

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

DECEMBER 15, 2020

TITLE:

**APPROVE A \$3,170,547 LOAN
AGREEMENT WITH LEGACY SQUARE LP
FOR A 55-YEAR TERM FOR THE
DEVELOPMENT OF THE LEGACY SQUARE
AFFORDABLE HOUSING PROJECT;
APPROVE A SUBORDINATION
AGREEMENT WITH BANK OF AMERICA,
N.A.; APPROVE A FUTURE
SUBORDINATION AGREEMENT WITH
STATE OF CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT; APPROVE A
RESOLUTION APPROVING THE ISSUANCE
OF BONDS
(NON-GENERAL FUND)**

/s/ Kristine Ridge

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

1. Authorize the City Manager to execute a loan agreement with Legacy Square LP (c/o National Community Renaissance of California) for \$3,170,547 in inclusionary housing funds for the development of the Legacy Square affordable housing project located at 609 N. Spurgeon Street, Santa Ana, CA 92701, subject to non-substantive changes approved by the City Manager and City Attorney.
2. Authorize the City Manager to execute a subordination agreement with Bank of America, N.A., for the City's inclusionary housing loan agreement with Legacy Square LP, subject to non-substantive changes approved by the City Manager and City Attorney.
3. Authorize the City Manager to execute a future subordination agreement with the State of California Department of Housing and Community Development, for the City's inclusionary housing loan agreement with Legacy Square LP, after the Legacy Square affordable housing project is complete, subject to non-substantive changes approved by the City Manager and City Attorney.
4. Adopt a resolution approving the issuance of revenue bonds by the California Statewide Communities Development Authority in an amount not to exceed \$40,000,000 for the purpose

of financing the acquisition, construction, improvement, and equipping of the Legacy Square affordable housing project located at 609 N. Spurgeon Street, Santa Ana, CA 92701.

EXECUTIVE SUMMARY

Two years ago, City Council approved an award of \$3.1 million in funding for the development of the Legacy Square affordable housing project by National Community Renaissance of California (National CORE). After two years of predevelopment in which National CORE worked with staff to secure all of their remaining sources of financing in their capital stack as a condition of the City's award of funds, staff are now returning to City Council with the City's financing documents required for this project, which include the loan agreement, subordination agreements, and a new TEFRA resolution. The terms of the loan agreement are provided for the City Council to consider approval of the loan agreement. The subordination agreements are required for the senior lenders with funds in the project. Finally, the City's previous TEFRA resolution expired after one year, so a new TEFRA resolution is also included.

DISCUSSION

On January 15, 2019, the City Council approved a pre-loan commitment of \$3,170,547 in inclusionary housing funds for the development of the 93-unit Legacy Square affordable housing project located at 609 N Spurgeon Street, Santa Ana, CA 92701 (Project) to be developed by National Community Renaissance of California (Developer) by a unanimous vote. The \$3,170,547 in funds from the City's Inclusionary Housing Funds are funds generated through the payment of in-lieu fees when developers opt-out of developing affordable housing on-site and instead pay a fee. The staff report from January 15, 2019 (Exhibit 1) and the pre-loan commitment (Exhibit 2), both provide further information on the Project.

After the City Council approves a pre-loan commitment of funding for an affordable housing project, it can often take a substantial amount of time for a developer to secure the remaining financing. The majority of large multi-family affordable housing projects require low-income housing tax credits, which are very competitive for the higher value 9% tax credits with only two application deadlines a year, and more difficult to finance with the lower value 4% tax credits. After almost two years since the Legacy Square Project received a commitment of funding from City Council, the Developer has now secured the remaining financing and is prepared to close on financing prior to the end of the year and begin building the Project.

Specifically, after receiving the pre-loan commitment letter from the City on January 15, 2019, the Developer secured entitlements from City Council on February 5, 2019 and then worked to secure all necessary financing for the construction and operation of the Project. The Developer worked with City staff to submit two applications for Affordable Housing and Sustainable Communities (AHSC) funds available through the State of California Department of Housing and Community Development. On both February 5, 2019, and one year later on February 4, 2020, City Council adopted a resolution supporting the Developer's submittal of a funding application for the AHSC Grant Program in an amount not to exceed \$30 million (Exhibit 3 and 4).

On June 25, 2020, the Strategic Growth Council awarded the Developer \$25,431,865 in AHSC funds. This was the third project in five rounds of funding for the State's AHSC program that has received an award of funds; the Depot at Santiago and Santa Ana Arts Collective were two previous projects that were awarded funds under this competitive funding source. The \$25.4 million award includes approximately \$2,000,000 to develop the surrounding transportation-related improvements around the Project by the City's Public Works Agency. Approximately \$430,000 will also be allocated to transit programs and transit-related amenities to build and operate a bicycle kiosk, car share program, three years of transit passes for each household, and onsite urban greening components. Following their award of AHSC program funds, the Developer applied for 4% tax credits. By September 2020, the Developer had secured all of their necessary financing to develop the Project and must now close on their financing and pull their building permit before their 4% tax credits and AHSC program funds expire.

The inclusionary housing loan agreement is attached as Exhibit 5. The following loan terms are incorporated into the loan agreement:

- **Borrower:** Legacy Square LP (c/o National Community Renaissance of California)
- **Loan Amount:** \$3,170,547 principal amount from the inclusionary housing fund
- **Interest Rate:** 3% simple interest compounded annually
- **Term:** 55 years from the date of issuance of the Certificate of Occupancy for the Project
- **Terms of Repayment:** Repaid from 50% of residual receipts (pro-rata with payments due in connection with other financing provided) calculated after payment of operating expenses including debt service on the senior loan, property management fee, owner administration fee, required reserves, and any deferred developer fee. The borrower shall retain the other 50% of the residual receipts.
- **Disbursement Schedule:** 90% of the funds will be disbursed upfront for the construction, with a 10% contingency.
- **Selection of Tenants:** The Developer shall give preference in leasing units to households that live and/or work in the City of Santa Ana. Implementation of the preference will be monitored by staff in the Community Development Agency.

Regarding the subordination agreement with Bank of America, N.A. (Exhibit 6), the City's total loan for this project is \$3,170,547 compared to Bank of America's larger loan of \$5,258,706. As a subordinate loan for a large affordable housing project such as this, it is not uncommon for a senior lender to request a subordination agreement for the City's smaller loan agreement in order to permit the senior lender to complete their underwriting and commit their private market financing.

Regarding the Subordination Agreement with the State of California Department of Housing and Community Development (HCD), the City's total loan for this project is \$3,170,547 compared to HCD's larger loan of \$15,000,000. HCD requires the City to enter into a subordination agreement. HCD's loan will be disbursed at the permanent loan conversion when the project is complete in approximately a year and a half. Therefore, HCD has not prepared this subordination agreement at this time and it will be provided after the project is complete.

If the loan agreement is not approved by City Council, the Developer will have to decline their award of AHSC Program funds and the Project will not move forward.

Project Description

The Project will be 100% affordable to households earning less than 60% of the Area Median Income (AMI). At least 44 of the units will be affordable to family households earning no more than 30% of the AMI and of those units 33 will be reserved as permanent supportive housing; 31 of the units will be affordable to family households earning no more than 50% of the AMI; 17 of the units will be affordable to family households earning no more than 60% of the AMI; and there will be one manager's unit. There will be a local preference for residents of Santa Ana who live and/or work in the City. The unit mix and rent restrictions are as follows:

	PSH - 30% AMI	30% AMI	50% AMI	60% AMI	Total
1-bedroom	30				30
2-bedroom	3	6	18	11	38
3-bedroom		5	13	6	24
2-bedroom Manager					1
Total	33	11	31	17	93

TEFRA Resolution

On December 17, 2019, the City Council conducted a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing in consideration of the issuance of tax exempt bond financing by the California Statewide Communities Development Authority on behalf of Legacy Square, LP, for the benefit of the Project to finance the acquisition, construction, and improvement of the Project (Exhibit 7). Following the TEFRA hearing, City Council adopted a resolution approving the issuance of revenue bonds by the California Statewide Communities Development Authority in an amount not to exceed \$40,000,000. However, the previous approval is set to expire after one year on December 16, 2020. On December 4, 2020, staff held a public hearing, telephonically, as permitted by the Internal Revenue Service to satisfy the public hearing requirement in light of the COVID-19 pandemic, at which time an opportunity was provided to interested parties to present arguments both for and against the issuance of the revenue bonds. The public hearing was held by staff because the Internal Revenue Service requires the use of a toll-free number and it was an administrative burden for the City to create a toll-free number specifically for this TEFRA resolution. Therefore, as an alternative a staff-level public hearing was held. No public comments were received during the staff-level public hearing and staff are recommending approval of a new resolution for the issuance of the revenue bonds (Exhibit 8).

FISCAL IMPACT

Funds for the conditional grant agreement in the amount of \$2,853,492.30 (90% of the total) are available in the Inclusionary Housing Fund, Loans and Grants account (No. 41718820-69152) for expenditure in the current fiscal year. The remaining \$317,054.70 (10%) will be budgeted and included in the FY 2021-22 annual budget.

The City received a payment of \$896.78 to hold a TEFRA hearing for this project, which was deposited into account No. 01102002-53902.

The bonds to be issued by the California Statewide Communities Development Authority are the sole responsibility of Legacy Square, L.P. The City has no financial or legal liability for the project or repayment of the bonds and does not constitute any type of indebtedness for the City.

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Steven A. Mendoza, Executive Director – Community Development Agency

- Exhibits:
1. Staff Report from January 15, 2019
 2. Pre-Loan Commitment Letter
 3. Staff Report from February 5, 2019 for First AHSC Resolution
 4. Staff Report from February 4, 2020 for Second AHSC Resolution
 5. City Inclusionary Housing Loan Agreement
 6. Subordination Agreement with Bank of America, N.A.
 7. Staff Report from December 17, 2019 for the First TEFRA Hearing
 8. TEFRA Resolution

Exhibit 1: Legacy Square Loan Agreement

<http://clerk/WebLink/DocView.aspx?dbid=1&id=105211&page=1&cr=1>

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Cecilia Iglesias
David Penaloza
Roman Reyna
Vicente Sarmiento
Jose Solorio



CITY MANAGER
Raul Godinez II
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Maria D. Huizar

CITY OF SANTA ANA
SANTA ANA HOUSING AUTHORITY
20 Civic Center Plaza • P.O. Box 22030
Santa Ana, California 92702
(714) 667-2200
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January 15, 2019

Michael Ruane
Executive Vice President
National Community Renaissance
9421 Haven Avenue
Rancho Cucamonga, CA 91730

Larry Haynes
Executive Director
Mercy House Living Centers

Re: Santa Ana United Methodist Church Site
609 N. Spurgeon Street, Santa Ana, CA 92701
Pre-Commitment Letter for: Inclusionary Housing Funds Loan, Project Based Vouchers

Dear Messrs. Ruane and Haynes:

National Community Renaissance of California ("National CORE") and Mercy Housing Living Centers (collectively referred to as "Developer") requested financial assistance in connection with the proposed development of a ninety-three (93) unit affordable housing complex to be located at 609 N. Spurgeon Street, Santa Ana, CA 92701 ("Project").

The City of Santa Ana ("City") and the Housing Authority of the City of Santa Ana ("Housing Authority") have reviewed the Developer's request for assistance, and at the City Council/Housing Authority meeting on January 15, 2019, the City Council and Housing Authority Board authorized and approved issuance of this pre-commitment letter evidencing the preliminary award of (collectively, the "City Assistance"):

- A loan in the maximum amount of \$3,170,547 in inclusionary housing in-lieu fee payments made pursuant to the City's Housing Opportunity Ordinance (Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code) (the "Inclusionary Housing Fund") held by the City of Santa Ana for the Project ("City Loan"); and,

SANTA ANA CITY COUNCIL

Miguel A. Pulido
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mpulido@santa-ana.org

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Cecilia Iglesias
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55A-7

- Eight (8) U.S. Department of Housing and Urban Development-Veterans Affairs Supportive Housing ("HUD-VASH") Project-Based Vouchers ("PBV") for Permanent Supportive Housing for the Project.

