficiary prepares a financing statement as required to convey to the Beneficiary a valid perfected security interest in the Security, the Trustor will execute the financing statement to the extent required for filing with the California Secretary of State. The Beneficiary is authorized to file a copy of any such financing statement in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the

Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, may inspect the Security, without payment of charges or fees.

Section 5.8 Nondiscrimination.

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

ARTICLE 6
EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default.

The following are events of default following the expiration of any applicable notice and cure periods as set forth in the Loan Agreement (each an "Event of Default"): (i) failure to make any payment to be paid by Trustor under the Loan Documents; and (ii) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, which failure is not cured within the times and in the manner provided in the Loan Documents; (iii) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any Secured Obligations, which default is not cured within the times and in the manner provided therein; and (iv) failure to make any payments or observe or perform any of Trustor's other covenants, agreements or obligations under any other debt instrument or regulatory agreement secured by the Property, which default is not cured within the time and in the manner provided therein. Trustor's limited partner shall have the right, but not the obligation, to cure any Event of Default hereunder in accordance with the provisions of Section 8(d) of the Note.

Section 6.2 Acceleration of Maturity.

If an Event of Default has occurred and is continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and all unpaid Secured Obligations are immediately due and payable, and no omission on the part of the Beneficiary to exercise such option when entitled to do so may be construed as a waiver of such right.

Section 6.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default has occurred and is continuing, the Beneficiary may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Property and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security will not cure or waive any Event of Default or Notice of Sale (as defined below) hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary will be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;
- (b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
- (c) Deliver to Trustee a written declaration of an Event of Default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of San Joaquin County; or
- (d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing the Secured Obligations

Section 6.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall deliver to the Trustee the Notice of Sale and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which will be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

- (a) Upon receipt of the Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published, and delivered to Trustor such Notice of Sale as is then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after the lapse of that amount of time as is then required by law and after recordation of such Notice of Sale as required by law, sell the Security, at the time and place of sale set forth in the Notice of Sale, whether as a whole or in separate lots or parcels or items, as Trustee deems expedient and in such order as it determines, unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters

of facts will be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 6.5 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy will be cumulative and concurrent and will be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 6.6 No Waiver.

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

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligation, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission will not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security; nor will any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event

of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary, will the lien of this Deed of Trust be altered thereby.

Section 6.7 Suits to Protect the Security.

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

Section 6.8 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, will be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount that becomes due and payable by the Trustor hereunder after such date.

Section 6.9 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

Section 6.10 Nonrecourse.

Neither the Trustor, nor any director, member, officer, employee, or agent of the Trustor will have any direct or indirect personal liability for payment of the principal of, or any other amount due, on the Note or any other of the Secured Obligations. The sole recourse of the Beneficiary with respect to the principal of, or any other amount due on, the Note will be to the Property securing the indebtedness evidenced by the Note. No judgment, or execution on a judgment, entered in any action, legal or equitable, on the Note or this Deed of Trust securing the Note or with respect to any other of the Secured Obligations will be enforced personally against the Trustor or nor any director, member, officer, employee, or agent of the Trustor but shall be enforced only against the Property described in the Loan Documents.

ARTICLE 7
MISCELLANEOUS

Section 7.1 Amendments.

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

Section 7.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 7.3 Notices. Formal notices, demands and communications between the Borrower and the City will be sufficiently given and will not be deemed given unless dispatched by: (1) personal delivery with a delivery receipt; (2) USPS certified mail, postage prepaid, return receipt requested, (3) by reputable delivery service with a delivery receipt, to the principal offices of the Borrower and the City as follows:

To the County County of Marin
 Community Development Agency
 3501 Civic Center Drive
 San Rafael, CA 94903
 Attention: Director and County Administrator

To the Borrower : _____

Notice will be deemed to have been received on the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the item was returned as undeliverable.

Section 7.4 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation also applies to and binds any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation will be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor will be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 7.5 Captions.

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

Section 7.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term

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

Section 7.7 Governing Law.

This Deed of Trust is governed by the laws of the State of California.

Section 7.8 Gender and Number.

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

Section 7.9 Deed of Trust, Mortgage.

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

Section 7.10 Actions.

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

Section 7.11 Substitution of Trustee.

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

Section 7.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 7.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not

obligated to notify any party hereto of a pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee.

[Signature on Following Page]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the Effective Date.

TRUSTOR

By: _____

Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The land is situated in the State of California, City of _____, County of Marin,
and is described as follows:

FORGIVABLE LOAN AGREEMENT
Housing Trust Funds
and
Permanent Local Housing Allocation Funds

[Project]

This Forgivable Loan Agreement (the "Agreement") is entered into as of ___, 202__, ("Effective Date") by and between Marin County, a political subdivision of the State of California, as the Manager of the Marin County Affordable Housing Fund (the "County"), and _____, a ___[type of entity] ("Borrower"), with reference to the following facts:

A. The County was awarded funds from the Permanent Local Housing Allocation ("PLHA") Program and entered into an agreement Standard Agreement No _____ with the Department of Housing and Community Development ("HCD") to receive those funds (the "PLHA Agreement"). The purpose of the PLHA Program and PLHA Agreement is to make funds available for housing related projects and programs that assist in addressing the unmet housing needs of the local community. The PLHA funds may be used for Work activity 1 in the PLHA agreement: "the predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households, including necessary Operating subsidies".

B. The County intends to provide a loan to Borrower from the County's Housing Trust Fund and PLHA funds. Borrower understands and acknowledges that the funds may only be used for eligible uses specified in the PLHA Program, which are included as Exhibit C (the "Eligible Uses").

C. Borrower intends to _____[describe project here] on real property located in the County, as more particularly described in Exhibit A (the "Property"), and which real property is commonly known as _____[address] for _____ housing [further describe project: e.g. new development; property acquisition; rehab; etc.].

D. On _____[date], the Marin County Board of Supervisors approved a loan in the amount of _____ and No/100 Dollars (\$____) to Borrower, comprised up of _____ Dollars (\$____) from the County's Housing Trust Fund and _____ Dollars (\$____) from PLHA funds to [preserve/develop/rehabilitate/etc.] the Property as affordable to low and very low-income households.

E. Based on that approval, Borrower wishes to be awarded from the County, and the County wishes to extend to the Borrower a loan of _____ and No/100 Dollars (\$____) to assist in _____[describe use of funds] of the Project, as defined herein (the "Loan").

F. The Loan is being made to finance _____[describe use of funds identify by PLHA Activity] in order to help achieve financial feasibility for the Project and maximize the affordability of the Project.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

- (a) "Agreement" means this Loan Agreement.
- (b) "Approved Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, and attached hereto and incorporated herein as Exhibit B.
- (c) "Approved Financing" means all of the following loans or equity funds acquired by Borrower and approved by the County for the purpose of financing the Project in addition to this Loan:
 - (i) [add other loans/financing]
- (d) "Borrower" means _____, and its permitted successors and assigns.
- (e) "Completion" means _____[point in time when Borrower has performed what is required for use of grant funds].
- (f) "County" means the County of Marin, a political subdivision of the State of California.
- (g) "Deed of Trust" means the Deed of Trust, Security Agreement, and Fixture Filing of even date herewith among Borrower, as trustor, _____, as trustee, and the County, as beneficiary, which will encumber the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents.
- (h) "Default" shall have the meaning set forth in Section 4.1 below.
- (i) "Loan" has the meaning set forth in recital E.
- (j) "Loan Documents" means this Agreement, the Promissory Note, the Deed of Trust, the Regulatory Agreement, and any other document executed by Borrower in favor of the County.
- (k) "Parties" means the County and Borrower.

