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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

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Alameda County **HOPWA/HOME** Loan)

PROJECT NAME

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of **January __, 2012**, by and between the County of Alameda, a political subdivision of the State of California ("County"), and **PROJECT NAME, L.P.**, a **California limited partnership ("Borrower")**.

RECITALS

A. Pursuant to the Loan Agreement (as defined in Section 1.1 below) the County will provide to Borrower a loan of **One Million Five Hundred Fifty- Four Thousand Five Hundred Seventy-Six Dollars (\$1,554,576)** consisting of **One Million Fifty Six Thousand Five Hundred and Seventy Six Dollars (\$1,054,576)** of HOME Funds and **Five Hundred Thousand Dollars (\$500,000)** of HOPWA Funds to rehabilitate the real property located at **ADDRESS _____**, County of Alameda, State of California, as more particularly described in **Exhibit A** attached hereto (the "Property"), consisting of **sixty-nine (69)** rental units, including one (1) unrestricted manager's units. Capitalized terms used but not defined in this Agreement have the meanings set forth in the Loan Agreement.

B. **The County Loan is funded with (i) Housing Opportunities for Persons with AIDS funds in the amount of Five Hundred Fifty-Six Thousand Nine Hundred Twenty-Five Dollars (\$500,000) ("HOPWA Funds"), received by the County as a subrecipient of the City of Alameda, as representative for the Alameda-Contra Costa County Eligible Metropolitan Area, pursuant to the AIDS Housing Opportunity Act (42 U.S.C. 12901, et. seq.), as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 5301, et. seq.) and with (ii) Home Investment**

Comment [A1]: Remove references to the funding source that is not in the project.

Partnerships Act funds from HUD pursuant to the Cranston-Gonzalez National Housing Act of 1990 in the amount of Six Hundred Eighty-Five Thousand Dollars (\$1,054,576) ("HOME Funds") which must be used by the County in accordance with 24 C.F.R. Part 92.

C. 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 and the Loan Agreement.

D. In consideration of receipt of the County Loan at an interest rate substantially below the market rate, Borrower has further agreed to observe all the terms and conditions set forth below.

E. 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.

THEREFORE, County and 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 defined under the Section 8 Housing Assistance Payment programs in 24 CFR 5.609 and calculated pursuant to 24 CFR 5.611, and as further referenced in 24 CFR 574.310(d)(1) for the HOPWA Units and 24 CFR 92.203(b)(1) for the HOME Units.

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

(d) "Borrower" means PROJECT NAME, L.P., a California limited partnership, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

(e) "Certificate Notice" means the document to be recorded by Borrower upon issuance of the final certificate of occupancy by the City for the Development, which recites the date of issuance of the final certificate of occupancy for the purposes of determining the Term of this Agreement.

(f) "City" means the City of Alameda, California.

(g) "County-Assisted Units" means the six (6) HOME Units and nine (9) HOPWA Units whose occupancy and rental charges are restricted pursuant to this Agreement.

(h) "County Deed of Trust" means the deed of trust dated of even date herewith, by and among Borrower, as trustor, First American Title Company, as trustee and the County, as beneficiary, to be recorded against title to the Property which secures repayment of the County Loan and the performance of the Loan Agreement and this Agreement.

(i) "County Loan" means all funds loaned to Borrower by the County pursuant to the Loan Agreement.

(j) "County Note" means the promissory note from the Borrower to the County, dated of even date herewith, evidencing the County Loan.

(k) "Development" means the Property and the Improvements.

(l) "HOME" means the Home Investment Partnerships Act Program pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 USC 12705 et seq.) as amended.

(m) "HOME Regulations" means the regulations governing the use of HOME funds as set forth in 24 CFR Part 92.

(n) "HOME Reporting Term" means the period beginning on the date of this Agreement and ending on the twentieth (20th) anniversary of the date of this Agreement.