This letter shall evidence the Agency's pre-commitment of the City Assistance to the Developer for the Project subject to the conditions described below.

City Loan:

The amount of the proposed City Loan has been determined based upon the City's review of the Developer's request for the receipt of the City Assistance and the development proforma and projected cash flows for the Project submitted by the Developer to the City ("Proforma"). The City Manager and Housing Authority Executive Director has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the City Assistance is not increased or extended.

The City Loan shall include the following terms:

- \$3,170,547 maximum principal amount, or as much thereof as is disbursed for hard and soft costs in constructing the Project, provided from the City of Santa Ana Inclusionary Housing Fund.
- 3% simple interest per annum.
- Repayment from 50% of Residual Receipts (pro-rata with payments due in connection with other financing provided by other public agencies) (after payment of operating expenses, debt service, any deferred developer fee, and partnership fees to be described in the Agreement) with the remaining 50% to be disbursed to the Developer.
- Remaining principal and accrued interest due upon the 55th anniversary of the issuance of Certificate of Occupancy and/or final building permits or earlier upon sale, refinancing or default. On that date, the City agrees to review the performance of the property and consider in good faith any reasonable request by Developer to modify the terms or extend the term of the City Promissory Notes. Additionally, the City will receive a pro rata share of 50% of the net proceeds received from any sale or refinancing of the Project, after payment of outstanding debt and payment in full of any deferred developer fee and establishment of any reserves and transaction costs.
- Cost savings from the Project, if any, will be applied first to pay down the City Loan, subject to compliance with the Tax Credit Allocation Committee ("TCAC") Regulations.

HUD-VASH PBV's:

The Project consists of thirty-three (33) permanent supportive housing units for homeless individuals and families, including eight (8) units to be made available at affordable rents to HUD-VASH eligible homeless veterans for a term of fifty-five (55) years. All individuals and families shall be referred from the Orange County Coordinated Entry System, and are residing or working in the City of Santa Ana as defined under the City's criteria. Efforts shall be made to incorporate ground-level retail as an interface for the forthcoming Orange County Streetcar.

The HUD-VASH PBV's shall include the following terms:

- **Voucher Source:** The eight (8) HUD-VASH PBVs will be funded exclusively out of the tenant-based voucher program annual budget authority received by the Housing Authority from the Department of Housing and Urban Development (HUD).
- **Rents:** The PBV Housing Assistance Payments ("HAP") Contract rents below are preliminary and contingent upon a reasonable rent determination to be conducted at the time of execution of the HAP Contract:
 - 1 Bedroom - \$1,388

In accordance with HUD regulations and the Housing Authority's Housing Choice Voucher Program Administrative Plan, these rents are subject to review prior to the execution of a HAP Contract.

Rents and income requirements for the remaining affordable units shall be based on the requirements of the federal Low Income Housing Tax Credit Program as administered by TCAC.

- **Annual Amount:** The Project will receive PBVs for eight (8) units:

Unit Size	Income Target	No. Units	Proposed Rent	Total Annual Revenue
1-Br	30% AMI	8	\$1,388	\$16,656

The estimated maximum annual amount received under this award is \$133,248. These estimates assume 100% occupancy of the assisted units over the twelve-month period.

- **Term:** The HAP Contract will have a term of twenty (20) years. Any time before the expiration of the HAP Contract, the Developer may request an additional twenty (20) years, subject to a determination by the Housing Authority that it is appropriate to continue providing affordable housing for low-income families or to

expand housing opportunities and HUD funding. Subsequent extensions are subject to the same requirements.

- Units Receiving PBV Assistance: The maximum number of units receiving PBV assistance will be eight (8).

General Provisions:

The City's obligation to provide the City Assistance to the Project is subject to each of the following conditions:

- Developer must provide proof that it has secured all of its remaining financing for the development of the Project before staff will return to the City Council for consideration of the Loan Agreement.
- All provided funding and project requirements shall conform to the City's adopted Affordable Housing Funds Policies and Procedures, unless alternative requirements are expressly provided in the executed Loan Agreement or any other documents related to the development of the Project.
- Approval of all required entitlements and discretionary actions, to allow the construction of a 93-unit affordable housing complex to be located at 609 N. Spurgeon Street, Santa Ana, CA 92701.
- The City's obligation to provide the Loan is and shall remain subject to all covenants, conditions, and restrictions set forth in the Loan Agreement, and in particular City's analysis of the available funding sources and development and operating costs of the Project and the overall economic feasibility of the Project.
- Review and approval of the documents evidencing the City Loan by the City Council, as applicable.
- Execution of HAP Contracts and all necessary documents for the PBV's.

Developer, at its sole cost and expense, will be responsible for securing any and all permits and discretionary approvals that may be required for the Project by the City, Housing Authority, or any other federal, state, or local governmental entity having or claiming jurisdiction over the Property or Project. Notably, this pre-commitment letter shall not obligate the City or any department thereof to approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the construction, rehabilitation, installation or operation of the Project.

This pre-commitment letter for the Project will expire on January 15, 2021.

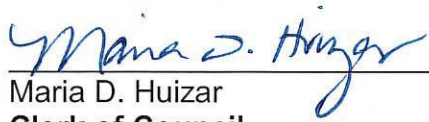
If you have any questions or require any additional information regarding this award letter, please contact Judson Brown, Housing Division Manager, by telephone at (714) 667-2241 or by e-mail at jbrown@santa-ana.org.

Sincerely,



Steven A. Mendoza
Acting City Manager

Attest:



Maria D. Huizar
Clerk of Council

Exhibit 3: Legacy Square Loan Agreement

<http://clerk/WebLink/DocView.aspx?dbid=1&id=105760&page=1&cr=1>

Exhibit 4: Legacy Square Loan Agreement

<http://clerk/WebLink/DocView.aspx?dbid=1&id=115881&page=1&cr=1>

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

When Recorded Mail to:

City of Santa Ana
Clerk of the Council
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702
Attention: Clerk of the Council

SPACE ABOVE THIS LINE FOR RECORDING USE
FREE RECORDING REQUESTED
[Government Code Section 6103]

LOAN AGREEMENT

by and between the

CITY OF SANTA ANA

and

LEGACY SQUARE L.P., a California limited partnership

(609 N. Spurgeon St., Santa Ana, California)

Dated: December 15, 2020

LOAN AGREEMENT INCLUSIONARY HOUSING PROGRAM

THIS LOAN AGREEMENT (“Agreement”) dated, for identification purposes only, as of December 15, 2020, is made and entered into by and between the City of Santa Ana, a charter city and municipal corporation (“City”), and Legacy Square L.P., a California limited partnership (“Developer”) with reference to the following:

RECITALS:

A. The City’s Housing Opportunity Ordinance (“Ordinance”) was originally adopted by the City Council on November 28, 2011 (Ordinance No. NS-2825), and is codified in Article XVIII.I of the Santa Ana Municipal Code (“SAMC”). The Ordinance was amended by the City Council on September 1, 2015 (Ordinance No. NS-2881), and on October 6, 2015 (Ordinance No. NS-2885). The Ordinance established standards and procedures to encourage the development of housing that is affordable to a range of households with varying income levels. Pursuant to SAMC section 41-1904(c), developers may pay an in-lieu fee in certain instances to satisfy the inclusionary requirements. These funds are deposited into the Inclusionary Housing Fund, as defined by SAMC section 41-1901, and are to be used to increase and improve the supply of affordable housing per SAMC section 41-1909.

B. Developer, acting by and through its representative and agent, National Community Renaissance of California (“NCRC”), a California nonprofit public benefit corporation requested financial assistance in connection with the proposed development of a ninety-three (93) unit affordable housing complex (the “Project”) to be located at 609 N. Spurgeon St., Santa Ana, California (to be re-designated as 301 East Santa Ana Boulevard), and legally described within **Exhibit A** attached hereto and incorporated herein (the “Property”). By voluntary decision of the Developer (but subject to restrictions set forth below), at least forty-four (44) of the units will be affordable to family households earning no more than 30% of the Area Median Income (“AMI”) and of those units thirty-three (33) will be reserved as permanent supportive housing (“PSH”); thirty-one (31) of the units will be affordable to family households earning no more than 50% of the AMI; seventeen (17) of the units affordable to family households earning no more than 60% of the AMI; and there will be one (1) manager’s unit. The Project unit mix adopted voluntarily by the Developer consists of:

	PSH - 30% AMI	30% AMI	50% AMI	60% AMI	Total
1-bedroom	30				30
2-bedroom	3	6	18	11	38
3-bedroom		5	13	6	24
2-bedroom Manager					1
Total	33	11	31	17	93

On-site amenities will include a community space. Mercy House Living Centers (“Mercy House”) will manage onsite residential services coordination for all households.

C. The City and the Housing Authority of the City of Santa Ana (“Housing Authority”) reviewed Developer’s request for assistance and at the City Council/Housing Authority meeting on January 15, 2019, the City Council authorized and approved issuance of a conditional, pre-commitment letter evidencing the preliminary award of \$3,170,547 of funds to the Project (“Inclusionary Loan”), to be funded exclusively from the Inclusionary Housing Fund.

D. The amount of the Inclusionary Loan was determined based upon the City’s review of the Developer’s request for the receipt of the Inclusionary Loan and the development proforma and projected cash flows for the Project submitted by the Developer to the City as of January 2019 (“Proforma”). The City Project Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Inclusionary Loan is not materially increased or extended.

E. In furtherance of the Inclusionary Housing Program, Developer has applied to the City for a loan with which to:

1. Acquire, develop and construct the project, and
2. Thereafter to maintain, operate and professionally manage the Project as decent, safe, sanitary and affordable rental housing.

F. The City, on certain terms and conditions, desires to make such Inclusionary Loan to Developer in order to make possible the acquisition, development, construction, ownership, maintenance, and operation of the Project, thereby expanding the supply of decent, safe, sanitary and affordable housing within the City.

G. If there is any inconsistency between Federal, State, and local guidelines with regard to any of the terms and conditions contained herein, the more stringent shall apply.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, City and Developer agree as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Defined Terms.** All capitalized terms used herein, including, without limitation, in the Recitals above and in all other Project Documents, unless otherwise expressly defined, are defined where first used in this Agreement and/or as set forth in this Article 1.

“Administrative General Partner” means Mercy House CHDO, Inc., a California nonprofit public benefit corporation.

"Affordability Restrictions on Transfer of Property" means that certain document affecting real property benefiting the City, attached hereto and incorporated herein as **Exhibit B**.

"Affordable Housing" housing in which households whose incomes qualify them as Extremely Low, Very Low or Low Income, to pay Affordable Rents.

"Affordable Rent" means the monthly rents which do not exceed the maximum amount applicable to Extremely Low, Very Low and Low Income households, as promulgated by the California Tax Credit Allocation Committee (TCAC), or by the State of California, as applicable.

"Agency" means the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the CRL. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. "Agency" shall also refer to the City where the context dictates, to the effect that City shall have all rights granted to the Agency hereunder.

"Building Permit" means the building permit(s) issued by City and required for the construction.

"Business Day" means any Monday, Tuesday, Wednesday, Thursday or Friday on which Santa Ana City Hall is open to the public for the conduct of City affairs.

"Calendar Year" means each consecutive twelve (12) month period from January 1 to December 31.

"Certificate of Completion" has the meaning set forth in Article 17.