- (l) "Project" means _____[description of project].
- (m) "Property" has the meaning set forth in Recital C, above.
- (n) "Unit" means one of the units to [be constructed] on the Property.

Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Approved Development Budget

EXHIBIT C: PLHA Eligible Use of Funds

EXHIBIT D: PLHA Requirements

EXHIBIT E: Schedule of Performance

ARTICLE 2 LOAN

Section 2.1 Loan.

The County hereby agrees to loan the amount of _____ Dollars (\$____) to Borrower on the terms and conditions set forth herein. The Borrower's obligation to repay the Loan shall be evidenced by the Promissory Note and secured by the Deed of Trust.

Section 2.2 Interest

Except in the event of a default, the outstanding balance of the Loan shall accrue simple interest at the rate of three percent (3%) per year.

Section 2.3 Use of Loan Funds.

The Borrower shall use the Loan funds to _____[describe use of funds], consistent with the Approved Budget. The Borrower shall not use the Loan funds for any other purpose without the prior written consent of the County, and in no event may Loan funds be used for a purpose not identified in Exhibit C.

Section 2.4 Compliance with Regulatory Agreement.

For all housing assisted through this Agreement, County and Borrower agree to execute a Regulatory Agreement ("Regulatory Agreement"), which will be recorded, on or about the date

of this Agreement, as a deed restriction in the Official Records of Marin County and will specify terms and conditions of affordability consistent with this Agreement. Borrower, as a condition of this Agreement, shall cause the Project to be operated in accordance with the Regulatory Agreement, for the entire term thereof, including ensuring that the required units are available to, and occupied by, low and very low-income households as defined in the Regulatory Agreement.

Section 2.5 Security

Borrower shall execute the Deed of Trust to secure the Promissory Note, and shall record it as a lien against Borrower's [fee] interest in the Property. Borrower shall also cause or permit the Regulatory Agreement to be recorded against Borrower's interest in the Property, in a lien position prior to all Approved Financing.

Section 2.6 Term.

Subject to the forgiveness provisions of Section 2.7 of this Agreement, the term of this Agreement, which shall commence on the Effective Date, shall end on the earlier of (i) 55 years from certificate of occupancy, or (ii) the date of full repayment or forgiveness of the Loan.

Section 2.7 Loan Term and Repayment Schedule.

(a) Forgiveness. As more particularly described in the Promissory Note, commencing on the first April 1st following the Effective Date of this Agreement and continuing on each April 1st thereafter during the Term the Borrower will submit an Annual Report to the County with the information regarding occupancy as required by the Regulatory Agreement. Provided that: (i) the Borrower is not in default under any Loan Document, and (ii) the Borrower has continuously operated the Project as affordable housing in compliance with the terms of the Regulatory Agreement and the PLHA Requirements, no payment will be due under the Note. If the Borrower has complied with the requirements of the Loan Documents (including cure of any Events of Default) during the entire Term of this Agreement, as evidenced by the Annual Reports, all sums otherwise due under the Note or any other Loan Documents will be forgiven by the County and the Deed of Trust will be reconveyed and released from the Property.

(b) Balance Due. Unless forgiven pursuant to Section 2.7(a), all outstanding principal and accrued interest on the Loan shall be due in full at the end of the Term, or upon County declaration of Default pursuant to Article 4.

Section 2.8 Disbursement of Loan Proceeds.

County shall disburse the Loan in an amount not to exceed ___ Dollars (\$) subject to the satisfaction of the disbursement conditions set forth below:

(a) Borrower holds, or along with the first disbursement will hold, good and marketable fee title to the Property.

(b) Borrower has delivered to the County a copy of Borrower's organizational documents and a corporate authorizing resolution authorizing Borrower's execution of the Loan Documents and the transactions contemplated by the Loan Documents.

(c) Borrower has signed and delivered to County the Promissory Note, the Deed of Trust, the Regulatory Agreement, and any other Loan Documents required by County.

(d) Borrower has furnished the County with evidence of insurance coverage satisfying the requirements of Section 5.2.

(e) The Deed of Trust and the Regulatory Agreement have been recorded against the Property in the Office of the Recorder of the County of Marin, and recorded copies have been delivered to the County.

(f) All environmental review necessary for the construction of the Development has been completed, and Borrower has provided the County evidence of compliance with all CEQA mitigation measures, as applicable.

(g) Borrower has obtained all permits and approvals necessary for the construction of the Development, provided however the Borrower may satisfy this requirement with regards to the building permit, if the Borrower provides the County with a permit ready letter from the [City Building Department].

(h) There exists no Default, nor any act, failure, omission, or condition that would constitute a Default under this Agreement, or any of the Loan Documents.

(i) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of construction that has occurred prior to the recordation of the Deed of Trust against the Property in the Office of the Recorder of the County of Marin.

(j) The County has received a written draw request from Borrower, including: (i) certification that the condition set forth in Section 2.8 continues to be satisfied; (ii) certification that the proposed uses of funds consistent with the Approved Development Budget; (iii) the amount of funds needed; and (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by: (A) certification by the Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (B) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

(k) Draw request for the entire Loan amount must be submitted to the County, and the entire Loan disbursed by the County to the Borrower, within twenty-four (24) months from the Effective Date.

ARTICLE 3 LOAN REQUIREMENTS

Section 3.1 Schedule of Performance.

Borrower shall perform the tasks described in the Schedule of Performance, attached hereto as Exhibit E, no later than the dates set forth in the Schedule of Performance, subject to Section 5.13. The Schedule of Performance may be modified in writing by the County Administrator, or the Community Development Agency Director, or their designee, on behalf of the County without the need for formal amendment of this Agreement or further approval by the Board of Supervisors.

Section 3.2 Permits and Approvals.

Borrower shall obtain all permits and approvals necessary for the construction of the Development no later than the date set forth in the Schedule of Performance.

Section 3.3 Construction Contract.

(a) Not later than thirty (30) days prior to the proposed Commencement of Construction, Borrower shall submit to the County for its approval a draft of the proposed construction contract for the Development (the "Construction Contract") with Borrower's general contractor (the "General Contractor"). All construction work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. The Construction Contract is to provide that at least ten percent (10%) of the hard costs incurred will be payable only upon completion of the construction, or such other amount that may be allowed under the Senior Loan, as defined in Section 5.4, subject to written approval by the County. The County's approval of the construction contract may not be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

Section 3.4 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any proposed or required amendments to the Approved Development Budget, along with evidence that the changes to the Approved Development Budget are reasonable and necessary, to the County for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget, which approval shall not be unreasonably withheld or delayed. Written consent of the County will be required to amend the Approved Development Budget. The County will make best efforts to respond in

writing within seven (7) days after receipt of a proposed amendment to the Approved Development Budget.

Section 3.5 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Development no later than the date set forth in the Schedule of Performance, which in no event shall be any later than twelve (12) months from the Effective Date. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Development in the notice to proceed issued by Borrower to Borrower's general contractor.

