ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

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Agenda Item_______December 21, 2021

December 7, 2021

Honorable Board of Supervisors
Administration Building
1221 Oak Street, Suite 536
Oakland, California 94612

Dear Board Members:

SUBJECT: **APPROVE THE NATURALLY OCCURRING AFFORDABLE HOUSING PILOT PROGRAM, ITS POLICIES AND PROGRAM GUIDELINES, AND FUNDING FOR UP TO 5 PROJECTS THROUGHOUT THE COUNTY**

RECOMMENDATION:

A. Approve the county-wide Naturally Occurring Affordable Housing Program (NOAH) and adopt its policies and program guidelines; and

B. Approve the use of up to $50,000 in Boomerang Funds to fund up to 5 projects under the NOAH Pilot guidelines; and

C. Authorize the Community Development Director, or his designee, to administratively approve projects that meet the NOAH guidelines with commitments of up to $10,000 per project through the Boomerang funds.

DISCUSSION/SUMMARY:

Alameda County, like urban regions nationwide, is experiencing a housing crisis caused by rising rents and insufficient housing supply affordable to lower-income households. Thousands of financially burdened families and individuals are unable to afford rents and become homeless. Solving this crisis will require engaging multiple strategies, one of which is the Naturally Occurring Affordable Housing (NOAH) program. The program and policies before you today have been outlined in the attached NOAH Policies and Guidelines (Exhibit A); the pilot program increases the supply of affordable housing without reliance on public subsidies, which are limited and oversubscribed. The program requires properties to provide at least 20% of the units to households with incomes at or below 80% Area Median Income (AMI), which makes them eligible to receive a State of California property tax exemption. Many of the standard affordable housing programs only serve households with incomes at or below 50% AMI; this program provides a low-cost avenue for local government to create units for households with incomes between 50-80% AMI - units that are limited in traditional subsidized housing programs.

An allocation of $50,000 in "Boomerang" funds will allow the NOAH Pilot Program to assist up to 5 projects across the county over the next year. "Boomerang" Shelter Crisis/Affordable Housing is funding from the residual property taxes returned to jurisdictions after the dissolution of redevelopment. Mission-driven owners of multi-family rental housing may access up to $10,000 per project if they agree to restrict up to 20% of their units to low-income households and agree to serve this population for 20 years.

The Alameda County Community Development Agency's Housing and Community Development Department (HCD) will enter into loan documents and record a regulatory agreement on the property restricting at least 20% of the units to households with incomes at or below 80% AMI and leased at affordable rents. Recording this restriction allows owners to be eligible for the property tax welfare exemption if they meet the State's requirements, detailed below. The property tax exemption lowers operating costs and makes the projects financially feasible. Property owners may voluntarily agree to restrict more units, and in exchange receive additional property tax waivers commensurate with the number of units providing the lower rents. At the end of the Pilot period, HCD will return to the Board with a recommendation on whether to continue the program.

To meet the State's requirements, NOAH applicants must be a non-profit or be managed by a non-profit or government agency. Eligible properties include existing multi-family or new construction properties. There will be a preference for properties with 20 units or more, but the County will consider smaller projects on a case-by-case basis. It is expected that many of the multi-family housing properties will need physical improvements. NOAH owners will rehabilitate properties to the extent feasible to improve the living conditions of tenants.

The owner and County will execute loan documents, including a regulatory agreement, promissory note, and deed of trust. When the funds are disbursed and the regulatory agreement and deed of trust are recorded, the owner will be eligible for the property tax exemption for all units occupied by households at or below 80% AMI. Administrative approval of each project, after review and approval of a standard set of loan documents by County Counsel, will allow the Director of the Community Development Agency, or his designee, to make a loan of not more than $10,000 to each project and move the project more quickly through the process.

SELECTION CRITERIA AND PROCESS:

Upon approval of the NOAH policies by Your Board, the County will issue a non-competitive Request for Proposals (RFP) and begin accepting applications through an over-the-counter process. HCD staff will review all applications against both the County-adopted Policies and Guidelines as well as a review of the feasibility and benefit of the project to the community. Recommendations for approval for acquisition/rehabilitation projects will be forwarded to the Community Development Agency Director for approval. Recommendations for new construction projects will come before your Board for approval. Projects where applicants request substantially different loan terms than those stated in the Program Polices and Guidelines will be brought to *your Board for review and approval. Applicants will be required to submit the information that staff will review to assess the applicant's mission, experience, history, and specific plans for the property.*

FINANCING:

Funding for the Naturally Occurring Affordable Housing Program (NOAH) is included in CDA's Approved FY 2021/2022 Budget under "Boomerang" Shelter Crisis/Affordable Housing Fund ($50,000). Projects funded under this program will access not more than $10,000 under a purchase order contract and will also execute approved loan documents that guide each project for the 20-year period. There is no increase in Net County Cost as a result of this action.

VISION 2026:

Programs funded by the Naturally Occurring Affordable Housing Program will meet the 10X goal pathway of **Eliminate Homelessness** in support of our shared visions of **Thriving and Resilient Populations** and **Safe and Livable Communities.**

Very truly yours,

DocuSigned by:

002C10B338294FA...

Chris Bazar, Director
Community Development Agency

cc: Susan Muranishi, County Administrator
Melissa Wilk, Auditor Controller
Donna R. Ziegler, County Counsel
Laura Lloyd, County Administrator's Office
Audrey Beaman, Office of the County Counsel
Sandra Rivera, Community Development Agency

Alameda County
Naturally Occurring Affordable Housing Pilot
Procedures & Guidelines

Alameda County, like urban regions nationwide, is experiencing a housing crisis that is largely the product of rising rents and insufficient housing supply. Thousands of severely rent-burdened households pay over half of their incomes toward rent, and thousands of more people are unable to afford rents and are left chronically homeless. Naturally Occurring Affordable Housing (NOAH) presents a solution to the housing affordability crisis that relies less heavily on government subsidies for capital development which tend to lengthen the development process.