"City" means the City of Santa Ana, California, a charter city and municipal corporation. "City" shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder.

"City Project Manager" shall mean the City's Housing Manager and/or his/her designee.

"Close of Escrow" shall mean the date upon which the Affordability Restrictions on Transfer of Property and Inclusionary Deed of Trust are recorded in the Official Records of the County.

"County" means the County of Orange, California.

"Developer" means Legacy Square L.P., a California limited partnership.

"Developer's Representative" shall mean a representative of the Managing General Partner designated from time to time by the Managing General Partner of Developer or his/her designee.

"Escrow" is the escrow opened for the closing of the Senior Loan and Inclusionary City Loan.

"Escrow Holder" is [Fidelity National Title Insurance Company].

"Event of Default" has the meaning set forth in Section 20.1.

"Extremely Low Income" means an adjusted income which does not exceed thirty percent (30%) of the Median Income for the Area, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.

"General Partner" means collectively, jointly and severally, the Administrative General Partner and the Managing General Partner.

"Governmental Authority" means any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and any public utility.

"Hazardous Materials" means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended. Hazardous Material shall not include (i) construction products, household cleaners and office materials of the type and quantity ordinarily used in the normal construction, operation, ownership, occupancy and maintenance of properties similar to the Project or (ii) small amounts of household mold to the extent promptly remediated upon Developer's discovery.

"Housing Authority" means the Housing Authority of the City of Santa Ana (CA093), a public body, corporate and politic.

"HUD" means the United States (U.S.) Department of Housing and Urban Development, and any successors or assigns thereof.

"Improvements" means all improvements and fixtures now and hereafter comprising any portion of the Property, including, without limitation, landscaping, trees and plant materials; and offsite improvements, as required through the City of Santa Ana Planning and Building Agency entitlement process.

"Inclusionary Deed of Trust" means the deed of trust encumbering the Property, in the form attached hereto as **Exhibit C**, to be executed by Developer pursuant to Section 5.B.1 in order to secure the Inclusionary Loan Note.

"Inclusionary Loan" or **"Inclusionary City Loan"** means a loan in the original principal amount of up to three-million, one-hundred seventy thousand five

hundred forty-seven dollars (\$3,170,547) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

"Inclusionary Promissory Note" means that certain promissory note for Inclusionary Loan funds in the original principal amount of \$3,170,547 in the form attached hereto as **Exhibit D**, and to be executed by Developer in favor of City to evidence the obligation of Developer to repay the Inclusionary Loan through residual receipts as further described in the Inclusionary Promissory Note.

"Indemnitees" has the meaning set forth in Section 14.5.

"Investor Limited Partner" means Bank of America, N.A., and Banc of America CDC Special Holding Company, Inc., or its permitted successors or assigns.

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Authority.

"Lien" means any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any lien or security interest.

"Loan Documents" or "Inclusionary Loan Documents" means, collectively, this Agreement, the Inclusionary Promissory Note, the Inclusionary Deed of Trust, and the Affordability Restrictions on Transfer of Property, and any other agreement, document, or instrument that the City reasonably requires in connection with the execution of this Agreement or from time to time to effectuate the purposes of this Agreement.

"Low Income" means an adjusted income which does not exceed eighty percent (80%) of the Median Income for the Area, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD).

"Managing General Partner" means NCRC Legacy MGP, LLC, a California limited liability company.

"Median Income for the Area" means the median income for the Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Loan Documents as "Area Median Income" or "AMI".

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of the Developer, dated as of [____], 2020, as may be amended, modified or supplemented.

"Project" means the construction of the Improvements upon the Property by Developer pursuant to this Agreement.

"Project Budget" means the line-item budget for the Project attached hereto as **Exhibit E**, as modified from time to time in accordance with this Agreement.

"Project Costs" means all costs of any nature incurred in connection with the Project in accordance with generally accepted accounting principles.

"Property" means the property that is located at 609 N. Spurgeon St. in the City of Santa Ana, and as more fully described in the "Legal Description" of the Property attached hereto as Exhibit A and incorporated herein by reference.

"Restricted Units" shall mean units in the Project that are required by the Loan Documents to be operated as Affordable Housing for the Term of Affordability.

"Scope of Work/Schedule of Performance" means the detailed statement of the work to be performed by Developer on and to the Property pursuant to this Agreement, along with the Schedule of Performance setting forth timeframes for certain tasks, which document is attached hereto as **Exhibit F**.

"Senior Lender" means a commercial or institutional financial institution providing the Senior Loan or any other holder of the Senior Loan Note.

"Senior Loan" means a loan from the Senior Lender concurrent to the Inclusionary Loan for payment of a portion of the acquisition and construction costs, and shall include any subsequent loan that permanently refinances the initial Senior Loan.

"Senior Loan Deed of Trust" means the first deed(s) of trust securing the Senior Loan by encumbering the Property.

"Senior Loan Documents" means, collectively, the loan agreement governing the Senior Loan, the Senior Loan Note, the Senior Loan Deed of Trust, and any other agreement, document or instrument that the Senior Lender requires in connection with the Senior Loan.

"Senior Loan Note" means the promissory note evidencing the Senior Loan from the Senior Lender.

"Term of Affordability" means a period of fifty-five (55) years from the date of issuance of the Certificate of Occupancy for the Project, or repayment of the Inclusionary Loan, whichever is longer.

"Very Low Income" means an adjusted income which does not exceed fifty percent (50%) of the Median Income for the Area, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.

1.2 **Singular and Plural Terms.** Any defined term used in the plural in this Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 **References and Other Terms.** Any reference to this Agreement shall include such document both as originally executed and as it may from time to time be

modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include) without limitation."

1.4 **Exhibits Incorporated.** All attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. **[RESERVED]**

3. **SCOPE OF WORK/PROJECT BUDGET**

A "Scope of Work" and "Schedule of Performance" for the Property is attached hereto as **Exhibit F**. Any material change to the Scope of Work/Schedule of Performance requested by the Developer shall be subject to the prior written approval of the City Project Manager. The Scope of Work/Schedule sets forth the construction work that shall be performed on the Property and timeframes for approvals of such work.

A line-item budget for the Project, including a summary of statement of sources and uses of funds, is incorporated into **Exhibit E** ("Project Budget"). Any material change to the Project Budget requested by Developer shall be subject to the prior written approval of the City Project Manager.

4. **[RESERVED]**

5. **INCLUSIONARY LOAN:**

The Inclusionary Loan shall be evidenced by the Inclusionary Promissory Note in the form attached hereto as **Exhibit D**. The Inclusionary Loan shall be secured by the Inclusionary Deed of Trust in the form attached hereto as **Exhibit C**. The terms and conditions of the Inclusionary Loan are as set forth in the Inclusionary Promissory Note. The Term of Affordability for the Project is fifty-five (55) years from the date of issuance of Certificate of Occupancy for the Project, or repayment of the Inclusionary Loan, whichever is longer.

5.1. Inclusionary Funds:

A. Amount and Purpose. Subject to the terms and conditions of this Agreement, City agrees to make a loan to Developer from the Inclusionary Housing Fund in the principal amount of up to \$3,170,547.00 for the acquisition, construction, ownership, operation, rehabilitation and other costs of the Project.

6. **CONDITIONS TO DISBURSEMENT OF LOAN PROCEEDS**

6.1 **Conditions Precedent.** City's obligation to disburse the loan is subject to the satisfaction of the following conditions precedent:

(a) **City Council.** Review and approval of the documents evidencing the Inclusionary Loan by the City Council of the City of Santa Ana. Such approval has occurred as of the City's execution hereof.

(b) **Code Compliance.** Compliance with California Health and Safety Code and applicable regulations set forth in Section 34176. Such compliance has occurred as of the City's execution hereof.

(c) **Environmental Review.** Compliance with and completion of environmental review of the Project pursuant to the California Environmental Quality Act ("CEQA") and approval thereof. Such completion has occurred as of the City's execution hereof.

(d) **Affordability Restrictions.** The funding of \$3,170,547 is from the Inclusionary Housing Fund. Forty-five (45) of the "Housing Units" at the Project shall and will be Restricted Units restricted to affordable rents pursuant to the Maximum Rents published yearly by the California Tax Credit Allocation Committee (TCAC) and referenced in the regulatory agreement containing conditions, covenants and restrictions executed by Developer and TCAC for a period of not less than fifty-five (55) years recorded against the Project in the Official Records, County of Orange, California. Twenty-seven (27) of the units at the Project shall and will be restricted to households earning 30% or less of the AMI and eighteen (18) of the units shall and will be restricted to households earning no more than 50% of the AMI.

(e) **Loan Documents.** Developer shall have delivered to the Escrow Holder, signed by the authorized officer or officers of Developer, with such signature(s) acknowledged where necessary, each of the following documents:

- (i) this Inclusionary Loan Agreement;
- (ii) the Inclusionary Promissory Note (\$3,170,547);
- (iii) the Inclusionary Deed of Trust; and,
- (iv) the Affordability Restrictions on Transfer of Property.

(f) **Title Insurance.** City shall have received an American Land Title Association (ALTA) Extended (LP-10) Loan Policy (6-17-06), or evidence of a commitment therefore satisfactory to City, issued by Fidelity National Title Insurance Company and in form and substance satisfactory to City, together with all endorsements and binders required, naming City as the insured, in a policy amount of not less than the total Inclusionary Loan Amount, showing Developer as the leasehold owner of the Property and insuring the Inclusionary Deed of Trust to be a valid priority lien on the Property. This Agreement, the Inclusionary Promissory Note, and the Inclusionary Deed of Trust shall all be subordinate to the Senior Loan Note and Senior Loan Deed of Trust.

(g) Affordability Restrictions on Transfer of Property. Developer shall have delivered to the Escrow Holder, in the form attached hereto as **Exhibit B**, the Affordability Restrictions on Transfer of Property pursuant to which, among other things, Developer agrees that the Restricted Units shall be used only for decent, safe, sanitary and Affordable Housing pursuant to the affordability requirements of California Health and Safety Code ("H&S") sections 50052.5 and 33334.3, as applicable. The City's Affordability Restrictions on Transfer of Property shall remain in superior position to the Senior Loan Documents and shall not be subordinated.

(h) Documents Recorded. This Loan Agreement, the Inclusionary Deed of Trust and the Affordability Restrictions on Transfer of Property shall have been recorded in the Official Records of the County.

(i) Request for Notice. For the benefit of City, Escrow Holder shall have recorded a request for notice of default of the Senior Loan (the "Request for Notice of Default").

(j) Insurance. City shall have received evidence satisfactory to the City Attorney that all of the policies of insurance required by Section 19 of this Agreement are in full force and effect.

(k) Representations and Warranties. The representations and warranties of Developer contained in this Agreement and the other Loan Documents shall be correct in all material respects as of the Close of Escrow as though made on and as of that date, and if requested by the City Project Manager, City shall have received a certificate to that effect signed by Developer's Representative.

(l) No Default. No Event of Default by Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer under this Agreement, and if requested by the City Project Manager, City shall have received a certificate to that effect signed by Developer's Representative.

(m) The City's obligation to provide the Inclusionary Loan is and shall remain subject to all covenants, conditions, and restrictions set forth in this Loan Agreement, and in particular City's analysis of the development and operating costs of the Project and the overall economic feasibility of the Project; provided, however, that the City's execution of the Loan Documents will evidence the satisfaction of this condition.

6.2 Disbursement Procedures for Loan. The Inclusionary Loan proceeds shall be disbursed on the date hereof (subject to Section 6.10) into an escrow account at with the Escrow Holder ("Loan Proceeds") to finance the acquisition, development and construction of the Project (as evidenced in the Project Budget, attached as **Exhibit E**). The Loan Proceeds shall not be used for any purpose other than for acquisition, development and construction related costs, including Developer fee and soft costs related to the development of the Project (costs all subject to City's review and approval).