Section 3.6 Completion of Construction.

For purposes of this Agreement, "Completion of Construction" means the following:

(a) Borrower shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later than the date set forth in the Schedule of Performance.

(b) Borrower shall record a Notice of Completion within ten (10) days of completion of construction of the Development and provide the County a copy of the recorded Notice of Completion.

(c) Borrower shall provide the County a copy of the Certificate of Occupancy, or other evidence of completion of the Development within ten (10) days of receipt from the City.

Section 3.7 Financial Accountings and Post-Completion Audits.

No later than one hundred twenty (120) days following Completion of the Project, Borrower shall cause to be provided to the County a financial accounting of all sources and uses of funds for the Project. No later than one hundred eighty (180) days following Completion of the Project, Borrower shall cause to be submitted to the County an audited financial report showing the sources and uses of all funds utilized for the Project.

Section 3.8 Information.

Borrower shall provide any information reasonably requested by the County in connection with the Project within thirty (30) calendar days. Borrower understands that the County has reporting and auditing obligations related to the use of PLHA funds and agrees to cooperate with the County in providing necessary information requested by the County in order for the County to meet such obligations.

Section 3.9 Records.

(a) Borrower shall maintain complete, accurate, and current records pertaining to the Project for a period of five (5) years after Completion date, or June 30, 2035, whichever is later,

and shall permit any duly authorized representative of the County to inspect and copy records. Records must be kept accurate and current.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

(c) If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started, involving HCD, County, or Borrower related to the Loan or this Agreement, before the expiration of the required record retention period, Borrower will retain all records until completion of the action and resolution of all issues that may arise from it.

Section 3.10 Audits.

(a) Borrower shall make available for examination at reasonable intervals and during normal business hours to County all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit County to audit, examine, and make excerpts or transcripts from such records. County may make audits of any conditions relating to this Agreement.

(b) If the PLHA portion of the Loan exceeds \$10,000, Borrower shall make available for examination by HCD all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit HCD to audit, examine, and make excerpts or transcripts from such records. Borrower shall make its employees available for interview by HCD upon request.

Section 3.11 PLHA Requirements.

Borrower acknowledges that a portion of the Loan comes from the PLHA Program. Borrower agrees to comply with all provisions of the PLHA, Health and Safety Code section 50470, the PLHA Guidelines issued by HCD, and requirements identified in Exhibit D.

Section 3.12 Prevailing Wages.

If the Project is subject to the California Labor Code Section 1720 et seq. requirements applicable to the payment of state prevailing wages, whether due to the Loan, other development financing, a future court decision, or a California Department of Industrial Relations ("DIR") determination requiring compliance, then Borrower shall:

(a) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of DIR, and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR.

(b) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed as required by California Labor Code Section 1777.5 et seq.;

(c) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(d) cause contractors and subcontractors constructing Project improvements to be registered as set forth in California Labor Code Section 1725.5;

(e) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the construction work to specify that:

(i) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the construction work unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(ii) the construction work is subject to compliance monitoring and enforcement by the DIR.

(f) provide the County all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(g) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(h) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(i) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as required by Subsection (a) or (b) above, and if applicable, to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the Construction Work or any other work undertaken or in connection with the Property. This obligation to indemnify survives termination of this Agreement, repayment of the County Loan, and the reconveyance of the Deed of Trust.

Section 3.13 Maintenance and Damage.

During the operation of the Project, Borrower shall cause the Project and the Property to be maintained in good repair and in a neat, clean and orderly condition.

Section 3.14 Notice of Litigation.

Borrower shall promptly notify the County in writing of any litigation materially affecting Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 3.15 Nondiscrimination.

The Borrower covenants by and for itself and its successors and assigns that during the performance of this Agreement there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, physical disability, mental disability, medical condition, genetic information, sex, sexual orientation, gender, gender identify, gender expression, marital status, military or veteran status, ancestry, or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. Borrower shall market units in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State, or local fair housing and equal opportunity requirements.

Section 3.16 Hazardous Materials.

(a) Borrower shall keep and maintain the Project in compliance with, and shall not cause or permit the Project to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Project including, but not limited to, soil and ground water conditions. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Project or transport to or from the Project any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be used in construction of the Project or customarily kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Project pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Project relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii)

above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project that could cause the Project or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Law.

(c) The County shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the County and its commissioners, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Project including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Project and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the County in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without the County's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Project, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's reasonable judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Project either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if either: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

(e) Borrower hereby acknowledges and agrees that: (i) this Section is intended as the County's written request for information (and Borrower's response) concerning the environmental condition of the Project as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Project is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Project is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or

to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (1) waive its lien on such environmentally impaired or affected portion of the Project; and (2) exercise, (a) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the County right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Project and Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Project is environmentally impaired, plus interest thereon at the rate specified in the Note until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 3.17 Transfer

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under this Agreement; and/or (ii) any interest in the Project, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. The term "Transfer" excludes the leasing of any single unit in the Project to an occupant in compliance with the Regulatory Agreement.

(b) No Transfer shall be permitted without the prior written consent of the County, which the County may withhold in its sole discretion; provided, however, that: (i) the project investor selected by Borrower to be admitted to a limited partnership to be formed by Borrower, whose sole member is Borrower (or an affiliate), as general partner, and the investor as a limited partner ("Investor") may Transfer its limited partnership interest to affiliates of Investor, without the consent of the County, so long as the managing general partner of the Borrower provides notice of such Transfer within thirty (30) days after such Transfer is effective; (ii) the Investor shall have the right to Transfer its limited partner interest, to any person without the County's consent; and (iii) the Investor shall have the right to remove and replace a general partner of the Borrower in accordance with the agreement of limited partnership of the partnership formed by Borrower without the County's consent so long as Borrower provides notice to County of such removal and replacement of the general partner within thirty (30) days of such replacement, which shall list the reasons for removal and the qualifications on which the new general partner was chosen, and shall provide written assurance that the change of the general partner will not

affect Borrower's ability to satisfy the requirements of the Regulatory Agreement or any of the other Loan Documents.

Section 3.18 Non-Recourse.

Except as provided below, Borrower or the partners of the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of Borrower under the Deed of Trust. The sole recourse of the County with respect to the principal of, or interest on, the Promissory Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to the Development; provided, however, that nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the County thereunder; or (b) be deemed in any way to impair the right of the County to assert the unpaid principal amount of the Promissory Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note and the performance of Borrower's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under Sections 4.4, and 6.5 of this Agreement; or liability for: (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development.

ARTICLE 4 DEFAULT AND REMEDIES

Section 4.1 Events of Default.

Each of the following shall constitute a "Default" by Borrower under this Agreement:

(a) Failure to Construct. Failure of Borrower to obtain permits, commence, and prosecute to completion, construction of the Development within the times set forth in the Schedule of Performance.

(b) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement or any other the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days, and has notified County of such efforts, and efforts are satisfactory to County; provided, however, that if a different period or notice requirement is specified under any other section of this Article 4, the specific provisions shall control.

(c) Assignment; Attachment. Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution.

(d) Suspension; Termination. Borrower shall have voluntarily suspended its business.

(e) Liens on Property and the Project. There shall be filed any claim of lien (other than liens approved in writing by the County) against the Project or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(f) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Project.

(g) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with this Agreement, proves to have been incorrect in any material respect when made.