The Alameda County NOAH Pilot Program allows property owners to meet requirements of the California Revenue and Taxation Code, which provides that property owned by a nonprofit organization or eligible limited liability company providing housing for lower-income households can qualify for a reduction or waiver of property taxes.

Information on the California Board of Equalization program can be found here:

https://www.boe.ca.gov/proptaxes/welfarelowinc.htm

Pilot Program

An allocation of $50,000 of Boomerang funds will fund the Naturally Occurring Affordable Housing Pilot Program (NOAH) to assist households at or below 80% of Area Median Income (AMI). Owners of multifamily rental housing may access up to $10,000 per project and will execute a 20-year regulatory agreement that requires at least 20% of the units to be rented to households at or below 80% of AMI and leased at affordable rents. Recording a restriction on the property is one option that allows owners to be eligible for the property tax welfare exemption if they meet the State's requirement to serve households at 80% AMI. The property tax exemption lowers operating costs and makes the projects financially feasible for owners and their investors. The program will fund up to 5 projects and be available through an over-the-counter application process. At the end of the first year, a review of the Pilot program will provide information and data on whether or not the program justifies continuation beyond the Pilot.

There are many areas in the County with rapidly increasing housing costs, and NOAH would provide households at 80% AMI an opportunity to stay in the area. There are also some areas with market rents already below 80%AMI and/or local rent control that limits rent increases. If market rents in certain neighborhoods are already lower than County-wide rents, tenants living in these areas may not initially experience lower rents through the NOAH program. However, in the short term, they will benefit from physical improvements and better-managed housing. The greatest impact will be over the long term if rents increase. If neighborhood rents increase, households at 80% AMI will be able to get into a unit at below-market rents. Given the trend of rising housing costs in Alameda County, the program aims to provide tenant protections over the long term. Tenants will benefit from the following:

- A socially responsible owner and property manager who will correct deferred maintenance and maintain the building according to professional property management standards.
- Units set aside for people at 80% AMI, which are difficult to find in traditional, subsidized housing.
- Ability to maintain rents at low rates as rents increase and exceed market rents.
- Rent increases that are consistent with or lower than increases allowed under rent control.
- Limits on rent increases that will remain even if rent control goes away. Currently, the State of California rent control law expires in 2030. The NOAH program will keep limits on rent increases in place for 20 years and even if local rent control policies cease to exist.

Eligible Applicants

The County will accept applications from organizations that qualify to meet the State's requirements. See Exhibit B for the State program description. https://www.boe.ca.gov/proptaxes/pdf/pub149.pdf]

To obtain the property welfare exemption, the State of California Board of Equalization requires the property to be owned by a nonprofit or a Limited Partner with a managing general partner that is a nonprofit or an LLC owned by a nonprofit or government agency.

The property may receive the welfare tax exemption on any units occupied by households at or below 80% AMI, even if those units are not restricted by the County's regulatory agreement (see county requirements listed below).

Eligible Properties

- Properties that will restrict a minimum of 20% of the units to households at 80% of AMI with restricted rents based on 30% of an Assumed Household size (See Exhibit C).
- Existing multi-family properties that will either
  - Reduce existing rents
  - Be rehabilitated and set new rents at 80% rent or below
- New construction properties
- Preference for properties with 20 units or more, but the County will consider smaller projects on a case-by-case basis

It is expected that many of the multi-family housing buildings that will be purchased under the NOAH program will need physical improvements. NOAH participants will rehab properties to the extent feasible to improve the living conditions of tenants

Alameda County Requirements

In addition to requirements that the property owner must meet, the proposed project must also meet the following requirements:

- A socially responsible owner who will maintain properties at a professional standard. For owners who want to use programs for the buildings they currently own, the County has the right to require tenant interviews by a third-party consultant approved by the county to assess their perspective of how the owner is managing the property.
- The funds that would have been necessary to pay property taxes are used to maintain the affordability of the housing or to reduce the rents for the units occupied by lower-income households.
- The partnership agreement provides the entity applying for the exemption with sufficient management authority and duties in the partnership operations to qualify the property for exemption.
- Enter into Loan Documents (Regulatory Agreement and Deed of Trust recorded against the property, Promissory Note and Loan Agreement executed by the property owner) with the County which will govern the NOAH program, restricting 20% of the units at or below 80% of AMI for the 20 years the property is restricted.
    - DRAFT Regulatory Agreement – Attachment A
        - Key loan requirements are highlighted below:
            - Monitoring fee of $100/unit up to $3,000 to be reevaluated every 5 years and possibly increased to cover the cost of the program
            - Rent increase limits of 5% or the amount allowed under rent control, whichever is lower
            - Replacement reserves: TCAC requirements ($300/unit year for new construction/gut rehab, $400-500/unit/year for rehab)
            - Initial income limits and rents for new tenants are based on governing jurisdiction's or TCAC limits, whichever is less
            - County has the right to conduct a site visit to assess the condition of the property
            - Subordination Agreement if required by the senior lender
            - Must comply with relocation laws.
            - Accessibility certification stating that the project is in compliance with accessibility laws
            - Cover the cost of the loan documentation, legal fees, and staff costs of the county, up to $15,000 per project.
- Property Owners are responsible for completing a program application, covering the costs of the Program Loan Documents, and turning in annual reports to the County to demonstrate continued participation in the program.
- Property Owners are responsible for providing analysis from a County-approved consultant showing the public benefit is greater than lost tax revenue, as well as an evaluation of the project's financial plan. This calculation must compare the total rent

differential between market and restricted rents to the estimated tax benefits over the regulatory period.
- Identification of the units which the County will restrict – or provide proof of vacant units at the time of application. This is to assess the likelihood of restricting the units within a reasonable period of time and being able to qualify for the property tax exemption.