The City's obligation to disburse the Loan is subject to satisfaction of the following conditions precedent, all of which the City acknowledges have been met as of the execution date hereof:

(a) All grading permits shall have been issued or the City shall have issued a letter stating that Building Permits are ready to issue, subject only to payment of fees and the completion of grading of the Project site.

(b) Developer shall have secured all necessary financing and funding for the construction and operation of the Project. Such financing and funding shall be sufficient to pay all Project development costs, through lease-up, as set forth in the final budget consistent with the approved Proforma (or as otherwise approved by the City).

(c) Developer shall have provided evidence to the City that the Developer has obtained insurance policies and certificates or endorsements acceptable to the City, as described in this Agreement.

(d) Developer shall have provided construction security in favor of the City, which may include a completion guarantee from Developer, in an amount sufficient to ensure the Project will be completed and placed in service within the time set forth in the Project schedule approved by the City.

(e) Developer shall submit and obtain the City Project Manager's approval (which such approval shall not be unreasonably withheld, conditioned, or delayed) of the construction contract, the identity and qualifications of the General Contractor, the Partnership Agreement for the limited partnership entity to be formed to own and operate the Project, and management, marketing and tenant selection plans for the Project.

6.3 **Termination for Failure of Condition.** If (a) any of the conditions set forth in Section 6.2 are not timely satisfied (subject to applicable notice and cure rights), and (b) City is not in default under this Agreement, City may terminate this Agreement without any further liability on its part by giving written notice of termination to Developer. Upon the giving of such notice, all principal, interest and other amounts owing under the Agreement shall be due and payable.

6.4 **Any Disbursement.** The City's obligation to approve any disbursement of the Loan is subject to the satisfaction of the following conditions:

(a) **Satisfactory Progress.** The City Project Manager shall be satisfied that, based on his/her own inspections or other reliable information from a third-party inspector, the construction is progressing satisfactorily in conformance with all applicable laws and other requirements.

(b) **Condition of Title.** Either (i) the City Project Manager reasonably believes that no event has occurred since the Close of Escrow that would give rise to a colorable claim against the Property (e.g., a mechanic's lien) superior to the claim of City against the Property with respect to the subject disbursement, or if such claim is made, the

City Project Manager shall receive satisfactory evidence that such claim has been bonded over until its resolution; or (ii) City must have received, at Developer's expense but payable out of the Loan Proceeds from the title insurer who issued City's LP-10 Title Policy, all endorsements thereto then reasonably required by City (including, without limitation, CLTA Form 122 -- priority of advance endorsements).

(c) Representations and Warranties. The representations and warranties of Developer contained in this Agreement and the other Inclusionary Loan Documents shall be correct in all material respects as of the date of the disbursement as though made on and as of that date.

(d) No Default. No Event of Default by Developer shall remain uncured (unless, to the extent permitted under this Agreement, Developer is diligently taking action to cure such default) and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer.

6.5 Final Disbursement. City's obligation to disburse that portion of the Loan funds retained pursuant to Section 6.10 is subject to the satisfaction of the following additional conditions precedent:

(a) Construction complete. The construction of the Project shall be complete.

(b) Certificate of Occupancy Issued. Any portion of the construction work requiring inspection or certification by any Governmental Authority shall have been inspected and certified as complete. Developer shall request that the City of Santa Ana Planning and Building Agency issue a Certificate of Occupancy, a copy of which shall be delivered to the City Project Manager, in order for final disbursement to occur.

(c) Lien Free. At least one of the following shall have occurred:

(i) Thirty-five (35) days shall have passed since the recording of a valid notice of completion for the construction, and no mechanic's or materialman's lien shall be outstanding; or

(ii) Ninety-five (95) days shall have passed since actual completion of the construction, and no mechanic's or materialman's lien shall be outstanding, or Developer shall have bonded over any such lien to City's reasonable satisfaction.

6.6 Waiver of Conditions. The conditions set forth pertaining to City's obligation to disburse the Loan Proceeds are for City's benefit only and the City Project Manager may waive all or any part of such conditions by written notice to Developer.

6.7 Draw Requests. Requests for the Loan Proceeds shall be made only upon Developer's written request in the form of a Draw Request showing all costs which Developer intends to fund, itemized in such detail as City may reasonably require, accompanied in each case by (a) invoices and lien releases satisfactory to City, including in any event partial lien releases executed by each contractor and subcontractor who has

received any payment for work performed, and (b) all other documents and information reasonably required by City. Draw Requests shall be submitted no less than ten (10) Business Days prior to the date of the requested draw, and shall not be submitted more often than monthly.

City shall notify the Developer of approval or disapproval of each Draw Request within five (5) Business Days after receipt of the Draw Request, using the City's "Disbursement/Change Order Approval Notice". City shall have the right, but not the obligation, to discontinue processing Draw Requests unless and until receipt of notification from the other lenders of approval or disapproval of each outstanding Draw Request.

6.8 **Cost Overruns.** In the event that, at any time and for any reason, (a) the actual cost reasonably estimated by Developer to be required to complete all matters included in any line item in the Project Budget exceeds the amount allocated to that line item in the Project Budget, (b) Project Costs for any matters not covered by a specific line item have been or will be incurred, or (c) the undisbursed portion of the Loan Proceeds and all other approved financing sources are or may be insufficient to pay all construction of the Project that may be payable under the Inclusionary Loan Documents or otherwise in connection with the construction, Developer shall, within ten (10) days after it receives written notice thereof from City of any of the foregoing matters, do one or more of the following:

(a) provide satisfactory evidence to City that Developer has previously paid such excess or otherwise provided for such insufficiency (collectively, the "Excess Cost") with funds from a source other than the Inclusionary Loan;

(b) deposit an amount equal to the Excess Cost in a non-interest bearing account (the "Overrun Account") with City from which withdrawals may be made only with the consent of the City Project Manager (such consent not to be unreasonably withheld) but which will be exhausted prior to any further Draw Request for any line item, so that any resulting surplus in any line item of the Project Budget will then be reallocated to the line item(s) in which the Excess Costs are expected to be incurred.

City shall have no obligation to approve Draw Requests until Developer has paid or otherwise provided for the overrun as required above.

6.9 **Cost Savings.** Upon completion of and disbursement for all matters covered by any line items in the Project Budget, any remaining undisbursed amounts allocated to that line item shall be reallocated to "Contingency" and thereafter be available for disbursement in accordance with the terms of this Agreement.

6.10 **Retainage.** City will withhold a Retainage of 10% from the Disbursement associated with Hard Costs in the Project Cost Breakdown (and other line items thereof designated for withholding of retainage) until all conditions to the final Disbursement of Hard Costs have been satisfied. In lieu of City's withholding Retainage, Developer can by written notice to City elect not to draw any overhead or profit as would otherwise be permitted under the Construction Contract until such time as Retainage would otherwise have been released.

6.11 **[Reserved].**

6.12 **Waiver of Disbursement Conditions.** Unless City otherwise agrees in writing, the approval by City of any Draw Request with knowledge that any condition to disbursement is not fulfilled shall constitute a waiver of such condition only with respect to the particular Draw Request, and such condition shall be conditioned to all further Draw Requests until fulfilled.

6.13 **Modification of Disbursement Conditions and Procedures.** The City Project Manager shall have the authority to modify the disbursement conditions and procedures set forth herein in order to conform them to the payment provisions of the contract for construction.

6.14 **Other Terms and Conditions of Loan.**

A. The Note shall become immediately due and payable, in the event of any of the following:

(1) Failure to complete the Project within three (3) years of the date on which the Inclusionary Deed of Trust is recorded, unless extended due to Force Majeure delays;

(2) Violation of any of the use covenants and restrictions contained in this Agreement after the expiration of any applicable notice and cure periods; or,

(3) An Event of Default by Developer after expiration of any applicable notice and cure periods pursuant to the terms of this Agreement.

6.15 **Closing Costs and Fees.** Developer shall pay (a) all escrow fees and charges, (b) all recording fees and charges on any document recorded pursuant to this Agreement, and (c) the premium for the title insurance required hereunder.

7. AFFORDABILITY REQUIREMENTS, USE AND MAINTENANCE OF THE PROJECT

7.1 **Use Covenants and Restrictions.** Developer agrees and covenants, which covenants shall run with the land and bind Developer, its successors, its assign and every successor in interest to the Property that Developer will make the Restricted Units available to extremely low, very low and low income households at rents affordable to such households for fifty-five (55) years. The Restricted Units shall consist of forty-five (45) residential units. Enforceability of restrictions on the forty-five (45) units shall be enforced until the date that is fifty-five (55) years after the date on which the Certificate of Occupancy is issued. If any other public agency imposes affordability restrictions on units at the Project, the Restricted Units shall be the same units.

7.2 **Affordability Levels/Unit Mix:**

The unit mix and levels of affordability of the Restricted Units are as follows:

	PSH - 25% AMI	PSH - 30% AMI	30% AMI	50% AMI	Total
1-bedroom	16				16
2-bedroom		3	6	18	27
3-bedroom			2		2
Total	16	3	8	18	45

- a. [reserved]
- b. Utility allowances must be deducted from the Maximum Gross Monthly Rent. The Housing Authority publishes a Utility Allowance Schedule on an annual basis, which shall be used by Developer in connection with units receiving Rental Subsidies as defined below for so long as may be required by the Housing Authority.
- c. Based on the unit mix and bedroom sizes provided above, at least forty-four (44) of the units will be affordable to family households earning no more than 30% of the AMI and of those units thirty-three (33) will be reserved as permanent supportive housing; and one (1) of the units shall be affordable to a family household earning no more than 50% of the AMI.
- d. The affordable rents charged at the Restricted Units must comply with the standards set forth by California Tax Credit Allocation Committee (TCAC). Notwithstanding anything to the contrary contained in this Agreement, the Affordability Restrictions on Transfer of Property, in the event of foreclosure, or delivery of deed in lieu of foreclosure, of any Senior Loan, then (1) the maximum qualifying tenant household income shall be increased to 60% of AMI adjusted for family size appropriate to the unit, and (2) the maximum annual affordable rent shall be increased to 30% of 60% of AMI, as adjusted for family size appropriate to the unit.
- e. The Project will receive eight (8) project based vouchers from the Housing Authority of the City of Santa Ana (the "Rental Subsidies") during the Term of Affordability of this Agreement. If, during the Term of Affordability of this Agreement, any change in federal law occurs or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidies, such that the rental subsidy projected on the budget for the Project is reduced or no longer available, the Developer may increase the rents on the eight project-based voucher assisted-units during the remainder of the Term of Affordability of this Agreement to the maximum rent published by the California Tax Credit Allocation Committee for a "60% AMI Household" in Orange County for the applicable bedroom size subject to the City Project Manager's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. If Developer demonstrates to the satisfaction of the City that such rental increase is necessary to maintain the financial stability of the Project and no

alternative rental subsidies are available, the City will review and consider such rental increase.

7.3 **Rent Increases:** On an annual basis, the City shall confirm the Developer's submission of the maximum allowable schedule of rents for the Property which shall correspond to the maximum rent levels allowed by TCAC. In no event can Developer charge any tenant more than such amount.

7.4 **Maintenance of the Property.** Solely at Developer's expense, Developer agrees to maintain the Property in a clean and orderly condition and in good condition and repair and keep the Property free from any accumulation of debris and waste materials. If at any time Developer fails to maintain, or cause to be maintained, the Property as required by this section, and said condition is not corrected after the expiration of a reasonable period of time not to exceed thirty (30) days from the date of written notice from the City, unless such condition cannot reasonably be cured within thirty (30) days, in which case Developer shall have such additional time as reasonably necessary to complete such cure, the City may perform the necessary maintenance and Developer shall pay all reasonable costs incurred for such maintenance. The City shall inspect the Property annually after the date of issuance of the Certificate of Completion as described in Section 17 of this Agreement.