Section 4.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement, including but not limited to the following:

(a) Specific Performance. The County shall have the right to bring an action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement.

(b) Repayment of Loan. The County shall have the right to accelerate repayment of the Loan.

(c) No Future Funds. The County shall have the right to bar the Borrower from applying for future PLHA and other County funds.

(d) Return of Funds. The County shall have the right to require the return of any unexpended or expended funds disbursed under this Loan Agreement.

(e) Other Remedies. The County shall have the right to exercise any and all rights and remedies afforded by this Agreement, law, equity or otherwise, including obtaining the appointment of a receiver (to which Borrower hereby consents).

(f) Remedies not Exclusive. All remedies available to the County are cumulative and not exclusive.

Section 4.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder, and Borrower shall provide to the County such security or other assurances, reasonably satisfactory to the County, as shall be required in the judgment of the County to ensure that such contest shall not materially adversely impair the construction or operation of the Project or any security held by the County.

Section 4.4 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 5 GENERAL PROVISIONS

Section 5.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both,

perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the purchase of the Property, construction of improvements, and operation of the Project, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

Section 5.2 Insurance

(a) Borrower shall maintain the following insurance coverage through the Term of the Loan or for such other period as indicated below:

(i) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(ii) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(iii) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(iv) Builders' Risk insurance during the course of construction, and upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(v) Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(b) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, except that the limit of liability for commercial general liability insurance for subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

(c) The required insurance must be provided under an occurrence form, and Borrower shall maintain the coverage described in subsection (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(d) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors.

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the County at least ten (10) days' notice prior to cancellation or material change for non-payment of premium, and thirty (30) days' notice prior to cancellation for any other change or cancellation in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

Section 5.3 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the County by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction of the Improvements, or the operation of the Project.

Section 5.4 Subordination.

(a) Any agreement by County to subordinate the Deed of Trust to security for any loan obtained by Borrower, or to refinance any loan obtained by Borrower (each a "Senior Loan"), is subject to the satisfaction of the following conditions:

(i) All of the proceeds of any proposed Senior Loan, less any transaction costs, must be used to provide construction and/or permanent financing for the Project.

(ii) The proposed lender of a Senior Loan (each a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation, or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(iii) Borrower demonstrates to the County's reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Project, including the operation of the Project as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of any Senior Loan is

necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination.

(iv) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Loan. To satisfy this requirement, the subordination agreement(s) must provide the County with adequate rights to cure any defaults by Borrower, including: (1) providing the County or its successor with copies of any notice of default at the same time and in the same manner as provided to Borrower; and (2) providing the County with a cure period of at least sixty (60) days to cure any default.

(v) Any subordination of this Loan is effective only during the term of any Senior Loan (including contemplated extension described in the documents evidencing the Senior Loan) and any additional extensions of its term that is approved in writing by the County.

(vi) The subordination does not limit the effect of the Deed of Trust before a foreclosure, nor requires the consent of the Senior Lender prior to the County exercising any remedies available to the County under the Loan Documents, unless set forth in the subordination agreement or expressly approved by the County in writing.

(b) Upon a determination by the County that the conditions in this Section have been satisfied, the County Administrator will be authorized to execute the approved subordination agreement without the necessity for further action or approval.

Section 5.5 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

Section 5.6 Indemnification.

Except as directly caused by the County's gross negligence or willful misconduct, Borrower agrees to indemnify, protect, hold harmless, and defend (by counsel reasonably satisfactory to the County) the County, its officers, employees, agents, and contractors from all suits, actions, claims, causes of action, costs, demands, judgments, and liens arising out of: (i) Borrower's performance or non-performance of its obligations under this Agreement; (ii) Borrower's ownership of the Project; (iii) the development, marketing, rental, and operation of the Project; or, (iv) any documents executed by Borrower in connection with the Project. The provisions of this Section shall survive termination of this Agreement.

Section 5.7 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County shall be personally liable to Borrower in the event of any default or breach by the County or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 5.8 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement, except for rights HCD may have pursuant to the PLHA Agreement.

Section 5.9 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County:

County of Marin
Community Development Agency
3501 Civic Center Drive
San Rafael, CA 94903
Attn: Director AND County Administrator

Borrower:

[NAME]
[ADDRESS]
[ADDRESS]
Attn: _____

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). Copies of notice, sent to Borrower shall also be sent to any limited partner of Borrower who requests such notice in writing and provides its address.

Section 5.10 Applicable Law.

This Agreement shall be governed by California law.

Section 5.11 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. Without limiting the foregoing, the County shall have the right to assign its rights under the Agreement to any third party, whether on a collateral assignment basis or otherwise, and in connection therewith the County shall have the right to deliver and otherwise disclose to such third party all information relating to the Borrower, any

partners of the Borrower, and/or the Project and the Property, including without limitation financial and credit information.

Section 5.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 5.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 5.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 5.15 County Approval.

Whenever this Agreement calls for County approval, consent, or waiver, and such action is requested of the County in the normal course of the administration and disbursement of the Loan, the written approval, consent, or waiver of the County Administrator of the County shall constitute the approval, consent, or waiver of the County, without further authorization required from the County Board of Supervisors. The County hereby authorizes the County Administrator of the County to deliver such approvals or consents as are required by this Agreement, or to waive such requirements under this Agreement, on behalf of the County. Waiver of a material term of the Loan or approval of a material change in the Loan or the Project shall require approval of the County Board of Supervisors. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The County Administrator of the County is also hereby authorized to approve, on behalf of the County, requests by Borrower for reasonable extensions of time deadlines set forth in this Agreement. The County shall not unreasonably delay in reviewing and approving or disapproving any proposal by Borrower made in connection with this Agreement.

Section 5.16 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 5.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 5.18 Entire Understanding of the Parties

The Agreement and Loan Documents constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 5.19 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[THE SIGNATURE PAGE FOLLOWS]

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

COUNTY:

MARIN COUNTY, a political subdivision of the State of California

By: _____

Name: _____

Its: _____

Approved as to Form:

By: _____

Name: _____

Its: _____

BORROWER:

_____, a _____

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description of the Property

[Insert]

EXHIBIT B

Approved Development Budget

See attached

EXHIBIT C
Eligible Uses of PLHA Funds

Eligible uses of PLHA Funds:

- 1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households, including necessary operating subsidies.
- 2) The predevelopment, development, acquisition, rehabilitation, and preservation of affordable rental and ownership housing, including Accessory Dwelling Units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high cost areas. ADUs shall be available for a term of no less than thirty days.
- 3) Matching portions of funds placed into local or regional housing trust funds.
- 4) Matching portions of funds available through the Low- and Moderate- Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
- 5) Capitalized reserves for services connected to the preservation and creation of new Permanent supportive housing.
- 6) Assisting persons who are experiencing or at risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
 - a) This activity may include subawards to Administrative Entities as defined in HSC Section 50490(a)(1-3) that were awarded California Emergency Solutions and Housing (CESH) program or Homeless Emergency Aid Program (HEAP) funds for rental assistance to continue assistance to these households.
 - b) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6) and in compliance with WIC Section 8255(b)(8). An Applicant allocated funds for the new construction, rehabilitation, and preservation of Permanent supportive housing shall incorporate the core components of Housing First, as provided in WIC Section 8255, subdivision (b).
- 7) Accessibility modifications in Lower-income owner-occupied housing.
- 8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.