Annual Submission of Property Tax Exemption forms

It is the property owners' responsibility to apply for and obtain the Welfare Property Tax Exemption on an annual basis. Should the property owner not apply for and obtain the Welfare Property Tax Exemption in any given year, they may apply the following year for those units which qualify. The regulatory agreement and deed of trust will remain recorded on the property even if the Welfare Tax Exemption is not obtained.

Alameda County Monitoring

The owner must submit an annual report, which will include tenant income, rent roll, financial reports, and proof of application for the welfare exemption in the County's online monitoring system, and other information needed to determine compliance with the program. An annual monitoring fee of $100 per regulated unit will apply which will cover the county's costs of reviewing the annual reports.

Alameda County Rental Housing Development Requirements

The NOAH Loan documents are based on the County's Rental Development Program, but NOAH exempts certain requirements under that program for acquisition and/or rehabilitation projects due to the minimum amount of funding made available to the projects (10,000 per project vs. $150,000 per unit). The deep subsidy needed to achieve these additional community benefits are not available to this program and therefore are specifically - **Not Applicable:**

- Labor compliance
- Prevailing wages
- Resident/Work preferences
- Limits on the developer fee
- Limits on asset management fees

Alameda County Tenant Engagement Requirements

For Properties with existing tenants, the property owner must obtain voluntary participation for existing tenants. State Just Cause Eviction law prevents landlords from requiring that tenants sign a new lease in order for the unit to qualify for the NOAH program based on the tenant's income. Nor does it allow the landlord to require that tenants submit income verification documents, which is required of the State program. Therefore, it is the property owner's responsibility to engage with the tenants in the properties (preferably before purchasing the property) to determine if the NOAH program will work for this particular property.

Tenants living in properties before they are purchased under the NOAH program are not legally required to provide income verifications or sign new leases requiring income certification. The owner will have to incentivize existing tenants to participate in the program through engagement and education about the benefits they will receive and/or by offering cash incentives. Tenant engagement must not involve pressure or harassment of tenants to participate or vacate. Future tenants can be required to sign a lease with income certification provisions. Applicants to the NOAH program will be required to turn in documentation that ensures a tenant engagement plan exists and was followed. The County requires that the tenants sign documentation that they are voluntarily agreeing to participate in the program (Exhibit D).

Background on Alameda County NOAH Program interaction with City policies

The following information is provided as a guide of how the NOAH regulatory agreement may impact properties in cities with rent control (as of December 2021). It is the property owners' responsibility to ensure that this information is correct and applicable to their projects.

A NOAH Regulatory Agreement may cancel out Rent Control on those units governed by the Regulatory Agreement. It will not cancel Just Cause or other forms of tenant protections. A jurisdiction with local rent control (which are currently Oakland, Berkeley, Hayward, and Alameda) may restrict the use of the NOAH program by passing an ordinance that would limit the program in that jurisdiction. A city could also adopt its own NOAH program, and choose to ensure that its program controls property transactions in that jurisdiction. It is the property owner's responsibility to determine if the County-wide NOAH program is applicable and to follow the requirements in each jurisdiction city.

- *City of Berkeley:* A unit is exempt from rent control if owned by a nonprofit and rented to a low-income person, restricted by a regulatory agreement and only for tenants moving in after the nonprofit buys it. **Existing tenants and non-restricted units would still be under the City's rent control. NOAH tenants moving in after the purchase would be restricted under the County's program and may or may not be exempt from the Berkeley's program (exemption from the City's rent control depends on several factors).**

- *City of Oakland:* Units restricted under a regulatory agreement are exempt from rent control. **NOAH units would be exempt from the Oakland's program, but would be restricted under the County's program. Non-restricted units would still be under the City's rent control.**

- *City of Hayward:* Units restricted under a regulatory agreement are exempt from rent increase limits rent and unable to participate in the City's rent increase dispute resolution process. **NOAH units would be exempt from certain provisions of Hayward's legislation, but the rents would be restricted under the County's program. Non-restricted units would still be under the City's rent control.**

- *City of Alameda:* Units restricted under a regulatory agreement are exempt from rent control. **NOAH units would be exempt from the Alameda's program but would be restricted under the County's program. Non-restricted units would still be under the City's rent control.**

Units restricted under the County's regulatory agreement would have rent increase limits that are the same or lower than increases allowed under rent control. For non-restricted units, rent increases will still be limited by rent control. If the new owner wants the property tax exemption on non-restricted units, they must also offer these units to tenants at 80% AMI at below-market rents and incentivize existing tenants to participate in the program.

While NOAH restricts rent control on the units covered, cities may have Just Cause and other restrictions that apply to NOAH units.

State Rent Control

California AB 1482 enacted State-wide rent control in 2019. Like local rent control, the state has Just Cause laws, rent increase limits, and exempts units under a regulatory agreement that are rented to low-income households. For properties that are not subject to local rent control, NOAH units will impose rent limits that are lower than what the State allows and will continue beyond 2030 when the law is set to expire.

Application Procedure

Upon approval of the program, Alameda County Housing and Community Development will administer the NOAH Program. Applications will be accepted over the counter and will be addressed based on an assessment of need and timing of the project.

Applicants must submit the application (Exhibit A) with all attachments. County staff may meet with applicants in advance of the application receipt in order to review the project and discuss program parameters with the applicant. Once applicants have submitted their application materials, County staff will review and ensure the program meets requirements. If projects meet requirements, a staff report and recommendation to the Community Development Agency Director, or his designee, will be made. Should the project request waivers of the program requirements or propose a program that is outside of the administrative approval granted by the Board of Supervisors, these projects must go to the full Board of Supervisors for approval. This will require additional time. Applicants should submit materials at least 3 months prior to closing. Projects, such as new construction projects, that must receive approval by the Board of Supervisors should anticipate a longer closing time frame.