7.5 **Obligation to Refrain from Discrimination.** Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, disability, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Developer itself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land and shall remain in effect for the term of the Agreement.

8. DEFAULTS AND REMEDIES

8.1 **Event of Default.** Failure or delay by either party to perform any term or provision of this Agreement within the time periods provided herein for such performance constitutes a default under the Agreement. If any party defaults in performance of its obligations, covenants or agreements hereunder, the defaulting party shall be entitled to cure the default in accordance with this section. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. The defaulting party must, within thirty (30) days following service of said written notice, commence to cure, correct or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence. Upon a default by Developer which is not cured within thirty (30) days following service of said notice, unless such default cannot reasonably be cured within thirty (30) days, in which case Developer shall have such additional time as reasonably necessary to complete such cure but no more than ninety (90) days, the City shall have the right to terminate this Agreement by delivery of written notice of termination to Developer.

8.2 **Institution of Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default to recover economic damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement.

8.3 **Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 **Damages.** In the event that the City is liable for damages to Developer, such liability shall not exceed costs incurred by the Developer in the performance of this Agreement and shall not extend to compensation for loss of future income, profits or assets.

8.5 **Nonrecourse Liability.** Neither Developer, nor any partner of Developer, nor any member of any partner of Developer, nor any member, partner, officer, director, employee, agent or representative of any member of any partner of Developer, shall have any personal liability under this Agreement, or the attached Note and Deed of Trust, and any judgment, decree or order for the payment of money obtained in any action to enforce the obligation of Developer to repay the loan evidenced by such documents shall be enforceable against Developer only to the extent of Developer's interest in the Property.

9. GENERAL PROVISIONS AND WARRANTIES

As a material inducement to City to enter into this Agreement, Developer represents and warrants as follows, which representations and warranties are made solely by Developer and not by or on behalf of any partner of Developer:

9.1 **Formation, Qualification and Compliance.** Legacy Square L.P. is a California limited partnership. Developer is in compliance with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with, any Governmental Authority that are necessary for the transaction of its business.

9.2 **Execution and Performance of Inclusionary Loan Documents.**

9.2.1 Developer has all requisite authority to execute and perform its obligations under the Inclusionary Loan Documents.

9.2.2 The execution and delivery by Developer of, and the performance by Developer of its obligations under, each Loan Document has been authorized by all necessary action and does not and will not:

(a) require any consent or approval not heretofore obtained of any person having any interest in Developer;

(b) violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Developer;

(c) result in or require the creation of any lien, claim, charge or other right of others of any kind (other than under the Inclusionary Loan Documents) on or with respect to any property now or hereafter owned or leased by Developer;

(d) to the best of its knowledge, violate any provision of any law presently in effect that is applicable to the Project; or

(e) constitute a breach or default under, or permit the acceleration of obligations owed under, any contract, loan agreement, lease or other agreement or document to which Developer is a party or by which Developer or any of its property is bound.

9.2.3 Developer is not in default, in any respect that is materially adverse to the interests of City under the Inclusionary Loan Documents or that would have any material adverse effect on the financial condition of Developer or the conduct of its business, under any law, contract, lease or other agreement or document described in subparagraph (d) or (e) of the previous subsection.

9.2.4 No approval, license, exemption or other authorization from, or filing, registration or qualification with, any Governmental Authority is required which has not been previously obtained in connection with:

(a) the execution by Developer of, and the performance by Developer of its obligations under, the Inclusionary Loan Documents; and

(b) the creation of the liens described in the Inclusionary Loan Documents.

9.3 **Financial and Other Information.** To the best of Developer's knowledge, all financial information furnished to City by the Developer or any affiliate thereof with respect to Developer in connection with the Loan (a) is complete and correct in all material respects as of the date of preparation thereof, (b) accurately presents the financial condition of Developer, and (c) has been prepared in accordance with generally accepted accounting principles consistently applied or in accordance with such other principles or methods as are reasonably acceptable to City. To the best of Developer's knowledge, all other documents and information furnished to City by the Developer or any affiliate thereof with respect to Developer, in connection with the Loan, are correct and complete insofar as completeness is necessary to give the City accurate knowledge of the subject matter. To the best of Developer's knowledge Developer has no material liability or contingent liability not disclosed to City in writing and there is no material lien, claim, charge or other right of others of any kinds (including liens or retained security titles of conditional vendors) on any property of Developer not disclosed in such financial statements or otherwise disclosed to City in writing.

9.4 **No Material Adverse Change.** There has been no material adverse change in the condition, financial or otherwise, of Developer since the dates of the latest financial statements furnished to City. Since those dates, Developer has not entered into any material transaction not disclosed in such financial statements or otherwise disclosed to City in writing.

9.5 **Tax Liability.** Developer has filed all required federal, state and local tax returns and has paid all taxes (including interest and penalties, but subject to lawful extensions disclosed to City in writing) other than taxes being promptly and actively contested in good faith and by appropriate proceedings. Developer is maintaining adequate reserves for tax liabilities (including contested liabilities) in accordance with generally accepted accounting principles or in accordance with such other principles or methods as are reasonably acceptable to City.

9.6 **Governmental Requirements.** Developer is in compliance with all laws relating to the Property and all Governmental Authority approvals, including zoning, land use, planning requirements, and requirements arising from or relating to the adoption or amendment of, any applicable general plan, subdivision and parcel map requirement; environmental requirements, including the requirements of the California Environmental Quality Act and the National Environmental Policy Act, and the preparation and approval of all required environmental impact statements and reports; use, occupancy and building permit requirements; and public utilities requirements.

9.7 **Rights of Others.** Developer is in compliance with all covenants, conditions, restrictions, easements, rights of way and other rights of third parties relating to the Property.

9.8 **Litigation.** There are no material actions or proceedings pending or, to the best of the Developer's knowledge, threatened against or affecting Developer or any property of Developer before any Governmental Authority, except as disclosed to City in writing prior to the execution of this Agreement.

9.9 **Bankruptcy.** To the best of Developer's knowledge, no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Developer, nor are any of such proceedings contemplated by Developer.

9.10 **Information Accurate.** To the best of Developer's knowledge, all information, regardless of its form, conveyed by Developer to City, by whatever means, is accurate, and correct in all material respects and is sufficiently complete to give City true and accurate knowledge of its subject matter, and does not contain any material misrepresentation or omission.

9.11 **Conflicts of Interest.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which

he/she has a direct or indirect financial interest. The Developer warrants that it neither has paid nor given, nor will pay or give, any third party any money or other consideration for obtaining this Agreement.

9.12 **Nonliability of City Officials and Employees.** No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount which may become due to Developer or on any obligations under the terms of this Agreement.

9.13 **No Assignment.** Developer expressly acknowledges and agrees that the City has only agreed to assist the Developer as a means by which to induce the construction/development of the Project. Accordingly, Developer further expressly acknowledges and agrees that this Agreement is a personal right of Developer that is neither negotiable, transferable, nor assignable except as set forth herein. Developer may assign some or all of its rights under the Agreement only with the prior written consent of the City Project Manager, except that no prior consent is necessary for an assignment by a limited partner of Developer to an affiliate, for the inclusion of tax credit investors in the Agreement, or as otherwise provided in the Inclusionary Deed of Trust.

9.14 **Applicable Law.** This Agreement shall be interpreted, governed and enforced under federal and California state law with venue in Orange County, California.

9.15 **Third Parties.** This Agreement is made for the sole benefit of Developer and the City and their successors and assigns, and no other person or persons shall have any rights or remedies under or by reason of this Agreement or any right to the exercise of any right or power of the City hereunder or arising from any default by Developer, nor shall the City owe any duty whatsoever to any claimant for labor performed or materials furnished in connection with the construction of the Property.

9.16 **Control of Property.** The parties acknowledge that the City has not at any time participated in any manner in the management or operation of the Property, and will not so participate at any time hereafter.

10. CONDITIONS FOR CONSTRUCTION

10.1 **Permits and Approvals.** Developer shall diligently obtain all permits, including all Building Permits, licenses, approvals, exemptions and other authorizations of Governmental Agencies required in connection with the construction and conversion of the Property.

10.2 **Commencement and Completion of Construction.** The construction of the Project shall be considered complete for purposes of this Agreement only when (a) all work described has been completed and fully paid for, and (b) all work requiring inspection or certification by Governmental Authority has been completed and all requisite certificates, approvals and other necessary authorizations (including required final certificates of occupancy) have been obtained.

10.3 **Change Orders.** The contract for construction shall not be modified except pursuant to change orders. All change orders in excess of \$30,000:

(a) Shall be in writing, numbered in sequence, signed by Developer and submitted to City prior to the proposed effectiveness thereof and accompanied by any working drawings and a written narrative of the proposed change; and,

(b) Shall be subject to the City Project Manager's prior written approval.

10.4 **Entry and Inspection.** At all times prior to completion of the construction, upon reasonable prior written notice and subject to reasonable job site safety rules, City and its agents shall have (a) the right of free access to the Property and all sites away from the Property where materials for the construction are stored, (b) the right to inspect all labor performed and materials furnished for the construction, and (c) the right to inspect and copy all documents pertaining to the construction.

10.5 [RESERVED]

10.6 **Construction Information.** From time to time during the course of the construction, within ten (10) Business Days following City's written demand therefore and/or in connection with each draw, Developer shall furnish requested reports of Project Costs, progress schedules and contractors' costs breakdowns for the construction, itemized as to trade description and items, showing the name of the contractor(s) and/or subcontractor(s), and including such indirect costs as real estate taxes, legal and accounting fees, insurance, architects' and engineers' fees, loan fees, interest during construction and contractors' overhead.

10.7 **Protection Against Liens:** Developer shall diligently file a valid Notice of Completion upon completion of the construction, diligently file a notice of cessation in the event of a cessation of labor on the construction for a period of thirty (30) days or more, and take all actions reasonably required to prevent the assertion of claims of lien against the Property. In the event that any claim of lien is asserted against the property or any stop notice or claim is asserted against the City by any person furnishing labor or materials to the Property, Developer shall immediately give written notice of the same to City and shall, promptly and in any event within ten (10) Business Days after written demand therefor from the City, (a) pay and discharge the same, (b) effect the release thereof by delivering to City a surety bond complying with the requirement of applicable laws for such release, or (c) take such other action as City may require to release City from any obligation or liability with respect to such stop notice or claim.

11. PROJECT COVENANTS

11.1 **Affordable Rent Schedule.** The rents shall be determined by the regulatory agreements entered into between the Developer and the California Tax Credit Allocation Committee governing the Project.

11.2 **Qualification as Affordable Housing.** As more particularly provided in the Affordability Restrictions on Transfer of Property, Developer shall use, manage and operate the Restricted Units in accordance with the requirements of California Health and Safety Code section 50052.5 so as to qualify the Restricted Units as Affordable Housing with Affordable Rents.

11.3 **Local Preference.** Local preference for Santa Ana residents and workers in tenant selection shall be a requirement of the Project. Subject to the prohibition of discrimination and the granting of preferences in housing occupancy imposed by federal laws and regulations, the State of California, and by the City of Santa Ana Affordable Housing Funds Policies and Procedures, and in accordance with a written tenant selection policy to be approved by the City prior to lease-up, the Developer shall use its best efforts to lease units in the following order of priority, as further elaborated in the tenant selection policies:

1. First priority shall be given to persons who have been permanently displaced or face permanent displacement from housing in Santa Ana as a result of any of the following:
 - a. A redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.) -- applicable only to projects funded by the Low and Moderate Income Housing Asset Fund.
 - b. Ellis Act, owner-occupancy, or removal permit eviction;
 - c. Earthquake, fire, flood, or other natural disaster;
 - d. Cancellation of a project-based Housing Choice Voucher HAP Contract by property owner; or
 - e. Governmental Action, such as Code Enforcement.
2. Second priority shall be given to persons who are either:
 - a. Residents of Santa Ana, and/or
 - b. Working in Santa.