9) Homeownership opportunities, including, but not limited to, down payment assistance.

10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more affordable housing Projects, or matching funds invested by a county in an affordable housing development project in a city within the county, provided that the city has made an equal or greater investment in the project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an affordable housing project. Matching funds investments by both the county and the city also shall be a grant or low interest deferred loan to the affordable housing project.

EXHIBIT D
PLHA Requirements

The following are required by PHLA funds:

1. Work under this Agreement will not commence prior to the Effective Dates.
2. Borrower must provide eligible activities in a manner consistent with the housing first practices described in California Code of Regulations, title 25, section 8409(b)(1)-(6). If funds are approved to provide permanent housing shall incorporate the core components of Housing First as provided in Section 8255(b) of the Welfare and Institutions Code.
3. Monitoring Activities:
 - a. Onsite monitoring visits by County or HCD shall occur whenever determined necessary by County, but at least once during the Loan Term.
 - b. County and HCD may monitor Borrower's performance based on a risk assessment according to the terms of the PLHA Agreement.
 - c. County may be required to submit to HCD all PLHA monitoring documentation necessary to ensure Borrower is in continued compliance with PLHA requirements. Borrower agrees to provide such documentation requested by County by the date specified in County's request.
4. Reporting and Audits:
 - a. Borrower shall submit an annual report to the County by July 10 of each year that reports all activities from the previous fiscal year (7/1 – 6/30), on forms prepared by HCD.
 - i. The annual report shall include, at a minimum:
 1. Amounts of Loan disbursed and activities Loan funds were applied to.
 2. Income levels of households assisted with Loan funds and affordability level for any assisted units.

3. Close out report once all Loan funds have been disbursed and all activities funded during the fiscal year.
 4. Any additional information requested by the County or HCD.
- b. The County and HCD reserve the right to perform or cause to be performed a financial audit at Borrower's expense.
 - c. If a financial audit is required by the County or HCD, the audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in 24 CFR 85.36.
 - d. The Borrower shall notify the County and/or HCD of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by the County and HCD to the independent auditor's working papers.
 - e. Borrower is responsible for the completion of audits and all costs of preparing audits.
 - f. If there are audit findings, Borrower must submit a detailed response acceptable to the County and/or HCD for each audit finding within ninety (90) days from the date of the audit finding report.

5. Retention and Inspection of Records

- a. Borrower is responsible for maintaining records, which fully disclose the activities funded by the Loan. Adequate documentation of each transaction shall be maintained to permit the determination, through an audit if requested by the County or HCD, of the accuracy of the records and the allowability of expenditures charged to Loan funds.
- b. Borrower agrees that the County and HCD or their designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement. Borrower agrees to provide the County and HCD or its designee, with any relevant information requested. Borrower agrees to permit the County and HCD or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the PLHA Statutes, the NOFA, and this Agreement.

- c. Borrower agrees to retain all records for a period of five (5) years after the end of the term of this Agreement:
 - i. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained until completion of the action and resolution of all issues, which arise from it.
 - ii. Borrower also agrees to include in any contract that it enters into in an amount exceeding \$10,000, the County and HCD's right to audit the contractor's records and interview their employees. Borrower shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Code Section 10115.10.
 - d. The determination by the County and/or HCD of the eligibility of any expenditure shall be final. If the eligibility of any expenditure cannot be determined because records or documentation are inadequate, the expenditure may be disallowed, and County or HCD shall determine the reimbursement method for the amount disallowed.
 - e. Borrower shall retain all books and records relevant to this Agreement for a minimum of five years after the end of the term of this Agreement. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five years after the conclusion or resolution of the matter.
6. Relocation: Borrower shall comply with all requirements of applicable California relocation law (Gov. Code, § 7260 et seq. and the regulations promulgated thereunder at Cal. Code Regulations, Title. 25, § 6000 et seq.). Any relocation plan for the Development shall be subject to the review and approval by the County and State.
7. Compliance with law: Borrower agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Loan and Loan activities.
8. Borrower certifies that it is qualified to do business and is in good standing with the California Secretary of State and the California Franchise Tax Board.
9. Compliance with conditions: Borrower agrees to comply with all conditions of this Agreement. Failure to comply with conditions may result in cancellation of the Agreement.

EXHIBIT E
Schedule of Performance

LOAN AGREEMENT

Between

Marin County

and

Housing Trust Fund

and

Permanent Local Housing Allocation Funds

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PROMISSORY NOTE
[Insert Project Name]

\$_____

Marin County, California

_____, 20__

FOR VALUE RECEIVED, ___[name], a ___[type of organization], (the "Borrower"), promises to pay to Marin County, a political subdivision of the State of California, as the Manager of the Marin County Affordable Housing Fund (the "County"), or order, the principal sum of ___ Dollars (\$___), or so much thereof as is loaned by the County to the Borrower pursuant to Article 2 of the Loan Agreement (as defined below). The outstanding principal balance of the Loan shall accrue interest as set forth below.

1 Loan Agreement; Security Agreement. This Promissory Note is made pursuant to a Loan Agreement dated of even date herewith by and between the Borrower and the County (the "Loan Agreement"). This Promissory Note is secured by a Deed of Trust, Security Agreement, and Fixture Filing of even date with this Promissory Note (the "Deed of Trust") and is subject to the terms of that certain Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement"), which will encumber the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents. Capitalized terms used but not defined in this Promissory Note shall have the meanings given in the Loan Agreement.

2 Forgiveness; Maturity Date; Interest.

(a) Forgiveness. Commencing on April 1st following the Effective date of the Loan Agreement and continuing on each April 1st thereafter during the Term, Borrower will submit an Annual Report to the County with information regarding occupancy as required by the Regulatory Agreement. Provided that: (i) the Borrower is not in default under the Loan Agreement or under any Loan Document, and (ii) the Borrower has continuously operated the Improvements as affordable housing in compliance with the terms of the Regulatory Agreement and the PLHA Requirements, no payments will be due under this Note. If Borrower has complied with the requirements of the Loan Documents (including cure of any Events of Default) during the entire Term of the Loan Agreement, as evidenced by the Annual Reports, all sums otherwise due under this Note or any other Loan Documents will be forgiven by the County. Upon the Borrower's full repayment of the Loan or upon the County's forgiveness of the entire outstanding balance of the Loan the County shall mark this Promissory Note as "Canceled" and shall return this Note to the Borrower.

(b) Balance Due. Unless forgiven pursuant to Section 2(a), all outstanding principal on the Loan shall be due in full at the end of the Term, or upon

County declaration of Default pursuant to Article 4.

(c) Interest. The outstanding principal balance of the Loan shall accrue simple interest at the rate of three percent (3%) per year, except as set forth in Section 4, below.

3 Prepayment. The Borrower shall have the right to prepay all or a portion of the principal and interest due under this Promissory Note without any charge or penalty being made therefor.

4 Acceleration. Upon the occurrence of a Default, the County shall have the right to accelerate the debt evidenced by this Promissory Note and declare all of the unpaid principal and interest, if any, immediately due and payable. Upon the occurrence of a Default, the outstanding portion of the principal shall bear interest at the rate of the lesser of ten percent (10%), compounded annually, and the highest rate permitted by law. Any failure by the County to pursue its legal and equitable remedies upon a Default shall not constitute a waiver of the County's right to declare a Default and exercise all of its rights under this Promissory Note, Loan Documents, and the Loan Agreement. Nor shall acceptance by the County of any payment provided for herein constitute a waiver of the County's right to require prompt payment of any remaining payment owed.