(o) "HOME Unit" means one of the six (6) Units subject to the occupancy and rent restrictions set forth in Section 2.2 (a) and 2.3(b) below.

(p) "HOPWA" means the Housing Opportunities for Persons with AIDS program pursuant to the AIDS Housing Opportunity Act (42 USC 12901, et seq.), as amended by the Housing and Community Development Act of 1992 (42 USC 5301, et seq.).

(q) "HOPWA Eligible Household" means a household that includes at least one Person with HIV/AIDS.

(r) "HOPWA Regulations" means the regulations governing the use of HOPWA funds as set forth in 24 CFR Part 574.

(s) "HOPWA Term Rent" means the maximum allowable rent for a HOPWA Unit pursuant to Section 2.2(a) below.

(t) "HOPWA Term" means the period beginning on the date of this Agreement and ending on the twentieth (20th) anniversary of the date of this Agreement.

(u) "HOPWA Unit" means one of the nine (9) Units restricted to occupancy by a HOPWA Eligible Household.

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

(w) "Improvements" means the sixty-two (62) residential units, including one (1) manager's unit, to be rehabilitated on the Property, as well as any additional improvements, and all landscaping, roads and parking spaces to be constructed thereon, as the same may from time to time exist.

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

(y) "Low HOME Rent" means a monthly Rent amount not exceeding the maximum rent published by HUD for a Very Low Income Household for the applicable bedroom size as set forth in 24 CFR 92.252(b).

(z) "Low Income Household" means a Tenant household with an Adjusted Income that does not exceed eighty percent (80%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty percent (80%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as such definition may be amended as set forth in 24 CFR 574.3 and 24 CFR 92.2.

(aa) "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 the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

(bb) "Person with HIV/AIDS" means a person with the disease of acquired immunodeficiency syndrome or any conditions arising from the etiological agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV), as confirmed by a certification of HIV-positive test status to be delivered to and maintained on file by the Borrower as such definition may be amended as set forth in 24 CFR 574.3.

(cc) "Property" has the meaning set forth in Recital A.

(dd) "Remainder Term" means the period commencing on the date of the expiration of the HOPWA Term and continuing until the expiration of the Term.

(ee) "Rent" means the total of monthly payments by the Tenant of a 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.

(ff) "Social Services Plan" means the Social Service Plan approved by County pursuant to Section 3.8 of the Loan Agreement.

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

(hh) "TCAC 50% Rent" means the maximum rent published by TCAC for a "50% Income Household" in Alameda County for the applicable bedroom size.

(ii) "TCAC 60% Rent" means the maximum rent published by TCAC for a "60% Income Household" in Alameda County for the applicable bedroom size.

(jj) "Tenant" means a household legally occupying a Unit.

(kk) "Term" means the term of this Agreement which commences as of the date of this Agreement, and continues until the later of: (i) December 1, 2066; (ii) or repayment in full of the County Loan and all interest due thereon.

(ll) "Unit" means one of the sixty-two (62) rental units included in the Development, excluding the one (1) manager's units.

(mm) "Very Low Income Household" means a household with an Adjusted Income that does not exceed fifty percent (50%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty percent (50%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

(a) HOME Units. During the Term, Borrower shall rent six (6) studio units to, and shall ensure that these Units are occupied by, or if vacant available for occupancy by, Very Low Income Households.

(b) HOPWA Units.

(1) HOPWA Term. During the HOPWA Term, Borrower shall rent nine (9) studio units to, and ensure that these units are occupied by, or if vacant, available for occupancy by Very Low Income Households, who are also HOPWA-Eligible Households.

(2) Remainder Term. HOPWA Units that become vacant during the Remainder Term may be made available for occupancy by Very Low Income Households, which households are not required to be HOPWA-Eligible Households.

(c) Intermingling of Units. The County-Assisted Units shall be intermingled throughout the Development and be of comparable quality to all other Units on the Property. Tenants in all Units shall have equal access to and enjoyment of all common facilities in the Development.