Documents to submit:

- Application (Exhibit A)
- Project Information
  - Proof of site control
  - Current rent roll
  - Rehab Scope of Work and Budget
  - Tenant Engagement Plan
  - Form of Lease
  - Management Plan
  - For rehabs: income certifications for at least the number of County restricted units. Or, proof of vacancies that are at least the number of County-assisted units.
- Financial Information
  - Financing Plan & Cash Flow Proforma
  - Lender Commitment letters
  - Subordination Agreement required by the senior lender
- Organizational Documents of Ownership Entity
  - Partnership Agreement
  - Nonprofit's IRS 501(3) (c) status letter
  - Current list of Board of Directors
  - Articles of Incorporation
  - Bylaws
  - Certificate of Good standing with State of California
  - W-9
  - Board resolution authorizing project and loan
  - Insurance Certificate

Where to submit documents: Send questions and documents to HCDadmin@acgov.org.

Exhibit A
NOAH Application (max 2 pages)

Applicant:

Nonprofit Applicant:

Applicant background and experience:

Nonprofit partner’s background and experience:

Property address:

Purchase price:

Description of property:

Sources and Uses

20-year Proforma

Unit Mix and Rents for entire property
Specify number of HCD restricted units, the bedroom sizes and the proposed unit rents:

Expected Closing date:

Lender:

Special requests/Additional Information:

Exhibit A
NOAH Application (max 2 pages)

<u>Applicant:</u>

<u>Nonprofit Applicant:</u>

<u>Applicant background and experience:</u>

<u>Nonprofit partner's background and experience:</u>

<u>Property address:</u>

<u>Purchase price:</u>

<u>Description of property:</u>

<u>Sources and Uses</u>

<u>20-year Proforma</u>

<u>Unit Mix and Rents for entire property</u>
<u>Specify number of HCD restricted units, the bedroom sizes and the proposed unit rents:</u>

<u>Expected Closing date:</u>

<u>Lender:</u>

<u>Special requests/Additional Information:</u>

Exhibit B
State of California Housing Property Tax Welfare Exemption Rules

Housing Welfare Exemptions are allowed under the following provisions:

1) Non-profits, limited partnerships managed by a non-profit, and limited liability companies managed by a non-profit or government agency that A) receives low-income housing tax credits or government financing for the particular property; and (B) the property is subject to a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located. Units under the regulatory agreement must be restricted at or below 80% of Area Median Income (AMI). Rents must be restricted to either 30% of 60% AMI or those required by the regulatory agreement.

2) Properties owned by religious, hospital, scientific, charitable funds, foundations, or corporations that are imposed by any resolution or statement of policy by an organization's board of directors, or executed by an organization's chief executive officer, that restricts a minimum of 90% of the units at or below 80% AMI. The exemption is limited to $20,000,000 in assessed value for each organization. (limited partnerships and limited liability companies are not allowed under this provision)

3) The percentage of the value of the property qualifying for the exemption is based on the actual use of the property for rental to 80% AMI households at the qualifying rent, and is not limited to the percentage restricted in the regulatory agreement or legal document adopted by the organization. Units reserved for the resident property manager are included in the percentage of units that qualify for the exemption.

Information on the California Board of Equalization program can be found here:

https://www.boe.ca.gov/proptaxes/welfarelowinc.htm

Exhibit C
Assumed Household Size

Size of Unit	***Number in Household***	***Rent***
Studio	*One*	May not exceed one-twelfth (1/12) of thirty percent (30%) of eighty percent (80%) of Median Income, adjusted for Assumed Household Size – including utility allowance.
One-Bedroom	*Two*	
Two-Bedroom	*Three*	
Three-Bedroom	*Four*	
Four-Bedroom	*Five*	

Exhibit D
Voluntary Participation Form

Naturally Occurring Affordable Housing
Tenant Voluntary Participation Form

I ______________________________________(name of tenant), voluntarily agree to provide income documentation to demonstrate that I meet the income qualifications for the Alameda County tax-exemption program. I understand that the owner needs proof of my income to qualify for this benefit, and I am not being coerced, threatened, or harassed into providing this information.

____
Name of Tenant
Address and unit number
____

____
Signature of tenant

____
Date

Attachment A
DRAFT Form of Regulatory Agreement

NO FEE DOCUMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Alameda County
Housing and Community Development Department
224 W. Winton Avenue, Room 108
Hayward, CA 94544
Attn: Housing Director

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS
(Naturally Occurring Affordable Housing - _______________)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated ________, 2021, and is between the County of Alameda, a political subdivision of the State of California (the "County"), and ____________________ ("Borrower").

RECITALS

A. Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. Borrower owns that certain real property located at ______________________, County of Alameda, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").

C. The Property is improved with _____ residential units (collectively, the "Improvements") on the Property. The Property and the Improvements are collectively referred to as the "Development."

D. On November 8, 2016, the voters in the County passed the Measure A1 Affordable Housing Bond (the "County Bond"), which provides for the issuance of bonds for affordable housing programs countywide (the "A1 Bond Funds"). Borrower is agreeing to cause at least ____ residential units *[insert at least 20% of units]* to be made available to low income households for affordable rents.

E. Borrower is borrowing from the County _________ Dollars ($_____) in A1 Bond Funds (the "County Loan"). The A1 Bond Funds were approved by the County on ___________ ___, 20__ by Resolution Number ______________. The A1 Bond Funds are being loaned to Borrower to further the purposes of the County Bond.