5 No Offset. The Borrower hereby waives any rights of offset it now has or may hereafter have against the County, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Promissory Note and the Loan Agreement.

6 Manner and Place of Payment. All payments of principal and interest and any late charge due under this Promissory Note shall be payable in lawful money of the United States of America to the County of Marin at 3501 Civic Center Drive, San Rafael, CA 94903, or such other address as the County may designate in writing.

7 Waiver; Attorneys' Fees. The Borrower, for itself, its heirs, legal representatives, successors and assigns, respectively, waives diligence, presentment, protest, and demand, and notice of protest, dishonor and non-payment of this Promissory Note, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitations as a defense to any demand on this Promissory Note or agreement to pay the same, and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees. If an action is instituted on this Promissory Note, the undersigned promises to pay, in addition to the costs and disbursements allowed by law, such sum as a court may adjudge reasonable as attorneys' fees in such action.

BORROWER:

____[Name], a ____[type of organization]

By: _____

Name: _____

Its: _____

FREE RECORDING REQUESTED PURSUANT TO
GOVERNMENT CODE SECTION 27383
AND WHEN RECORDED MAIL TO:

Marin County
County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, California 94903
Attn: Director AND County Administrator

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
Marin County Affordable Housing Funds
and
Permanent Local Housing Allocation Funds
Loan

[Project Name]

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of ____, 202__, by and between the **County of Marin**, as Manager of the Marin County Affordable Housing Fund (the "County"), and _____ [name of Borrower], a _____ [type of entity], (the "Borrower").

RECITALS

A. The County and the Borrower have entered into a Loan Agreement pursuant to which the County will provide a Loan in the principal amount of _____ (\$____) (the "Loan") to the Borrower to ___ [describe project here] located in the County as more particularly described in Exhibit A attached hereto (the "Property"). Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement.

B. The Loan funds come from the County's Housing Trust Fund and moneys received through the Permanent Local Housing Allocation ("PLHA") Program. The County will apply the County Assisted Units to be constructed by the Borrower pursuant to this Agreement toward satisfaction of the requirement for the PLHA Program.

C. On __, County adopted Resolution No. __ allocating __ Dollars (\$____) from the County's Housing Trust Fund and __ Dollars (\$____) of PLHA funds to the Project, the County shall apply the Restricted Units to be developed pursuant to this Agreement toward satisfaction of the requirements for the PLHA.

D. The Borrower intends to construct or rehabilitate _____ units of residential rental housing (including ___ manager's unit), all common areas, plans, entitlements,

appurtenances, improvement easements, buildings and fixtures associated with the Property (hereinafter referred to collectively as the "Improvements"). The Improvements together with the Property shall hereinafter be referenced as (the "Project").

E. The County has agreed to make the Loan to the Borrower on the condition that the Property be maintained and operated in accordance with Health and Safety Code Section 50470 and guidelines promulgated thereunder, and in accordance with restrictions concerning affordability, operation, and maintenance of the Property, as specified in this Agreement, and the Loan Agreement.

F. In consideration of receipt of the Loan, the Borrower has further agreed to observe all the terms and conditions set forth below.

G. In order to ensure that the entire Property will be used and operated in accordance with these conditions and restrictions, the County and the Borrower wish to enter into this Agreement.

THEREFORE, the County and the Borrower hereby agree as follows.

ARTICLE 1 DEFINITIONS

1.1 Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" means the actual number of persons in the applicable household.

(b) "Adjusted Income" means the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914. In the event that no such program exists, the County shall provide the Borrower with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(c) "Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Borrower" means _____ and its successors and assigns to the Project.

(e) "County" means the County of Marin, a political subdivision of the State of California.

(f) "County Assisted Unit" means units restricted pursuant to Section 2.1 below, and more particularly identified in Exhibit B.

(g) "Deed of Trust" means the deed of trust to the County on the Property which secures the performance of the Loan Agreement and this Agreement.

(h) "Extremely Low Income Household" means a household with an Adjusted Income that does not exceed thirty percent (30%) of Median Income, the qualifying limits for extremely low income households, adjusted for Actual Household Size, as calculated pursuant to Health and Safety Code Section 50106 and published annually for Marin County by HCD in Title 25, Section 6932, California Code of Regulations, or successor provision.

(i) "Extremely Low Income Rent" means the rent permitted to be charged for an Extremely Low Income Unit pursuant to Section 2.2, below.

(j) "Extremely Low Income Units" means the Units, which are required to be occupied by Extremely Low Income Households.

(k) "Loan" means all funds Loaned to the Borrower by the County pursuant to the Loan Agreement.

(l) "Loan Agreement" means the Loan Agreement entered into by and between the County and the Borrower, dated of even date herewith.

(m) "Low Income Household" means a household with an Adjusted Income that does not exceed, eighty percent (80%) of Median Income, the qualifying limits for lower income households, adjusted for Actual Household Size, as calculated pursuant to Health and Safety Code Section 50106 and published annually for Marin County by HCD in Title 25, Section 6932, California Code of Regulations, or successor provision.

(n) "Low Income Rent" means the maximum allowable rent for a Low Income Unit pursuant to Section 2.2 below.

(o) "Low Income Units" means the Units, which are required to be occupied by Low Income Households.

(p) "Median Income" means the median gross yearly income, adjusted for Actual Household Size or Assumed Household Size as specified herein, in the County of Marin, California, as published annually by the United States Department of Housing and Urban Development ("HUD") and the State of California. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.

(q) "Project" has the meaning set forth in Recital D, above.

(r) "Property" has the meaning set forth in Recital A, above.

(s) "Rent" means the total of monthly payments by the Tenant of a County Assisted Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Borrower, and paid by the Tenant.

(t) "Tenant" means a household occupying a Unit.

(u) "Term" means the term of this Agreement, which shall commence on the date of this Agreement and shall continue for 55 years after the issuance of a certificate of occupancy for the Project or _____, 20____. These deed restrictions and covenants running with the land shall remain in force, without regard to the term of any mortgage or the transfer of ownership by the Owner or any subsequent Owner, in-perpetuity commencing on the date of this Agreement.

(v) "Unit" means one of the units on the Property.

(w) "Very Low Income Household" means a household with an Adjusted Income that does not exceed fifty percent (50%) of Median Income, the qualifying limits for very low income households, adjusted for Actual Household Size, as calculated pursuant to Health and Safety Code Section 50106 and published annually for Marin County by HCD in Title 25, Section 6932, California Code of Regulations, or successor provision.

(x) "Very Low Income Rent" means the rent permitted to be charged for a Very Low Income Unit pursuant to Section 2.2(b) below.

(y) "Very Low Income Units" means the Units, which, pursuant to Section 2.1(b) below, are required to be occupied by Very Low Income Households.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

(a) **Occupancy Requirements.** The Units shall be occupied by Residents meeting the following income requirements, and shall be provided in a manner that complies with the PLHA Guidelines:

(b) Extremely Low Income Units. _____ () Units, including _____ () single room occupancy/ studio Units, _____ () one-bedroom Units, _____ () two-bedroom Units, and _____ () three-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Extremely Low Income Households.