2.2 Allowable Rent.

(a) HOME Unit Rent. Subject to the provisions of Section 2.3 (b) below, the Rent paid by Tenants of the HOME Units shall not exceed the Low HOME Rent.

(b) HOPWA Unit Rent.

(1) HOPWA Term Rent. During the HOPWA Term, subject to the provisions of Section 2.3 (a) below, the total monthly charges for Rent (including utility allowance) paid by Tenants of the HOPWA Units shall be the higher of the following amounts:

(A) thirty percent (30%) of the household's monthly Adjusted Income, as adjusted pursuant to 24 CFR 574.310(d)(1);

(B) ten percent (10%) of the household's monthly gross income; or

(C) if the household is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the household's actual housing costs, is specifically designated by the agency to meet the household's housing costs, the portion of the payments that is so designated.

(2) Remainder Term Rent. During the Remainder Term:

(A) subject to the provisions of Section 2.3(a), the Rent paid by any new Tenant in a HOPWA Unit shall not exceed the TCAC 50% Rent.

(B) The Rent paid by a HOPWA Eligible Household residing in a HOPWA Unit will remain subject to Section 2.2(b)(1).

(c) No Additional Fees. The 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.

2.3 Rent Increases; Increased Income of Tenants.

(a) **HOPWA Units.**

(1) **Rent Increases.** Initial Rents and subsequent Rents for all HOPWA Units shall be approved by the County prior to occupancy and are subject to the HOPWA Regulations during the HOPWA Term. All rent increases for all HOPWA Units shall also be subject to County approval. The Borrower may increase the Rent of a Tenant residing in a HOPWA Unit only once each year and in an amount not to exceed five percent (5%) per year. Tenants shall be given at least sixty (60) days written notice prior to any Rent increase. The County shall provide the Borrower with a schedule of maximum permissible Rents for the HOPWA Units when requested.

(2) **Increased Income of HOPWA Eligible Household During HOPWA Term.** Subject to Section 2.3(a)(1) above, in the event that, upon recertification of the income of a HOPWA Eligible Household during the HOPWA Term, the Borrower determines that the Tenant has an Adjusted Income exceeding the maximum qualifying income of a Very Low Income Household, the Tenant may continue to occupy the Unit and be charged rent consistent with Section 2.2(b)(1) above. The Borrower shall then rent the next available HOPWA Unit to a Very Low Income Household that is also a HOPWA Eligible Household to comply with the requirements of Section 2.1(b) above.

(3) **Increased Income of Tenant During Remainder Term.** Subject to Section 2.3(a)(1) above, in the event that, upon recertification of the income of a Tenant of a HOPWA Unit, the Borrower determines that the Tenant has an Adjusted Income exceeding the maximum qualifying income of a Very Low Income Household but does not exceed the qualifying limit for a Low Income Household, the Tenant may continue to occupy the Unit and, upon sixty (60) days written notice to the Tenant, the Borrower may increase the Tenant's Rent to the TCAC 60% Rent. The Borrower shall then rent the next available Unit to a Very Low Income Household to comply with the requirements of Section 2.1 above.

(4) **Non-Qualifying Household During Remainder Term.** Subject to Section 2.3(a)(1) above, if, upon recertification of the income of a Tenant of a HOPWA Unit, the Borrower determines that a former Very Low Income Household has an Adjusted Income exceeding the maximum qualifying income for a Low Income Household, such Tenant shall be permitted to continue occupying the HOPWA Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and the Borrower shall rent the next available Unit to a Very Low Income Household to meet the requirements of Section 2.1(b) above.

(5) **Termination of Occupancy.** Upon termination of occupancy of a HOPWA Unit by a Tenant, such Unit will be deemed to be continuously occupied by a HOPWA Eligible Household if termination occurs during the HOPWA Term, and by a household of the same income level of the vacating Tenant, until such Unit is reoccupied, at which time the character of the Unit will be determined to meet the occupancy requirements of Section 2.1(b) above.