11.1 **Application and Financial Preparedness.** Developer shall submit for review and approval by the City a pamphlet or flyer to inform interested persons regarding application and eligibility requirements and to assist interested persons with application and eligibility for residency at the Project at the initial leasing of the affordable units. Developer shall also work with the City to hold a minimum of two (2) workshops to be coordinated by the Developer at least twelve (12) months prior to the initial leasing of the affordable units.

11.2 **Handicapped Accessibility.** [Developer shall comply with: (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulations at 24 CFR 8C; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR 35-36 in order to make the Project readily accessible to and usable by individuals with disabilities]. NCRC is confirming.

11.6 **Onsite Supportive Services, Programs and Amenities.** Developer shall provide residents of the Project access to discounted or no-cost onsite supportive services programming, and amenities that promote child development, youth development, and economic mobility, and include, but are not limited to health and wellness services, transportation services, social activities, and physical or recreational amenities as expressly set forth in and required by the Affordability Restrictions on Transfer of Property.

11.7 **Local Sourcing Plan.** Developer agrees to make a good faith effort to encourage contractors and suppliers to hire and procure locally. The City has reviewed and approved the Developer's local sourcing plan for the Project targeting, to the extent feasible, the hiring of qualified workers, construction contractors, or the purchasing of goods locally within the City of Santa Ana.

11.8 **Lead-Based Paint.** Developer shall comply with the requirements, as applicable of the Lead-Based Paint Poisoning Prevention Act.

11.9 **Affirmative Marketing.** [Prior to the issuance of a Certificate of Occupancy, Developer shall prepare and obtain City's approval of an affirmative marketing program for leasing the affordable units at the Project].

11.10 **Equal Opportunity and Fair Housing.** Developer shall carry out the construction and perform its obligations under this Agreement, including, specifically the Local Preference requirements in Section 11.3 herein and the Affirmative Marketing requirements in Section 11.9 herein, in compliance with all of the state and federal laws and regulations regarding equal opportunity and fair housing. Developer must also follow the requirements of California Health and Safety Code section 33435.

11.11 **Property Standards.** Developer shall cause the Property to meet all applicable local, state and federal codes and ordinances, including zoning ordinances. Developer shall also cause the Property to meet the current edition of the Model Energy Code published by the Council of American Building Officials.[Under review by NCRC]

11.12 **Alternative Transportation and Energy Source, Resource Conservation, and LEED Certification.** In recognition of the City's desire to optimize the energy efficiency of the Project, Developer agrees to consult with the Project design team, a CABEC certified 2016 Certified Energy Analyst, a LEED AP Homes (low-rise and mid-rise), LEED AP BD+C (high rise), National Green Building Standard (NGBS) Green Verifier, or GreenPoint Rater (one person may meet both of these latter qualifications) early in the Project design process to evaluate a building energy model analysis and identify and consider energy efficiency or generation measures beyond those required by the TCAC minimum construction standards. [Under review by NCRC]

11.13 **Maintenance.** At all times during the term of this Agreement, Developer shall cause the Property and the Project to be maintained in a decent, safe and sanitary manner regardless of cause of the disrepair subject to Force Majeure. Developer shall be fully and solely responsible for costs of maintenance, repair, addition and improvements. City, and any of its employees, agents, contractors or designees, shall have the right to enter upon the Property at reasonable times and in a reasonable manner to inspect the Project.

11.14 **Property Maintenance Agreement.** Developer shall execute a maintenance agreement with the City prior to occupancy, which shall be in a form reasonably satisfactory to the City Attorney.

11.15 **Management Plan.** Prior to issuance of a Certificate of Occupancy, Developer shall submit for the reasonable approval of the City a “Management Plan” that sets forth in detail Developer’s property management duties, a tenant selection process in accordance with this Agreement, a security system and crime prevention program, the procedures for the collection of rent, the procedures for eviction of tenants, the rules and regulations for the Property and manner of enforcement, a standard lease form, an operating budget, the identity and emergency contact information of the professional property management company to be contracted with to provide onsite property management services at the Property, and other matters relevant to the management of the Property.

11.16 **Crime Free Housing.** Developer shall work with City staff to develop a crime free housing policy, procedure, and design plan. Such plan will be consistent with, and not cause Developer to be in violation of, all requirements of law or any Project funding document, including without limitation “Housing First” principles required to be observed by California HCD.

11.17 **Onsite Parking [Management Plan].** Developer shall provide onsite parking for residents and visitors of the Project and actively monitor the parking demand of the Project site. Developer shall continually monitor and take appropriate measures to manage the parking demand of the Project site to mitigate the use of offsite parking spaces on private or public properties and/or right-of-way. Prior to issuance of a Certificate of Occupancy, Developer shall submit a [Parking Management Plan] which will include but not be limited to: 1) a list of requirements for any tenants who park their vehicles on-site; 2) pre-conditions and ongoing conditions associated with all on-site parking; and 3) towing policies and practices of management. Developer shall obtain approval from the City for said plan.

11.18 **Conflict of Interest.** Developer shall comply with and be bound by the conflict of interest provisions set forth in all applicable state regulations pertaining to conflict of interest.

11.19 **Monitoring.** Developer shall allow the City to conduct annual inspections of each of the assisted units on the Property after the date of construction completion, with reasonable advance notice and only during normal business hours. Developer shall cure any defects or deficiencies found by the City while conducting such inspections within ten

(10) business days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City.

11.20 Recertification of Tenant Income.

(a) Developer shall take all necessary steps to review the income of all tenants prior to renting to them, as well as reviewing current tenants on an annual basis.

(b) Developer shall allow the City to conduct annual reviews of tenant files and files relating to affirmative marketing and outreach to ensure the Project's compliance with applicable regulations and guidelines.

(c) City assisted units continue to qualify as affordable housing despite a temporary non-compliance caused by increases in the incomes of existing tenants if actions satisfactory to the City are being taken to ensure that all vacancies are filled in accordance with this section until the non-compliance is corrected.

(d) All tenant certifications and related files shall be made available to the City either on-site or via an internet based document sharing platform selected by the Managing General Partner. Upon City's request therefore, the Managing General Partner will make available documents or certifications containing tenant information or personal information.

(e) The City will indemnify and hold the Developer and each of the Managing General Partner and Administrative General Partner (and their respective affiliates) harmless from and against any and all losses, damages and liabilities (including reasonable attorney's fees) which any of them may incur by reason of the unauthorized release or disclosure of tenant files, or any portion thereof, or information included therein (including any information that could be used, either directly or indirectly, to identify any person, whether a natural person or a legal entity), including any such release or disclosure that violates any applicable State, federal or other local laws, ordinances, regulations, or codes, by the City or its officers, employees, agents and/or personnel and such unauthorized release or disclosure is due to the fraud, gross negligence or willful misconduct by the City or such officers, employees, agents and/or personnel.

11.21 Housing Opportunity Ordinance Requirements. Developer shall comply with all other applicable requirements of the City's Housing Opportunity Ordinance, including the following:

(a) Onsite Services: The Developer shall provide on-site services that are available to the residents and shall report to the City annually the services provided.

(b) Coordination with the WORK Center: The Property Manager shall enter into a Memorandum of Understanding ("MOU") with the City's WORK Center to provide tenants with information about WORK center opportunities to find better jobs and careers. The goal of the MOU is to ensure that all tenants have been provided

an opportunity to connect with the WORK Center and be assisted with the tools and knowledge necessary to enter the workforce or obtain a higher-paying job.

(c) Tenant Satisfaction Survey: The Developer shall complete and submit to the City biennial tenant satisfaction surveys of tenants.

(d) Rental Inclusionary Housing Manual: The Developer shall also maintain compliance with the City's Inclusionary Housing Manual for Rental Projects.

11.22 **Controlling Covenants.** If there is a discrepancy between local, state and federal law with regard to any of the aforementioned covenants, the more stringent shall apply.

12. **MAINTENANCE, MANAGEMENT, OPERATION, PRESERVATION AND REPAIR OF PROPERTY**

12.1 **Maintenance.** Developer shall maintain the Property (and all abutting grounds, sidewalks, roads, parking and landscape areas which Developer is otherwise required to maintain) in good condition and repair; shall operate the Property in a business-like manner; shall prudently preserve and protect its own as well as the City's interests in connection with the Property; shall not commit or permit any waste or deterioration of the Property (except for normal wear and tear); shall not abandon any portion of the Property or leave the Property unguarded or unprotected; and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of any damage to the Property or of any other impairment of City's interests under the Inclusionary Loan Documents. Without limiting the generality of the foregoing, and except as otherwise agreed by City in writing from time to time, Developer shall promptly and faithfully perform and observe each of the following provisions:

12.1.1 **Alterations and Repair.** After Construction Completion, Developer shall not remove, demolish or materially alter any material Improvement without City's prior consent, except to make non-structural repairs which preserve or increase the Property's value, and shall promptly restore, in a good and professional manner, any Improvement (or other aspect or portion of the Property) that is damaged or destroyed from any cause, subject to Force Majeure.

12.2 Reserved

12.3 **Taxes and Impositions.** Subject to any property tax abatement available to the Developer, Developer shall pay, prior to delinquency, all of the following (collectively, the "Impositions"): (a) all general and special real property taxes and assessments imposed on the Property; (b) all other taxes and assessments and charges of every kind that are assessed upon the Property (or upon the owner and/or operator of the Property) and that create or may create a lien upon the Property (or upon any personal property or fixtures used in connection with the Property), including, without limitation, non-governmental levies and assessments pursuant to applicable covenants, conditions or

restrictions; and (c) all license fees, taxes and assessments imposed on City (other than City's income or franchise taxes) which are measured by or based upon (in whole or in part) the amount of the obligations secured by the Property. If permitted by law, Developer may pay any Imposition in installments (together with any accrued interest).

12.3.1 **Right to Contest.** Developer shall not be required to pay any Imposition so long as: (a) its validity is being actively contested in good faith and by appropriate proceedings; (b) Developer has demonstrated to City's reasonable satisfaction that leaving such Imposition unpaid pending the outcome of such proceedings could not result in conveyance of the Property in satisfaction of such Imposition or otherwise impair the City's interests under the Inclusionary Loan Documents; and, (c) Developer has furnished City with a bond or other security satisfactory in an amount not less than 100% of the applicable claim (including interest and penalties).

12.3.2 **Evidence of Payment.** Upon demand by City from time to time, Developer shall deliver to City, within thirty (30) days following the due date of any Imposition, evidence of payment reasonably satisfactory to City.

12.3.3 **Books and Records.** Developer shall maintain complete books of account and other records reflecting its operations (in connection with the Property), in accordance with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to City.

12.4 **[RESERVED]**

12.5 **Project Operating Budget.** Developer must promptly deposit all Gross Revenues (as defined in the Project Note) directly into a segregated depository account established exclusively for the Project ("Project Operating Account") pursuant to the agreement with the property management company. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Project Budget, as it may be revised from time to time with prior City approval. Developer may make withdrawals from the Project Operating Account solely for the payment of Operating Expenses (as defined in the Project Note) and for payments of debt service and distributions as permitted by the Project Note. Withdrawals from the Project Operating Account for other purposes may be made only with the prior written approval of the City. Notwithstanding anything to the contrary contained herein, neither capital contributions from the Investor Limited Partner or proceeds from any loans made to the Developer (other than loans to address operating deficits pursuant to the terms of the Partnership Agreement) shall be deposited in the Project Operating Account.