F. Subject to the terms of the Loan Agreement, the County has agreed to make the County Loan to Borrower on the condition that the Development be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance of the Development, as specified in this Agreement, the Loan Agreement, and the Implementation Policies.

G. In consideration of receipt of the County Loan at an interest rate substantially below the market rate and the property tax exemption for which Borrower will be eligible, Borrower has further agreed to observe all the terms and conditions set forth below.

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

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by this reference, and the covenants and promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the County and Borrower hereby agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions.

When used in this Agreement, the following terms have the following meanings:

(a) "80% AMI Household" means a household with an 80% Income Level as published by TCAC, or if TCAC does not publish such level, a household with an Adjusted Income that does not exceed eighty percent (80%) of Area Median Income.

(b) "A1 Bond Funds" has the meaning set forth in Recital D.

(c) "Accessibility Requirements" has the meaning set forth in Section 2.1(d).

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

(e) "Adjusted Income" means with respect to the Tenant of each County-Assisted Unit, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by TCAC.

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

(g) "Annual Operating Budget" has the meaning set forth in Section 4.7(a).

(h) "Area Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Alameda, California as published from time to time by HUD. 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 Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(i) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(j) "City" means the _______________, California.

(k) "County Bond" has the meaning set forth in Recital D.

(l) "County Loan" has the meaning set forth in Recital E.

(m) "County-Assisted Units" means each of the __________ (___) Units restricted by the County as a condition of loaning the A1 Bond Funds.

(n) "Deed of Trust" means the deed of trust dated of even date herewith, by and among Borrower, as trustor, _____________., as trustee, and the County, as beneficiary, to be recorded against Borrower's interest in the Property to secure repayment of the Note and the performance by Borrower under the Loan Agreement and this Agreement.

(o) "Development" has the meaning set forth in Recital C.

(p) "Development Regulatory Documents" has the meaning set forth in Section 4.2(a).

(q) "Housing Director" means the Housing Director of the County Housing and Community Development Department or his or her designee.

(r) "HUD" means the United States Department of Housing and Urban Development.

(s) "Implementation Policies" means the Naturally Occurring Affordable Housing requirements that were adopted by the Alameda County Board of Supervisors on __________ .

(t) "Improvements" has the meaning set forth in Recital C.

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

(v) "Loan Documents" means the documents executed by Borrower evidencing the County Loan including the Note, the Loan Agreement, the Deed of Trust and all other documents evidencing or securing the County Loan between Borrower and the County or by Borrower for the benefit of the County, as each may be amended.

(w) "Marketing Plan" has the meaning set forth in Section 4.4(a).

(x) "Note" means the promissory note executed by Borrower in favor of the County, dated of even date herewith, evidencing the County Loan.

(y) "Property" has the meaning set forth in Recital B.

(z) "Rent" means the total of monthly payments made by the Tenant of a Unit (excluding any Rental Subsidy received) 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 Borrower that are customarily charged in rental housing and 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 Borrower, and paid by the Tenant.

(aa) "Rental Subsidy" means Project-Based Section 8 or any comparable federal, state, or local government rental assistance program rental subsidies.

(bb) "Residual Receipts" has the meaning set forth in Section 1.1 of the Loan Agreement.

(cc) "TCAC" means the California Tax Credit Allocation Committee.

(dd) "TCAC 80% Rent" means the maximum rent published by TCAC for a "80% AMI Household" in Alameda County for the applicable bedroom size.

(ee) "Tenant" means a household legally occupying a Unit pursuant to a valid lease with Borrower.

(ff) "Tenant Selection Plan" has the meaning set forth in Section 4.5(a).

(gg) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends on the later of: (i) twenty (20) years from the date of this Agreement, or (ii) repayment in full of the County Loan and all interest due thereon.

(hh) "Unit" means one or all of the ________ (____) units in the Development, including the manager's unit.

ARTICLE 2
AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements.

(a) 80% Units. During the Term, Borrower shall cause the County-Assisted Units to be rented to and occupied by, or, if vacant, available for occupancy by, 80% AMI Households.

(b) Manager's Unit. Any Unit available for designation as the manager's unit, and is not income or rent restricted by the County.

(c) Intermingling of Units. Borrower shall cause the County-Assisted Units to be intermingled throughout the Development and be of comparable quality to all other Units. Tenants in all Units shall have equal access to and enjoyment of all common facilities in the Development. The County-Assisted Units must be of the bedroom size set forth in the following chart:

	80% Units	Total Units
1-Bd.		
2-Bd.		
3-Bd.		
4-Bd.		
Total		

(d) Disabled Persons Occupancy.

(1) Borrower shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Borrower shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Borrower's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust.

Section 2.2 Allowable Rent.

(a) 80% Units. Subject to the provisions of Section 2.3 below, Rent paid by Tenants of the 80% Units shall not exceed the TCAC 80% Rent for the applicable bedroom size.

(b) No Additional Fees. Borrower shall not charge any fee, other than Rent, to any resident of the County-Assisted Units for any housing or other services provided by Borrower.

Section 2.3 Rent Increases; Increased Income of Tenants.

(a) Rent Increases. Initial Rents and subsequent Rents for all County-Assisted Units are subject to County approval. All Rent increases for all County-Assisted Units are also subject to County approval. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting a County-Assisted Unit, Borrower shall submit to the County a schedule of any proposed increase in the Rent charged for County-Assisted Units. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year or whatever rent control allow, whichever is lowest, except as set forth in Subsection (b) below. Borrower shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant, following completion of the County approval process set forth above.