(c) Very Low Income Units. _____ () Units, including _____ () single room occupancy/ studio Units, _____ () one-bedroom Units, _____ () two-bedroom Units, and _____ () three-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(d) Low Income Units. _____ () Units, including _____ () single room occupancy/ studio Units, _____ () one-bedroom Units, _____ () two-bedroom Units, and _____ () three-bedroom Units shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

(e) All income restricted Units, under this Section 2.1, shall be referred to as the "County Assisted Units".

(f) Manager's Unit. One (1) ___-bedroom Unit shall be available for designation as the manager's unit and shall not be restricted.

2.2 Allowable Rent

(a) Very Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of Area Median Income, adjusted for Assumed Household Size.

(b) Very Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(c) Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size.

(d) Assumed Household Size. In calculating the allowable Rent for the Units, the following "Assumed Household Sizes" shall be utilized, provided that the Project receives an allocation of low income housing tax credits, otherwise Assumed Household Size shall be determined pursuant to the terms of Health and Safety Code Section 50052.5(h):

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>	<u>TCAC Assumed Household Size</u>
Studio	1	1
One	2	1.5
Two	3	3
Three	4	4.5

(e) The initial rent for the County Assisted Unit shall be approved by the County prior to occupancy. All Rent increases shall also be subject to approval by the County. No later than November 1 of each calendar year, the County shall provide the Borrower with a schedule of permissible maximum Extremely Low Income, Very Low Income Rents, Low Income Rents, for the succeeding year. Under no circumstance may Borrower raise rents above the permissible maximum rents as allowed under the annual rent schedule provided by the County.

(f) Rent. Subject to the provisions of above and in Section 2.3 and 2.4 below, the Rent (including utility allowance) charged to Tenants of the County Assisted Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of [__sixty percent (60%)] of Area Median Income, as appropriate based on the applicable income level set forth in Section 2.1(a) of this Agreement, and adjusted for Assumed Household Size or the applicable fair market rent if rented to a household with a Housing Choice Voucher. Borrower is precluded from tenants paying increased rent amounts in excess of five-percent (5%) during a 12 month period.

2.3 Tenant Protections

(a) Just Cause for Eviction. Property is subject to Just Cause for Eviction. For a termination to qualify as "For Cause," the Borrower shall demonstrate any of the following circumstances with respect to a termination of tenancy. Nothing in this section shall abrogate the protections afforded to survivors of violence consistent with the California Code of Civil Procedure Section 1161.3, as amended, and the Violence Against Women Act, Public Law 102-322, as amended.

(1) Failure to Pay Rent. Tenant failed to pay Rent within three days of receiving written notice from the Landlord demanding payment as provided in subsection 2 of California Code of Civil Procedure section 1161.

(2) Breach of Rental Contract. Tenant violated a material term of the rental agreement as provided in subsection 3 of California Code of Civil Procedure section 1161.

(3) Tenant Illegal Activities. Tenant has been convicted for using the Unit for an illegal purpose as provided in subsection 4 of California Code of Civil Procedure section 1161, including but not limited to the unlawful distribution of a controlled substance as contemplated by California Civil Code section 3486, the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by California Civil Code section 3485, or for of a serious crime or violent felony as defined by applicable law, which occurred during the tenancy and within 1,000 feet of the Unit. For purposes of this subsection, tenant household, after receiving a written notice, may cure the violation by removing, and demonstrating such removal, of the offending Tenant.

(4) Threat of Violent Crime. Any statement made by a Tenant, or at his or her request, by his or her agent to any person who is on the property that includes the Unit or to the Landlord, or his or her agent, threatening the commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety.

(5) Nuisance Behavior. The Tenant, after written notice to cease and the passage of a reasonable period of time to abate or cure, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Unit, or the creation or maintenance of a dangerous or unsanitary condition in violation of applicable local, state, and Federal law, and may be further defined in the regulations adopted by the County's Community Development Director.

(6) Notwithstanding the limitations of California Code of Civil Procedure Section 1161.3, as amended, act or acts constituting domestic violence or sexual assault or stalking against the Tenant or a member of Tenant's household cannot form the substantial basis of a For Cause reason to terminate the tenancy of the victim of such acts. A member of a Tenant household may raise such facts as an affirmative defense to an action terminating the tenancy.

2.4 Increased Income of Tenant Households.

(a) Increase from Extremely Low Income to, at or below Very Low Income. If upon recertification of income for a tenant of an Extremely Low Income Unit, the Borrower determines that tenant's Adjusted Income has increased and exceeds the qualifying income for an Extremely Low Income Household (but does not exceed the qualifying limit for a Very Low Income Household), then, such County Assisted Unit shall be considered a Very Low Income Unit, on expiration of the tenant's lease, such tenant's Rent may be increased to Very Low Rent upon sixty (60) days written notice to the tenant, and the Borrower shall rent the next available Unit to an Extremely Low Income Household to comply with the requirements of Section 2.1 above.

(b) Increase from Very Low Income to, at or below Low Income. If upon recertification of income for a tenant of a Very Low Income Unit, the Borrower determines that tenant's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household (but does not exceed the qualifying limit for a Low Income Household), then, such County Assisted Unit shall be considered a Very Low Income Unit, on expiration of the tenant's lease, such tenant's Rent may be increased to Low Income Rent upon sixty (60) days written notice to the tenant, and the Borrower shall rent the next available Unit to a Very Low Income Household to comply with the requirements of Section 2.1 above.

(c) Non-Qualifying Household. If, upon recertification of income for a tenant that occupies a County Assisted Unit, the Borrower determines that a former

Extremely Low Income or Very Low Income Household's Adjusted Income has increased and exceeds Low Income and if no other Unit in the Project can serve as a County Assisted Unit to satisfy the requirements of Sections 2.1 and 2.2 above, then such tenant shall be given six (6) months' notice to vacate the Unit.

(d) Termination of Occupancy. Upon termination of occupancy of a Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Extremely Low Income Household or Very Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., Extremely Low Income or Very Low Income Unit) shall be redetermined.

2.5 Tax Credit Rules.

If the Project is subject to federal low-income housing tax credit requirements, the provisions of those requirements regarding continued occupancy by households whose incomes exceed the eligible income limitations may apply in place of the provisions set forth in Section 2.3.

ARTICLE 3 INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

The Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the County Assisted Units. The Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the County upon request.

3.2 Annual Report to County.

The Borrower shall submit to the County (a) not later than the July 10 of each calendar year, a statistical report, including income and rent data for all County Assisted Units and racial and ethnicity data of all households, setting forth the information called for therein, use of PLHA Loan funds, or such other data as may be reasonably requested by the County, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms

requested by the County in order to comply with reporting requirements of the California Department of Housing and Community Development ("HCD").

3.3 Additional Information.

The Borrower shall provide any additional information reasonably requested by the County. The County shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to the Project.

3.4 Records.

The Borrower shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the County to inspect records, including records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. The Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the County Assisted Units for a period of at least five (5) years.

3.5 Other Records.

Borrower acknowledges that a portion of the Loan it received from the County comes from the PLHA Program. Borrower agrees to comply with requests of the County for information for information necessary for the County's reporting obligations to HCD and all agrees to provide all information and records required under the Loan Agreement.