(b) **HOME Units.**

(1) Rent Increases. Initial Rents and Subsequent Rents for all HOME Units are subject to County approval and are subject to the HOME Regulations. All rent increases for all HOME Units are also subject to County approval. Rent may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year, provided, however, if the Rent required to be charged to Tenants by Section 2.3(b)(3) results in a greater than five percent (5%) annual increase, Borrower shall charge the Rent required by Section 2.3(b)(3). Borrower will provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant

(2) Increased Income above Very Low but below Low Income Limit Subject to Section 2.3 (b)(1) above, in the event that, upon recertification of the income of a Tenant of a HOME Unit, the Borrower determines that the Tenant no longer qualifies as a Very Low Income Household, but does qualify as a Low Income Household, the Tenant may continue to occupy the Unit and the Tenant's rent shall remain at the Low HOME Rent. The Borrower shall then rent the next available Unit to a Very Low Income Household, at a Rent not exceeding the maximum Rent specified in Section 2.2(a), or re-designate another Unit in the Development with a Very Low Income Household as a HOME Unit, to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1(a) or re-designating another Unit in the Development with a Very Low Income Household as a HOME Unit, the Unit with the over-income Tenant will no longer be considered a HOME Unit.

(3) Non-Qualifying Household. If, upon recertification of the income of a Tenant of a HOME Unit, the Borrower determines that a former Very Low Income Household has an Adjusted Income exceeding the maximum qualifying income for a Low Income Household, such Tenant shall be permitted to continue occupying the Unit and upon expiration of the Tenant's lease and upon sixty (60) days written notice, the Rent shall be increased to the lesser of one-twelfth (1/12th) of thirty percent (30%) of the actual Adjusted Income of the Tenant, or fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements), and the Borrower shall rent the next available Unit to a Very Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2 (a), or re-designate another Unit in the Development with a Very Low Income Household as a HOME Unit, to meet the requirements of Section 2.1 (a) above. Upon renting the next available Unit in accordance with Section 2.1 (a) or re-designating another Unit in the Development with a Very Low Income Household as a HOME Unit, the Unit with the Non-Qualifying Household will no longer be considered a HOME Unit.

(4) Termination of Occupancy. Upon termination of occupancy of a HOME Unit by a Tenant, such Unit shall be deemed to be continuously occupied by 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(a) above.

2.4 Cure for AIDS.

If, in the reasonable determination of the County, there is a cure for AIDS and therefore no need for the HOPWA Units, the County and Borrower agree that the HOPWA Units shall be restricted to Very Low Income Households and the rents governed by Section 2.2(b)(2), and the HOPWA Units shall be treated as County-Assisted Units occupied during the Remainder Term.

2.5 Income and Rent Calculations.

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

2.6 Disabled Persons Occupancy; Compliance with Accessibility Requirements.

(a) The Development shall be operated at all times in compliance with the provisions of: (i) the Unruh Act; (ii) the California Fair Employment and Housing Act; (iii) Section 504 of the Rehabilitation Act of 1973(29 U.S.C. 794)("Section 504"); (iv) the United States Fair Housing Act, as amended; and (v) any other applicable law or regulation (including the Americans With Disabilities Act, to the extent applicable to the Development).

(b) Borrower shall rehabilitate the Improvements in compliance with all applicable federal and state disabled persons accessibility requirements, including, but not limited to, the Federal Fair Housing Act; Section 504 and its implementing regulations (24 CFR 8); Title II and/or Title III of the Americans with Disabilities Act of 1990; and Title 24 of the California Code of Regulations. In compliance with Section 504, a minimum of four (4) Units shall be fully accessible to households with a mobility impaired member and an additional two (2) Units shall be fully accessible to hearing and/or visually impaired persons. The Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Development complies with all federal and state accessibility requirements applicable to the Development as required by Section 504.