(b) Subsidy Units. For a County-Assisted Unit where the Tenant receives a Section 8 voucher or Borrower receives project-based Section 8 assistance, the following applies in the event of an increase in the Tenant's income:

(1) If as a result of an increase in the Tenant's income evidence by a recertification of income, the entity administering the Section 8 assistance (i.e. HUD or the Public Housing Authority), reduces the amount of the Section 8 assistance provided to the Tenant or to Borrower for such Tenant's Unit, the Rent paid by the Tenant may increase above the limit set forth in Section 2.2 for the applicable household, up to the amount that the Rent paid by the Tenant, and the Section 8 assistance provided, equals the Section 8 rent applicable to the Unit.

(2) Borrower shall provide the County notice of such Rent increase prior to implementation in accordance with subsection (a) above.

(c) Non-Qualifying Households. Subject to Section 2.3(a) and (b), if, upon recertification of the income of a Tenant of a County-Assisted Unit, Borrower determines that a Tenant of a County-Assisted Unit has an Adjusted Income exceeding the maximum qualifying income for a 80% AMI Household, such Tenant shall be permitted to continue occupying the County-Assisted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth ($1/12^{th}$) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and Borrower shall rent the next available Unit of the appropriate size to a 80% AMI Household, at a Rent not exceeding the maximum Rent specified in Section 2.2, or designate another Unit in the Development with an 80% AMI Household as an 80% Unit, at a Rent not exceeding the maximum Rent specified in Section 2.2(a).

(d) Termination of Occupancy. Upon termination of occupancy of a County-Assisted Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such

Unit is reoccupied, at which time the income character of such Unit will be redetermined to meet the occupancy requirements of Section 2.1 above.

Section 2.4 Income and Rent Calculations.

In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, respectively, the County shall provide Borrower with other income and rent determinations which are reasonably similar with respect to methods of calculation to those previously published by TCAC, as applicable.

Section 2.5 County Monitoring Fee.

(a) In connection with the restrictions imposed by this Agreement, the County shall charge Borrower and Borrower shall pay a monitoring fee in the amount of One Hundred Dollars ($100.00) per County-Assisted Unit per year, with a maximum of $3,000 per year, to be re-evaluated every 5 years and increased at the County's discretion to cover increased monitoring costs per year on May 1 of each calendar year thereafter through the end of the Term.

ARTICLE 3
INCOME CERTIFICATION; REPORTING; RECORDS

Section 3.1 Income Certification.

(a) Borrower shall 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. 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 (2) or more of the following steps as a part of the verification process: (i) obtain a pay stub for the most recent two (2) months of pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer verifying employment for the last two (2) months; (v) 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 (vi) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

(b) Borrower shall also complete and/or have the Tenants of the County-Assisted Units complete and sign the "Income Computation and Certification" and the "Owner's Certification of Household Income" both of which are attached hereto as Exhibit B, or any other form approved by the County, and/or any other forms related to Tenants' income provided to Borrower by the County or that provide income information that is sufficient to determine an applicant's income as required by this Section. Copies of Tenant income certifications shall be made available to the County upon request.

Section 3.2 Reporting Requirements.

Borrower shall submit to the County annual reports in a form approved by the County, no later than one hundred twenty (120) days after the end of Borrower's fiscal year. The reports shall contain such information as the County may require, including, but not limited to, the following:

(a) The substantial physical defects in the Development, if any, including a description of any major repair or maintenance work undertaken in the reporting period.

(b) Proof of application to State for welfare exemption

(c) The occupancy of the Development indicating:

(1) A listing of current Tenants' names, income levels, Rent charged and paid, move-in dates, and the race and ethnic groups of Tenants;

(2) General management performance, including Tenant relations and other relevant information; and

(3) Financial reports.

Upon request of the County, Borrower shall furnish, within fifteen (15) days, copies of all Tenant agreements for the County-Assisted Units. Within fifteen (15) days after receipt of a written request from the County, Borrower shall also submit any other information or completed forms requested by the County (provided, however, that Borrower shall in no event be obligated to provide any information that it cannot legally obtain as a housing provider).

Section 3.3 Additional Information.

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 Borrower which pertain to the Development.

Section 3.4 Tenant Records.

Borrower shall maintain complete, accurate and current records pertaining to the income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of Borrower and shall be maintained as required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. 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. The County may examine and make copies of all books, records or other documents of Borrower that pertain to the Tenants.

Section 3.5 Development Records.

(b) Borrower shall keep and maintain at the principal place of business of the Borrower set forth in Section 6.11 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development. Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of the Loan Documents to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement. Borrower shall cause all books, records, and accounts to be open to and available for inspection and copying by the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records for a period of not less than five (5) years after their creation in compliance with all County records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the County Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. Borrower shall cause the records to include all invoices, receipts, and other documents related to expenditures from the County Loan funds. Such records are to include but are not limited to:

(1) Records providing a full description of the activities undertaken with the use of the County Loan funds;

(2) Records demonstrating compliance with the affordability and income requirements for Tenants;

(3) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

The County shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) 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 fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

ARTICLE 4
OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use.

The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing. Borrower shall provide to Tenants and post in a public location at the Development a "Tenants Rights and Responsibilities" document in the form provided by the County.

Section 4.2 Compliance with Loan Documents and Regulatory Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Loan Documents; (ii) the Implementation Policies; and (iii) any other regulatory requirements imposed on the Development (the "Development Regulatory Documents").

(b) Borrower shall promptly notify the County in writing of the existence of any default under any Development Regulatory Documents, and provide the County copies of any such notice of default.

Section 4.3 Taxes and Assessments.

(a) Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Borrower is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

(b) However, Borrower is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (ii) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

(c) 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, will immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

(d) Borrower shall not apply for a property tax exemption for the Property under any provision of law except California Revenue and Taxation Code Section 214(g) without the prior written consent of the County.

Section 4.4 Marketing Plan.