ARTICLE 4
OPERATION OF THE PROJECT

4.1 Residential Use.

Borrower shall operate the Project only as rental housing. No part of the Project shall be operated as transient housing.

[Use of the Project; example: The Project shall be operated only for use as permanent affordable rental housing.]

4.2 Compliance with Loan Agreement.

Borrower shall comply with all the terms and provisions of the Loan Agreement.

4.3 Taxes and Assessments.

Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed

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

4.4 Condominium Conversion.

The Borrower shall not convert Units in the Project to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Project or the Property during the Term of this Agreement.

4.5 Taxes and Assessments.

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

ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The Borrower is responsible for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Property. The Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform its management duties hereunder. If Borrower becomes qualified as a professional property management company, this could be approved by the County in lieu of an outside management company.

5.2 Management Agent; Periodic Reports.

The Property shall at all times be managed by an experienced management agent reasonably acceptable to the County, with demonstrated ability to operate residential facilities like the Property in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Borrower shall submit for the County's approval the identity of any proposed Management Agent. The Borrower shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as

is reasonably necessary for the County to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the County shall approve the proposed Management Agent by notifying the Borrower in writing. Unless the proposed Management Agent is disapproved by the County within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Approval of Management Policies.

The Borrower shall submit its written management policies with respect to the Project to the County for its review and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.4 Property Maintenance.

The Borrower agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, County, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

5.5 Replacement of Management Agent.

If the County determines in its reasonable judgment that the Project is not being operated and managed in accordance with the requirements and standards of this Agreement, the County shall deliver notice to the Borrower of its intention to cause replacement of the Management Agent and the reasons for such intention. Within fifteen (15) days of receipt by the Borrower of such written notice, County and Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the Management Agent. If, after such meeting, the County elects to proceed with the replacement of the Management Agent, the County shall so notify the Borrower in writing within fifteen (15) days following the meeting. Thereupon, Borrower shall promptly dismiss the Management Agent and appoint as the new Management Agent a person or entity approved by the County pursuant to Section 5.2, above. Any contract for the Management Agent entered into by Borrower shall be approved in advance by the County and shall provide that the contract can be terminated, as set forth above. Borrower's failure to dismiss the Management Agent in accordance with this Section shall constitute a default under the Agreement, and the County may enforce this provision through any legal remedy available to it.

5.6 Insurance Coverage.

The Borrower shall cause to have in full force and effect during the Term of this Agreement insurance coverage as required by the Loan Agreement.

5.7 Property Damage or Destruction.

If any building or improvements erected by Borrower on the Property are damaged or destroyed by an insurable cause, Borrower shall, at its own cost and expense, but subject to the extent and availability of sufficient insurance proceeds and other lender requirements, diligently repair or restore the Property to its pre-damage or destruction condition. Such work or repair shall commence within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one (1) year thereafter.

5.8 Hazardous Materials.

During the Term of this Agreement, the Owner shall comply with all of the obligations with respect to Hazardous Materials in the Loan Agreement.

ARTICLE 6
MISCELLANEOUS

6.1 Lease Provisions.

The form of Tenant lease utilized by Borrower shall be submitted to the County for review and approval and shall comply with all requirements of this Agreement and the Loan Agreement, and shall, among other matters provide for termination of the lease and consent by the Tenant to immediate eviction for only for just cause, as defined in Section 2.3.

6.2 Nondiscrimination.

There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, age, ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall the Borrower or any person claiming under or through the Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Borrower shall market units in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State, or local fair housing and equal opportunity requirements.

6.3 Section 8 Certificate Holders.

The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Borrower apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of units by such prospective Tenants.

6.4 Term.

The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of the Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The earlier expiration or termination of the Loan Agreement shall not terminate this Agreement. The County makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.5 Subordination.

This Agreement shall be recorded in a lien priority subject only to the liens and encumbrances approved in writing by the County in its reasonable discretion as provided in the Loan Agreement.

6.6 Transfer and Encumbrance of Property.

Except as otherwise provided herein or the Loan Agreement, the Borrower shall not make or permit any sale, assignment, conveyance, lease (other than the rental of the Units to eligible tenant occupants), or transfer of the Property or any part thereof, without the prior written consent of the County during the Term of this Agreement.

6.7 Compliance with Loan Agreement.

Borrower's actions with respect to the Property shall at all times be in full conformity with all requirements of the Loan Agreement.

6.8 Covenants to Run With the Land.

The County and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.9 Enforcement by the County.

If the Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified the Borrower in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90)

days, and shall notice the County of its efforts, and these efforts must be to the satisfaction of the County, the County shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel the Borrower's performance of its obligations under this Agreement, and/or for damages.

(b) Remedies Provided Under Loan Agreement. The County may exercise any other remedy provided under the Loan Agreement.

6.10 Attorneys Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.11 Non-Liability of Officials, Employees and Agents.

The County shall not be personally liable to the Borrower for any obligation created under the terms of this Agreement except in the case of actual fraud, willful misconduct or sole gross negligence by such person.

6.12 Indemnity.

Notwithstanding the insurance coverage required herein, the Borrower shall indemnify and hold the County free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including without limitation attorneys' fees) which the County may incur as a direct or indirect consequence of (a) the Borrower's negligent or willful failure to perform any obligations as and when required by this Agreement; (b) any failure of any of the Borrower's representations or warranties to be true and complete; or (c) any negligent or willful act or omission by the Borrower or any contractor, subcontractor, management agent, or supplier with respect to the Project or the Property, except where such losses are caused by the sole gross negligence, or willful misconduct of the County. The Borrower shall pay immediately upon the County's demand any amounts owing under this indemnity. The duty of the Borrower to indemnify includes the duty to defend the County in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. The Borrower's duty to indemnify the County for acts, failures to act, or misrepresentations occurring during the Term shall survive the Term of this Agreement

6.13 Recording and Filing.

The County and the Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Marin.

6.14 Governing Law.

This Agreement shall be governed by the laws of the State of California.

6.15 Waiver of Requirements.

Certain requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

6.16 Amendments.

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

6.17 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower: [Borrower Name]
[Address]
[Address]
Attn: [Name]

Copies of notices sent to Borrower shall also be sent to the limited partner of the Borrower if the limited partner has requested such notice and provided the County with its address.

County: County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, California 94903
Attn: Director AND County Administrator

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

6.18 Regulatory Agreement Controls

In the event that any provisions of the Agreement and other agreements on the Property conflict, the terms of the most restrictive agreement shall control and/or regulate the property.

6.19 Severability.

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

6.20 Consent and Approvals.

Any consent or approval by the County or the Borrower required under this Agreement shall not be unreasonably delayed or withheld, unless otherwise provided in this Agreement. Any approval required under this Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

6.21 County Actions.

Except where approval by the County Counsel is expressly required in this Agreement, all references in this Agreement to County action (including approvals, consents or extensions of time) shall mean action by the County Administrator of the County or the County Administrator's designee.

6.22 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, the County and the Borrower have executed this Agreement by duly authorized representatives, all on the date first written above.

BORROWER:

_____, a

By: _____

Name: _____

Its: _____

COUNTY:

County of Marin, a political subdivision of the State
of California

By: _____

Name: _____

Its: _____

Approved as to Form:

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description of the Property

EXHIBIT B

County Assisted Units