(c) Borrower agrees to indemnify, protect, hold harmless and defend (by 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 applicable legal requirements related to housing for persons with disabilities. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

ARTICLE 3 INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

(a) 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. 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. 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 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 available to the County upon request.

(b) For each HOPWA Unit during the HOPWA Term, Borrower will confirm and maintain on file, immediately prior to initial occupancy and annually thereafter, a certification that the HOPWA Unit is occupied by a HOPWA Eligible Household.

3.2 Reporting Requirements.

Upon completion of the rehabilitation, Borrower shall submit to the County quarterly Development status reports for the first two (2) years of Development operation no later than ninety (90) days after the end of each quarter. Thereafter, 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) A statement of the fiscal condition of the Development, including a financial statement indicating surpluses or deficits in operating accounts for the period covered, a detailed itemized listing of income and expenses, and the amounts of any Development reserves. The report due after the end of each fiscal year shall contain an audited version of this statement. Such audit shall be prepared in accordance with the requirements of the County and certified at the Development's expense by an independent Certified Public Accountant licensed by the State of California. The Borrower shall also follow audit requirements of the Single Audit Act and OMB Circulars A-122 and 110 as set forth in 24 CFR 574.605 and other audit requirements of 24 CFR 574.650 and 24 CFR 92.506.

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

(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) The number of Tenants receiving services for each year; and
- (3) General management performance, including Tenant relations and other relevant information.

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 in order to comply with reporting requirements of HUD, (provided, however, that the Borrower shall in no event be obligated to provide any information that it cannot legally obtain as a housing provider), the State of California, or any other government entity or lender to Borrower.

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.

3.4 Records.

Borrower shall maintain complete, accurate and current records pertaining to the Development, 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 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.

3.5 HOPWA Record Requirements.

For the period of the HOPWA Term, all records maintained by Borrower pursuant to Sections 3.2 and 3.4 above shall be (i) maintained in compliance with all applicable HUD records and accounting requirements (including those set out in 24 CFR 574.450 and 24 CFR 574.530), and (ii) open to and available for inspection and copying by HUD and its authorized representatives at reasonable intervals during normal business hours; provide however, records pertaining to Tenant income verifications, Rents, and Development inspections shall be subject to HUD inspection for five (5) years after expiration of the HOPWA Term.

3.6 HOME Record Requirements.

For the period of the HOME Reporting Term, all records maintained by Borrower

Pursuant to Section 3.2 and 3.4 above shall be (i) maintained in compliance with all applicable HUD records and accounting requirements, and (ii) open and available for inspection and copying by HUD and its authorized representatives at reasonable intervals during normal business hours; provided, however, records pertaining to Tenant income verifications, Rents and Development inspections shall be subject to HUD inspection for five (5) years after expiration of the HOME Reporting Term. Borrower is subject to the audit requirements set forth in 24 CFR 92.506 during the HOME Reporting Term.

3.7 On-site Inspection.

The County shall have the right to perform an on-site inspection of the Development when deemed necessary by the County, in any event at least one (1) time per year upon reasonable notice to the Borrower. Borrower agrees to cooperate in such inspection.

ARTICLE 4
OPERATION OF THE DEVELOPMENT

4.1 Residential Use.

The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

4.2 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 line 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.

4.3 Property Tax Exemption.

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

4.4 Notice of Operations.

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 the Borrower in connection with the operations of the Development.

4.5 Tenant Selection Plan.

Borrower shall not make material modifications to its tenant selection plan without the prior written approval of the County, which approval shall not be unreasonably withheld.

ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The 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. The Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required.

5.2 Management Agent.

The Development 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 Development 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 (and the County hereby pre-approves the John Stewart Company, as the initial 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 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. The Borrower shall cooperate with the County in such reviews.

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 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 the 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 6.7 below.

5.5 Approval of Management Policies.

The Borrower shall submit its written management policies with respect to the Development 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.