(a) At least thirty (30) days prior to offering any units for rent to new tenants, Borrower shall submit to the County for approval its plan for marketing the Development (the "Marketing Plan"), to ensure that target populations, countywide and local residents and workforce populations will be aware of the housing opportunities in the Development.

(b) Upon receipt of the Marketing Plan, the County shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably denied. If the Marketing Plan is not approved, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall submit a revised Marketing Plan within fifteen (15) days thereafter, and the County shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably denied. If the County does not approve the revised Marketing Plan, Borrower shall be in default hereunder.

(c) Borrower shall comply with the approved Marketing Plan during the Term and may not make material modifications to the Marketing Plan without the prior written approval of the County, which approval shall not be unreasonably withheld.

Section 4.5 Tenant Selection Plan.

(a) At least thirty (30) days prior to initially offering any units for rent to new tenants, Borrower shall submit to the County for approval its policies and criteria for selecting tenants for the Development to ensure that the leasing of the Development will be conducted in a manner that provides fair and equal access under the law (the "Tenant Selection Plan"). The Tenant Selection Plan may be part of the Marketing Plan. The Tenant Selection Plan must comply with the requirements set forth in the Implementation Policies and this Agreement.

(b) Borrower shall not, at any time or by any means, whether direct or indirect, inquire about a prospective Tenant's criminal history, require a prospective Tenant to disclose their criminal history, require a prospective Tenant to authorize the release of their criminal history, or if such information is received, base an adverse action such as rejection of tenancy in whole or in part on a prospective Tenant's criminal history. Borrower shall not disseminate any advertisement that expresses directly or indirectly, that any person with criminal history will not be considered for the rental or lease of a Unit in the Development or may not apply for the rental or lease of a Unit in the Development. It shall not be a violation of this provision for Borrower to comply with Federal or State laws that require the automatic exclusion of persons based on certain types of criminal history. In compliance with California law, Borrower may review the State registry of lifetime sex offenders operated by the State of California Department of Justice; provided that Borrower has stated the lifetime sex offender screening requirement in writing in the rental application, and Borrower may only inquire or require disclosure of such information after: (i) determining that the prospective Tenant is qualified to rent the unit; (ii) providing a conditional rental agreement to the prospective Tenant; and (iii) obtaining written consent of the prospective Tenant.

(c) Upon receipt of the Tenant Selection Plan, the County shall promptly review the Tenant Selection Plan and shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably denied. If the Tenant Selection Plan is not approved, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall submit a revised Tenant Selection Plan within fifteen (15) days thereafter, and the County shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably denied. If the County does not approve the revised Tenant Selection Plan, Borrower shall be in default hereunder.

(d) Borrower shall comply with the approved Tenant Selection Plan during the Term and may not make material modifications to the Tenant Selection Plan without the prior written approval of the County, which approval shall not be unreasonably withheld.

Section 4.6 Lease Provisions.

(a) No later than four (4) months prior to entering into a new lease for the County-Assisted Units, Borrower shall submit to the County Borrower's proposed form of lease agreement for the County's review and approval. When leasing the County-Assisted Units within the Development, Borrower shall use the form of lease approved by the County. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

(1) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, or (ii) to qualify as an 80% AMI Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(2) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Borrower. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Borrower and the Tenant. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.3.

(3) Include a provision which shall require a Tenant who is residing in a Unit made accessible pursuant to Section 2.1(g)(2) and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available and another Tenant or prospective Tenant is in need of an accessible Unit.

(4) Include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs.

(b) Any termination of a lease or refusal to renew a lease for a County-Assisted Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Borrower specifying the grounds for the action.

Section 4.7 Annual Operating Budget; Operating Deficiencies.

(a) Borrower, at least sixty (60) days prior to the end of each of Borrower's fiscal years, shall furnish the County a budget for the operation of the Development (the "Annual Operating Budget"). The County may request additional information to assist the County in evaluating the financial viability of the Development. Upon receipt by the County of the proposed Annual Operating Budget, the County shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Annual Operating Budget is not approved by the County, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall thereafter submit a revised Annual Operating Budget for County approval within thirty (30) days, which approval shall be granted or denied within fifteen (15) days in accordance with the procedures set forth above.

(b) Borrower shall promptly notify the County upon Borrower's discovery that Borrower's rental income and other Development subsidies are insufficient to pay for any or all operating expenses incurred by Borrower in connection with the operations of the Development.

Section 4.8 Additional County Requirements.
Borrower shall comply with all applicable laws and regulations governing the use of the County Loan including but not limited to, the requirements of the Implementation Policies, this Agreement, and the County Contract.

ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities.

Borrower is responsible for all management functions with respect to the Development, 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 Development. Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform Borrower's management duties hereunder. An on-site property management representative is required to reside at the Property.

Section 5.2 Management Agent.

Borrower shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). Borrower shall submit for the County's approval the identity of any other proposed Management Agent. 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 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. The County may also approve Borrower's self-management of the Development.

Section 5.3 Periodic Performance Review.

The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the

Development. The purpose of each periodic review will be to enable the County to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. Borrower shall cooperate with the County in such reviews.

Section 5.4 Replacement of Management Agent.

If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the County shall deliver written notice to Borrower of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Borrower of such written notice, County staff and Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the Management Agent, Borrower shall promptly dismiss the current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Borrower shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.5 below.

Section 5.5 Approval of Management Plan.

Prior to execution of this Agreement, Borrower has submitted its written management plan with respect to the Development to the County and shall amend the plan in any way necessary to ensure that the plan complies with the provisions of this Agreement.

Section 5.6 Property Maintenance.