12.6 **Replacement Reserve Account.** Developer must establish or cause to be established a segregated replacement reserve depository account ("Replacement Reserve Account") no later than the commencement of the permanent financing period for the Project. Developer must make monthly deposits from project income into the Replacement Reserve Account in accordance with Developer's Project Budget, and the requirements of the Senior Lender, as amended from time to time. Developer may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project and as otherwise is permitted under the Senior Loan Documents and including, but not limited

to, capital repair or replacement, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Project that are reasonably required to preserve the Project. Developer may not withdraw funds from the Replacement Reserve Account for any other purpose without the prior written approval of the City.

13. NONDISCRIMINATION COVENANTS

13.1 **Obligation to Refrain from Discrimination.** Developer covenants and agrees that:

(a) **In Use of Property.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, disability, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendors of the Property.

(b) **In Affordable Housing Restrictions.** The foregoing covenant shall: (a) be included in the Affordability Restrictions on Transfer of Property; (b) run with the land; and, (c) remain effective for the term of the Agreement (for 55 years).

(c) **In Employment.** In construction on the Property, Developer shall not discriminate against any employee or applicant because of race, color, creed, religion, sex, marital status, disability, national origin, or ancestry. Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, disability, creed, religion, sex, marital status, disability, national origin, or ancestry.

(d) **In all Contracts.** Developer shall cause the foregoing covenants to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor for the benefit of City, provided that the foregoing covenant shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

14. ENVIRONMENTAL MATTERS

14.1 **Representation and Warranty.** Except as disclosed in writing to the City, Developer has no knowledge: (a) of the presence on, under or about the Property, now or in the past, of any Hazardous Materials, or of the transportation to or from the Property of any Hazardous Materials; (b) that asbestos or polychlorinated biphenyls (PCBs) are contained in or stored on the Property; or, (c) that there are any underground storage tanks located in, on or under the Property.

14.2 **Compliance with Environmental Laws.** Developer shall: (a) comply with all environmental laws and environmental permits applicable to the construction of the Property; (b) immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance; (c) keep the Property free and clear of any environmental claims or

liens imposed pursuant to any environmental law; and, (d) obtain and renew all environmental permits required for ownership or use of the Property.

14.3 **Presence of Hazardous Materials.** Developer shall not, and shall not permit anyone else to, generate, use, treat, store, handle, release, or dispose of Hazardous Materials on the Property, or transport or permit the transportation of Hazardous Materials to or from the Property, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the routine operation and maintenance of the Property.

14.4 **Notice of Environmental Matters.** Developer shall immediately advise City in writing of any of the following: (a) any pending or threatened environmental claim against Developer or the Property; or (b) any condition or occurrence that: (i) results in noncompliance with any applicable environmental law; (ii) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental Law; or, (iii) could reasonably be anticipated to form the basis of an environmental claim against the Property or Developer.

14.5 **Environmental Indemnification by the Developer.** Developer agrees to defend, indemnify and hold harmless the City and its respective officers, directors, employees and agents (collectively the "Indemnitees") from and against any and all obligations (including removal and remediation), losses, claims (including third party claims), suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including consultants, and attorneys' fees) of whatever kind or nature whatsoever that may at any time be incurred by, imposed on, or asserted against the Indemnitees directly or indirectly based on, or arising or resulting from the actual or alleged presence of Hazardous Materials on the Property, other than resulting from the gross negligence or willful misconduct of any Indemnitee.

15. **OTHER AFFIRMATIVE COVENANTS**

While any obligation of Developer under the Inclusionary Promissory Note or Inclusionary Leasehold Deed of Trust remain outstanding, the following provisions shall apply, except to the extent that City Project Manager otherwise consents in writing:

15.1 **Existence.** The sole member of Developer's managing general partner shall maintain its existence in good standing under the laws of the State of California, and Developer shall provide documentation of such status annually to the City.

15.2 **Protection of Lien.** Developer shall maintain the lien of the Inclusionary Leasehold Deed of Trust as a deed of trust on the Property in the same priority as at the commencement of construction and take all actions to execute and deliver to City all documents, reasonably required by City from time to time in connection therewith.

15.3 **Notice of Certain Matters.** Developer shall give notice to City, within ten (10) days of Developer's learning thereof, of each of the following:

(a) any filed litigation or claim affecting or relating to the Property involving an amount in excess of \$5,000 litigation or claim that might subject Developer or any general partner to liability in excess of \$5,000 whether covered by applicable insurance or not;

(b) any dispute between Developer and a Governmental Authority relating to the Property, the adverse determination of which might materially affect the Property;

(c) any change in Developer's principal place of business;

(d) any aspect of the Improvements that is not in substantial conformity with the plans or code;

(e) any event which after the giving of all required notices and the expiration of all applicable cure periods, would constitute an Event of Default;

(f) any material default by Developer or any other party under any Senior Loan document, or the receipt by Developer of any notice of default under any Senior Loan document;

(g) the creation or imposition of any mechanics' or materialmans' lien or other lien against the Property which might materially affect the Property, which is not bonded over or released; and/or

(h) any material adverse change in the financial condition of Developer.

15.4 **Further Assurances.** Developer shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to City all documents, and take all actions, reasonably required by City from time to time to confirm the rights created or now or hereafter intended to be created under the Inclusionary Loan Documents; to protect and further the validity, priority and enforceability of the Inclusionary Deed of Trust; to subject to the Deed of Trust any property intended by the terms of any Loan Document(s) to be covered by the Inclusionary Deed of Trust or otherwise to carry out the purposes of the Inclusionary Loan Documents and the transactions contemplated thereunder.

15.5 **Annual Financial Statements.** Developer shall deliver the following to City within one hundred and fifty (150) days after the end of each Calendar Year: (a) a certified public accountant reviewed balance sheet for Developer as of the end of such Calendar Year and a certified public accountant reviewed statement of profit and loss for Developer and for Developer's operations in connection with the Property for such Calendar Year, together with all supporting schedules; (b) a certificate of such certified public accountant that such documents were reviewed by such certified public accountant in accordance with generally accepted accounting principles and otherwise comply with generally accepted accounting principles review requirements; and, (c) a certificate of Developer's chief financial officer that such documents: (i) were prepared in accordance with generally accepted accounting principles applied on a consistent basis or in

accordance with such other principles or methods as are reasonably acceptable to City; (ii) fairly present Developer's financial condition; (iii) show all material liabilities, direct and contingent; and, (iv) fairly present the results of Developer's operations. Developer shall also provide the City with any other annual audit reports issued by other monitoring agencies. Developer shall include in said reports a document in the "Form of Residual Receipts Report" attached hereto as **Exhibit G** and incorporated herein.

15.6 **Audits and Access to Records.** Developer agrees that City or any of its authorized representatives shall have the right of access, upon reasonable notice and during normal business hours, to any books, documents, papers, or other records of Developer that are pertinent to this Agreement in order to make audits, examinations, abstracts, excerpts or transcripts. Developer will maintain all books and records pertaining to this Agreement for a period of not less than five (5) years after all matters pertaining to this Agreement (i.e., audit, disputes or litigation) are resolved in accordance with applicable federal or state laws, regulations or policies, and when a period of affordability or recapture applies to Developer's activities, for a period of not less than five (5) years after the affordability or recapture period ends.

15.7 **Termite Inspection Report.** Developer shall deliver a termite report pertaining to the Property to the City every fifth (5th) year following the date of issuance of the Certificate of Occupancy.

16. **OTHER COVENANTS**

While any obligation of Developer under the Inclusionary Note or Inclusionary Deed of Trust remain outstanding, the following provisions shall apply, except to the extent that City Project Manager otherwise consents in writing:

16.1 **Default on Senior Loan.** Developer shall not default on any of the Senior Loan Documents, provided however, that Developer shall have such period as is provided in the Senior Loan Documents during which to effectuate a cure.

16.2 **Sale or Lease of Property.** Unless and until Developer has received a Certificate of Completion for the construction from City, Developer shall not sell, lease (other than to tenants meeting the requirements set forth in this Agreement), sublease or otherwise transfer all or any part of the Property or any interest therein without the prior written consent of the City Project Manager, which consent may be withheld in the City Project Manager's reasonable discretion. In connection with the foregoing consent requirements, Developer acknowledges that City relied upon Developer's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the construction.

Notwithstanding anything to the contrary contained herein, a "transfer" shall not include: (i) a transfer of a General Partner's interest in Developer when made in connection with the exercise by the Developer's limited partner (the "Limited Partner") of its rights upon a default by a General Partner under the Developer's Partnership Agreement (the "Partnership Agreement") or upon a General Partner's withdrawal in violation of the Partnership Agreement, so long as the removal and substitution of the defaulting General

Partner is made within thirty (30) days of such default or, if such removal and substitution cannot reasonably be completed within thirty (30) days, so long as the Limited Partner commences to take action to remove and substitute the General Partner within a reasonable period and thereafter diligently proceeds to complete such substitution; (ii) any transfer of the Property to one or more of the General Partners pursuant to the purchase option, as provided for in the Partnership Agreement; (iii) any transfer of the Limited Partner's interest in connection with a default by the Limited Partner under and in accordance with the Partnership Agreement; and, (iv) any sale, transfer or other disposition of the Limited Partner's interest in the Developer or of an interest in the Limited Partner.

16.3 **Transfer of Developer Limited Partner's Interest.** Notwithstanding anything to the contrary in this Agreement or the Loan Documents, no consent shall be required of the City (and it shall not be deemed a default or an Event of Default under any of the Loan Documents), in connection with the transfer and/or the assignment by the Developer's limited partner of its interest in the Developer to an entity controlled or managed by an entity which is related to or under common control with the Developer's limited partner.

16.4 **Removal of Developer's General Partner.** Notwithstanding anything to the contrary in this Agreement or the Loan Documents, the removal and/or replacement of a General Partner for cause in accordance with the Partnership Agreement shall not require the consent of the City and shall not constitute a default or an Event of Default under this Agreement or the Loan Documents or accelerate the maturity of the Inclusionary Loan. If the Developer's limited partner exercises its right to remove a General Partner, City will not unreasonably withhold its consent to the substitute general partner; provided however, the consent of either the City shall not be required if the substitute general partner is an affiliate of the Developer's limited partner. The substitute general partner shall assume all of the rights and obligations of the removed general partner hereunder.

17. **CERTIFICATE OF COMPLETION**

Upon satisfactory completion of the construction and upon the request of Developer, or at its own election, the City shall issue a Certificate of Completion. Such Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction.

If City declines to furnish a Certificate of Completion after written request from Developer, the City Project Manager shall, within thirty (30) days after receipt of the request, provide Developer with a written statement of the reasons therefore. The statement shall contain a description of the action Developer must take to obtain a Certificate of Completion. If the reason therefore is that the Developer has not completed a minor portion of the construction, City may, in its sole and absolute discretion, issue the Certificate of Completion upon the posting with City of a bond or other form of security acceptable to the City Project Manager in the amount of the fair value of the uncompleted work.

A Certificate of Completion is not evidence of compliance with or satisfaction of the Inclusionary Loan Documents or any obligation of Developer to any other party whatsoever, including any holder of a mortgage or deed of trust. A Certificate of

Completion is not "notice of completion" referred to in Section 3093 of the California Civil Code.