5.6 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, and in accordance with the following maintenance conditions:

The County places prime importance on quality maintenance to protect its investment and to ensure that all County and County-assisted affordable 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 the Borrower agrees to provide all necessary improvements to assure the Development is maintained in good condition. The Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that the Borrower breaches any of the covenants contained in this section and such default continues for a period of five business (5) days after written notice from County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after

written notice from the County with respect to landscaping and 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 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 Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess 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 the Borrower to the County upon demand.

5.7 Asset Management.

The 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

6.1 Lease Provisions.

(a) Lease Provisions.

In leasing the Units, Borrower shall use a form of Tenant lease approved by the County. The form of Tenant lease shall comply with all requirements of this Agreement and the Loan Agreement, and shall, 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, (ii) to qualify as a Very Low Income Household 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, and provide for no increase in Rent during such year. 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 2.6 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) shall not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any amendments thereto.

(b) HOPWA Lease Termination.

(A) Any termination of a lease or refusal to renew a lease for a HOPWA Unit must be in conformance with 24 CFR 574.310(e) during the HOPWA Term, and must be preceded by not less than sixty (60) days written notice to the Tenant by the Borrower specifying the grounds for the action.

(B) During the HOPWA Term, the Borrower shall ensure that surviving members of a household that included a Person with HIV/AIDS at the time of his or her death shall be permitted continued occupancy and receipt of supportive services for a reasonable period of up to one (1) year from the time of the death, and shall be provided with notice of their grace period and with assistance to obtain information about other available housing assistance programs. In addition, in the event such surviving members of a household would be eligible for occupancy in one of the other Units on the Property, upon approval from the Borrower, such surviving members may remain in their current Unit and the next available Unit on the Property shall become a HOPWA Unit.

(C) Borrower's form of Tenant lease shall provide for termination of the lease and consent by the Tenant of a HOPWA Unit during the HOPWA term to immediate eviction for failure to qualify as a HOPWA-Eligible Household when and if applicable as a result of any material misrepresentation made by such Tenant with respect to HIV/AIDS status.

(c) **HOME Lease Termination.** Any termination of a lease or refusal to renew a lease for a HOME Unit must be in conformance with 24 CFR 92.253(c) and must be preceded by not less than sixty (60) days written notice to the Tenant by the Borrower specifying the grounds for the action.

6.2 **Nondiscrimination.**

(a) All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Borrower shall not give preference to any particular class or group of persons in renting or selling the Units, except to the extent that the Units are required to be leased to income eligible households and **HOPWA-Eligible** Households pursuant to this Agreement. The Borrower herein covenants by and for Borrower, assigns, and all persons claiming under or through the Borrower, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, 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) 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 is 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 Development which have the effect of precluding occupancy of units by such prospective Tenants.

6.3 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.

6.4 Compliance with Loan Agreement and Program Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with:

- (1) all requirements of the Loan Agreement;
- (2) all requirements imposed on projects assisted under HOME;
- (3) all requirements imposed on projects assisted under the HOPWA Program as contained in 42 U.S.C. Section 12901, et seq., 24 C.F.R. Part 574, and other implementing rules and regulations;

(b) During the HOPWA term Borrower shall comply with the following for HOPWA Eligible Households:

- (A) ensure the confidentiality of the name of any HOPWA Eligible Household receiving assistance through this project pursuant to 24 CFR 574.440;
- (B) ensure that qualified service providers in the area make available appropriate supportive services to HOPWA Eligible Households pursuant to 24 CFR 574.310(a)(1);

(C) conduct an ongoing assessment of the services required by HOPWA Eligible Households pursuant to 24 CFR 574.500(b)(2); and

(D) provide the County a Social Services Plan for review detailing the services provided to HOPWA Eligible Households.

(c) Borrower shall ensure that the Development meets the Housing Quality Standards pursuant to 24 CFR 92.251 and 24 CFR 574.310(b) throughout the Term.

6.5 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 of the County.

(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 County 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.

6.6 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 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.