(a) County Standards. The County places prime importance on quality maintenance to protect its investment and to ensure that all County-assisted housing projects within the County are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Development will be acceptable to the County assuming Borrower agrees to provide all necessary improvements to assure the Development is maintained in good condition. Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(b) Maintenance Requirements. For the entire Term of this Agreement Borrower shall maintain all interior and exterior improvements, including landscaping, on the Property in decent, safe and sanitary condition, and good condition and repair (and, as to landscaping, in a healthy condition), 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. Borrower shall cause the Development to be free of all health and safety defects. Borrower shall correct any life-threatening maintenance deficiencies, immediately upon notification.

(c) Violation of Maintenance Requirements. In the event that Borrower breaches any of the covenants contained in this section and Borrower does not commence to cure such breach within (i) a period of five (5) business days after written notice from County (and diligently prosecute such cure to completion within ten (10) business days following such notice) with respect to graffiti, debris, waste material, landscaping and general maintenance or (ii) or a period of ten (10) business days after written notice from the County (and diligently prosecute such cure to completion within sixty (60) days following such notice) with respect to building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Development and the Borrower's interest in the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Development and the Borrower's interest in the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Development and the Borrower's interest in the Property, and to attach a lien on the Development and the Borrower's interest in the Property, or to assess on the Development and the Borrower's interest in the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, which amount shall be promptly paid by Borrower to the County upon demand.

Section 5.7 Inspections.

(1) The County shall have the right but not the obligation to perform an on-site inspection of the Development when deemed necessary by the County, upon reasonable notice to Borrower to ensure compliance with the requirements of the Loan Documents. Borrower agrees to cooperate in such inspection.

(2) After the completion of an inspection, the County shall deliver a copy of the inspection report to Borrower. If the County determines as a result of such inspection that there are any life-threatening health and safety related deficiencies, Borrower has the obligation to correct such deficiencies immediately. If the County determines as a result of the inspection that there are any deficiencies for any of the inspectable items in the Development, Borrower shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. In addition, Borrower acknowledges that the County may reinspect the Development to verify all deficiencies have been corrected or rely on third party documentation submitted by Borrower for non-hazardous deficiencies.

Section 5.8 Asset Management.

Borrower is responsible for all asset management functions with respect to the Development, including, without limitation, the oversight of the Management Agent, maintaining accurate and current books and records for the Development, and promptly paying costs incurred in connection with the Development. The County shall have no responsibility over asset management of the Development.

ARTICLE 6
MISCELLANEOUS

Section 6.1 Nondiscrimination.

(a) Borrower covenants by and for Borrower, its assigns, and all persons claiming under or through Borrower, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, familial status, source of income, ancestry or national origin, Vietnam era veteran's status, political affiliation, HIV/AIDS, or any other arbitrary basis, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Borrower or any person claiming under or through 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. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b).

(b) Nothing in this Section prohibits Borrower from requiring County-Assisted Units in the Development to be available to and occupied by eligible households in accordance with this Agreement.

(c) Borrower shall 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. 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 Borrower apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

Section 6.2 Application of Provisions.

The provisions of this Agreement shall apply to the Development and the Borrower's interest in the Property for the entire Term, even if the entire County Loan is paid in full prior to the end of the Term. This Agreement binds any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County makes the County Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

Section 6.3 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the County, and (iv) a statement that a public hearing may be held by the County on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Borrower shall also file a copy of the above-described notice with the Housing Director.

(b) In addition to the notice required above, Borrower shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the Housing Director) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.4 Covenants to Run With the Land.

The County and 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 Development; provided, however, that on the expiration of the Term, said covenants and restrictions expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or the Borrower's interest in the Property or any portion thereof, is to 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 Development or the Borrower's interest in the Property from the requirements of this Agreement.

Section 6.5 Enforcement by the County.

If Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified 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 sixty (60) days, 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) Calling the County Loan. The County may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Deed of Trust.

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

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

Section 6.6 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 reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.7 Recording and Filing.

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

Section 6.8 Governing Law.

This Agreement is governed by the laws of the State of California.

Section 6.9 Waiver of Requirements.

Any of the 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.

Section 6.10 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 Official Records of the County of Alameda. Any legal fees incurred due to any amendment of this Agreement, or any of the Loan Documents, shall be paid for by the Borrower.

Section 6.11 Notices.

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 Alameda
Housing and Community Development Department
224 W. Winton Avenue, Room 108
Hayward, CA 94544
Attention: Housing Director

Borrower:

[Insert Borrower's Contact Information]

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).

Section 6.12 Severability.

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

Section 6.13 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.

Section 6.14 Term.

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

[Signatures on following page.]

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

COUNTY:

COUNTY OF ALAMEDA, a political subdivision of the State of California

By:_ ______________________________________

Michelle Starratt, Director
Housing and Community Development Department

BORROWER:

[Insert Borrower's Signature Blokc]

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

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 OF THE PROPERTY

Real property in the City of _________________ County of Alameda, State of California, described as follows:

EXHIBIT B

I, the Undersigned, certify that I have read and answered fully, and truthfully each of the following questions for all persons in the household who are to occupy a room in this house for which application is made.

Occupant ' s Name	Social Security #	Age	Place of Employment	Annual Income
1.				
2.				
3.				
4.				
5.				
6.				
7.				
			TOTAL:	

The total anticipated annual household income* for the twelve (12) month period beginning this date (the sum of the final column): $ ____________________.

Signed:_________________________ Date: ____________________
Head of Household

* The anticipated annual Income as determined by Attachment A.

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Owner's Certification of Household Income

Household Name ______________________

I certify, as Owner/Management Agent for ___________________________ that I have verified this Household's Income by using the following:

1. Tax returns ____________________
2. Place of employment verification ____________________
3. Pay stubs ____________________
4. Notarized statement from lessee ____________________
5. Other (please describe) ____________________

____
Owner/Management Agent

____
Date