6.7 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 ninety (90) 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 County Note, accelerate the indebtedness evidenced by the County Note, and proceed with foreclosure under the County 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 Agreement. The County may exercise any other remedy provided under the Loan Agreement.

6.8 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.

6.9 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.

6.10 Governing Law.

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

6.11 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.

6.12 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 Alameda.

6.13 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:

PROJECT NAME, L.P.
PROJECT'S ADDRESS
Attn: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate 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).

6.14 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.

6.15 Multiple Originals; Counterparts.

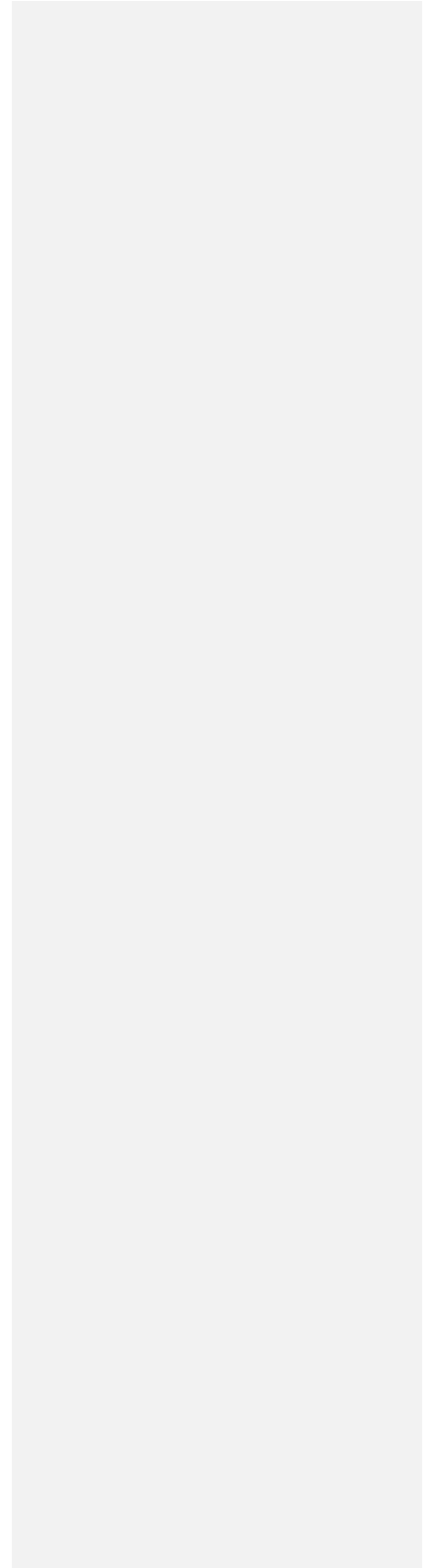
This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.16 HOME Revival of Agreement After Foreclosure.

This Agreement shall be revived according to its original terms if, during the original Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that

includes the former owner or those with whom the former owner has or had business ties, obtains an ownership interest in the Development or Property.

Remainder of Page Left Intentionally Blank



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: _____
Linda Gardner, Housing Director
Housing & Community Development
Department

BORROWER:

PROJECT NAME, L.P.,
a California limited partnership

By: ENTITY
a California non-profit public benefit
corporation
its sole member/manager
By: _____
NAME
Executive Director

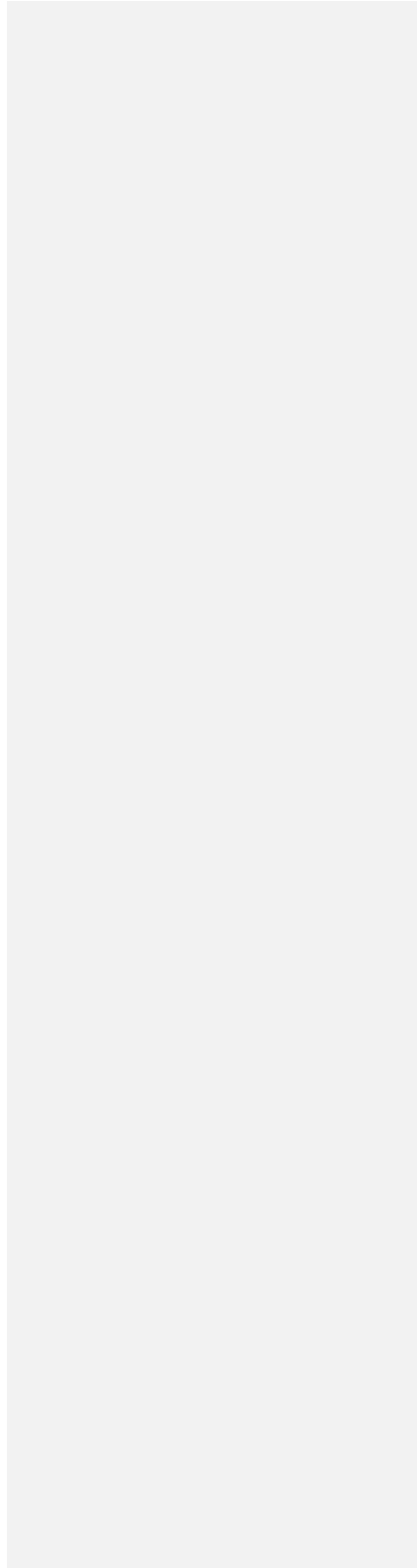


EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

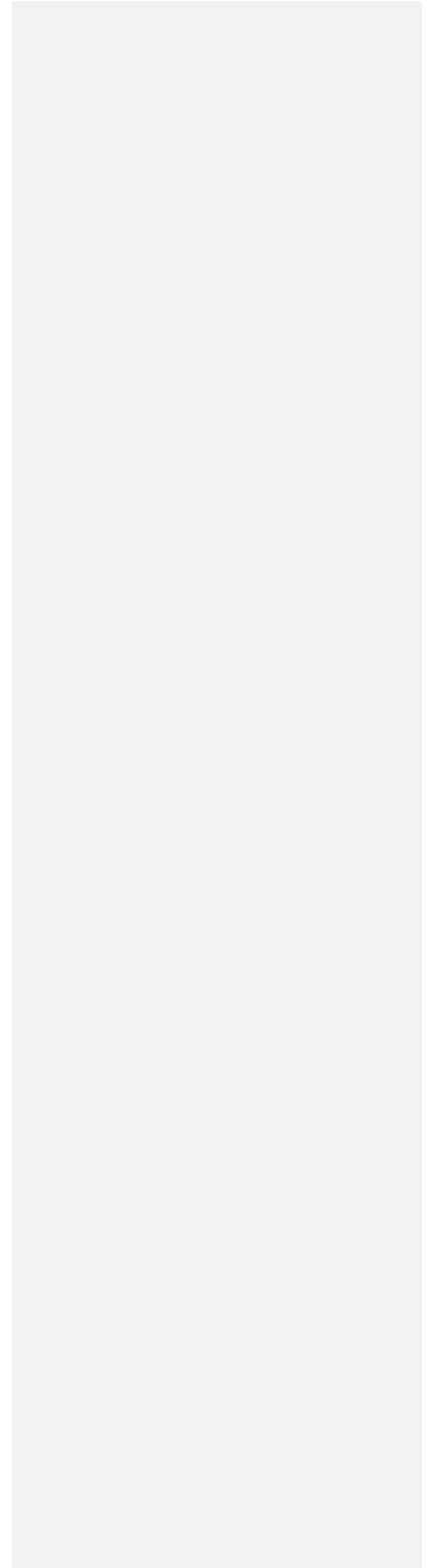


EXHIBIT B

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.

<u>Occupant 's Name</u>	<u>Social Security #</u>	<u>Age</u>	<u>Place of Employment</u>	<u>Annual Income</u>
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.

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