18. INDEMNIFICATION

18.1 Nonliability of City. Developer acknowledges and agrees that:

(a) The relationship between Developer and the City is and shall remain solely that of Developer and lender. City neither undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Developer of any matter in connection with the construction, including matters relating to: (i) the performance of the construction work; (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them; or, (iii) the progress of the construction; and Developer shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Developer by City in connection with such matters is solely for the protection of City, and that neither Developer nor any third party is entitled to rely on it;

(b) Notwithstanding any other provision of any Loan Document: (i) the City is not a partner, joint venture, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer, and City does not intend to ever assume any such status; (ii) City's activities in connection with the Loan shall not be "outside the scope of the activities of a lender of money" within the meaning of California Civil Code Section 3434, as modified or recodified from time to time, and City does not intend to ever assume any responsibility to any person for the quality or safety of the Property; and, (iii) City shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer;

(c) City shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property, whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Developer or any of Developer's agents, employees, independent contractors, licensees or invitees; or (iii) any accident on the Property or any fire or other casualty or hazard thereon; and,

(d) By accepting or approving anything required to be performed or given to City under the Loan Documents, including any certificate, financial statement, survey, appraisal or insurance policy, City shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by City to anyone.

18.2 Indemnity. Developer shall defend (by counsel reasonably satisfactory to City), indemnify and save and hold harmless the Indemnitees from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising from or relating to: (i) this Agreement; (ii) the making of the Loan(s); (iii) a claim, demand or cause of action that any person has or asserts against Developer; (iv) any act or omission of Developer, any

contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Property; or, (vi) the ownership, occupancy or use of the Property. Notwithstanding the foregoing, Developer shall not be obligated to indemnify City with respect to the consequences of any act of gross negligence or willful misconduct of City. Developer's obligations under this Section shall survive the cancellation of the Inclusionary Promissory Note, release and reconveyance of the Inclusionary Deed of Trust, issuance of the Certificate of Completion, and termination of this Agreement.

18.2.1 Notwithstanding the foregoing, neither Developer, nor any of its partners nor their respective directors, officers or employees, shall be personally liable for any indemnification obligation hereunder that would result as the repayment of principal and/or interest under the Loan.

18.3 **Reimbursement of City.** Developer shall reimburse City immediately upon written demand for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the Loan Documents and all related matters, including all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under the Loan Documents. Such reimbursement obligations shall bear interest from the date occurring sixty (60) days after City gives written demand to Developer and shall be secured by the Inclusionary Deed of Trust. Such reimbursement obligations shall survive the cancellation of the Loan Note, release and reconveyance of the Inclusionary Deed of Trust, issuance of a Certificate of Completion, and termination of this Agreement. Developer shall not be obligated to reimburse City for any expenses related to the conduct of any periodic inspections carried out by the City, its personnel or its agents.

19. **INSURANCE, CASUALTY AND CONDEMNATION**

19.1 **Policies Required.** While any obligation of Developer under the Loan Documents remains outstanding, Developer shall maintain at Developer's sole expense, with insurers either: (i) admitted in California; or, (ii) are not admitted to California but have an A.M. Best Rating of "A" or above and reasonably approved by the City, the following policies of insurance in form and substance reasonably satisfactory to the City Attorney:

(a) worker's compensation insurance and any other insurance required by law in connection with the construction;

(b) prior to commencement and following completion of the construction, fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood);

(c) upon commencement of the construction and at all times prior to completion of the construction, builder's risk-all risk insurance covering 100% of the replacement cost of all Improvements (including offsite materials) during the course of construction in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood);

(d) public liability insurance in amounts reasonably required by City from time to time, and in no event less than \$1,000,000 for "single occurrence;"

(e) property damage insurance in amounts reasonably required by the City from time to time, and in no event less than \$1,000,000; and

(f) any other insurance reasonably required by City that is available at commercially reasonable rates.

All such insurance shall provide that it may not be canceled or materially modified without thirty (30) days prior written notice to City. The policies required under subparagraphs (b) and (c) shall include a "lender's loss payable endorsement" in form and substance satisfactory to City, showing the City as encumbrance. The City shall be named as an additional insured in the policies required under subparagraphs (d) and (e). Certificates of insurance for the above policies (and/or original policies, if required by City) shall be primary and delivered within ten (10) days after demand therefore, and prior to start of any construction work. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Developer shall deliver to City evidence of renewal or replacement of such policy reasonably satisfactory to the City Attorney.

19.2 **City Attorney May Modify.** The City Attorney may modify the type and amounts of insurance required pursuant to this Section.

19.3 **Claims and Proceedings.** Developer shall give City immediate notice of any material casualty to any portion of the Property, whether or not covered by insurance, and of the initiation or threatened initiation of any proceeding for the condemnation or other taking for public or quasi-public use of any portion of the Property (collectively, "Condemnation"), and shall provide City with copies of all documents which pertain to any such casualty or Condemnation. Developer shall take all action reasonably required by City in connection therewith to protect the interests of Developer and/or City, and City shall be entitled (without regard to the adequacy of its security) to participate in any action, claim, adjustment or proceeding and to be represented therein by counsel of its choice. Developer shall not settle, adjust, or compromise any claim, action, adjustment or proceeding without prior written approval, which approval shall not be unreasonably withheld or delayed.

19.4 **Delivery of Proceeds to City.** In the event that, notwithstanding the "lender's loss payable endorsement" requirement set forth above, the proceeds of any

casualty insurance policy described herein are paid to Developer, Developer shall, subject to any superior rights of the Senior Lender, deliver such proceeds to the City immediately upon receipt.

19.5 Application of Casualty Insurance Proceeds. Any proceeds collected (the "Proceeds") under any casualty insurance policy described in this Agreement shall be disbursed to Developer as provided below, but only upon fulfillment of each of the following conditions (the "Restoration Conditions") within ninety (90) days (unless extended by mutual agreement of Developer and City) following the occurrence of the receipt of the Proceeds:

(a) Developer shall demonstrate to City's reasonable satisfaction that the Proceeds (together with amounts deposited by Developer pursuant to subparagraph (b) and any undisbursed loan and tax credit proceeds available to the Developer) will be adequate to repair the Improvements and to restore the fair market value of the Property, within a time period reasonably determined by City, to at least the value it had immediately prior to sustaining the damage. Such demonstration shall include delivery to City of: (i) plans and specifications reasonably satisfactory to City; and, (ii) a construction contract in form and content, and with a contractor, reasonably satisfactory to City;

(b) To the extent that the Proceeds (together with all undisbursed Loan Proceeds and any other financing proceeds available to the Developer) are insufficient to accomplish the restoration required above, Developer shall deliver to City funds (the "Shortfall Funds") in the amount of such shortfall, which funds shall be assigned to City as security for Developer's obligation hereunder and held and disbursed in the same manner as the Proceeds;

(c) Developer shall execute such documents as City reasonably requires to evidence and secure Developer's obligation to use all amounts disbursed for the diligent restoration of the Property; and,

(d) No Event of Default shall remain uncured.

19.6 Method of Disbursement and Undisbursed Funds. Any Proceeds and Shortfall Funds to be disbursed to Developer shall be held by the Senior Lender if a Senior Loan is outstanding, and disbursed in accordance with the Senior Loan Documents or, if no Senior Loan, then held by the City and disbursed in accordance with the City's then customary disbursement procedures and related provisions. Any amounts remaining undisbursed following completion of such restoration shall be returned to Developer up to the amount of any Shortfall Funds deposited by Developer, and any other amounts remaining shall either be paid to Developer or applied by the Senior Lender, or the City in the absence of a Senior Loan, as the case may be against any obligations that are secured by a lien on the Property, as they elect in their sole and absolute discretion.

19.7 Failure to Satisfy Conditions. In the event that Developer fails to fulfill the Restoration Conditions within one hundred and eighty (180) days (unless extended pursuant to Section 19.5) following the date Proceeds are received, the Proceeds shall be applied by City against any obligations to City that are secured by a lien on the Property,

and the selection of which such obligations to apply the Proceeds against shall be made by City in its sole and absolute discretion.

19.8 **Restoration.** Nothing in this Section 19 shall be construed to excuse Developer from repairing and restoring all damage to the Property in accordance with other Loan Document provisions, regardless of whether insurance proceeds are available or sufficient.

19.9 **Condemnation; Treatment of Compensation.** Subject to any superior rights of Senior Lender, Developer hereby assigns to the City, as security for all obligations to City secured by a lien on the Property, all amounts payable to Developer in connection with any Condemnation, and any proceeds of any related settlement (collectively, "Compensation"). Subject to any superior rights of Senior Lender, Developer shall deliver such remaining Compensation to City immediately upon receipt. If the taking results in a loss of the Property to an extent that, in the reasonable opinion of City, renders or is likely to render the Property not economically viable or if, in City's reasonable judgment Developer's security is otherwise impaired, City may apply the Compensation received due to judgment or settlement in connection with any condemnation or other taking to reduce the unpaid obligations secured in such order as City may determine, and without any adjustment in the amount or due dates of payments due under the Note. If so applied, any award in excess of the unpaid balance of the Note and other sums due to City shall be paid to Developer or Developer's assignee. City shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

19.9.1 Notwithstanding the foregoing, as long as the value of City's liens are not impaired, any condemnation proceeds may be used by the Developer for repair and/or restoration of the Project.

19.9.2 Notwithstanding the foregoing, during the tax credit compliance period for the Project, as determined under Section 42 of the Internal Revenue Code, any condemnation proceeds may be used by the Developer for repair and/or restoration of the Project.

19.10 **Waiver of Subrogation.** Developer hereby waives all rights to recover against the City (or any officer, employee, agent or representative of City) for any loss incurred by Developer from any cause insured against or required by any Loan Document, to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Developer shall use its best efforts to obtain only policies that permit the foregoing waiver of subrogation.

20. **DEFAULTS AND REMEDIES**

20.1 **Events of Default.** The occurrence of any of the following, whatever the reason therefore which is not cured, shall constitute an Event of Default by Developer:

(a) Developer fails to make any payment of principal or interest under the Inclusionary Promissory Note when due, and such failure is not cured within ten

(10) Business Days after Developer's receipt of written notice that such payment was not received when due;

(b) Developer fails to perform any other obligation for the payment of money under any Loan Document, and such failure is not cured within ten (10) Business Days after Developer's receipt of written notice that such obligation was not performed when due;

(c) Developer fails to perform any obligation (other than the obligations described in subparagraphs (a) and (b) above) under any Loan Document, and such failure is not cured within thirty (30) days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such thirty (30)-day period, such failure shall not be an Event of Default so long as Developer (in any event, within ten (10) Business Days after receipt of such notice) commences to cure, and thereafter diligently (in any event within ninety (90) days after receipt of such notice) prosecutes such cure to completion;

(d) Any representation or warranty in any Loan Document proves to have been incorrect in any material respect when made;

(e) The Property is materially damaged or destroyed by fire or other casualty unless Developer fulfills the Restoration Conditions set forth in the insurance provisions of this Agreement within one hundred eighty (180) days (unless extended pursuant to Section 19.5) and thereafter diligently restores the Property in accordance with this Agreement;

(f) Work on the construction ceases for thirty (30) consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God or any other deity, strikes or other causes beyond Developer's reasonable control);

(g) Developer is enjoined or otherwise prohibited by any Governmental Authority from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for sixty (60) days or more for any reason;

(h) Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the City Project Manager's prior written consent;

(i) Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for ninety (90) days; or Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, construction or similar proceeding relating to it or any part of

its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for ninety (90) days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer and is not released, vacated or fully bonded within ninety (90) days after its issue or levy; or

(j) (i) any of the Senior Loan Documents is revoked or terminated, in whole or in part and for any reason (except due to repayment of such loans), without the City Project Manager's prior written consent, or (ii) Developer defaults or otherwise fails to perform any of its duties or obligations under or in connection with any of the Senior Loan Documents, subject to all applicable notice and cure periods, or (iii) any of the Senior Loan Documents is amended, supplemented or otherwise modified without City's prior written consent, which consent shall not be unreasonably withheld.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered under this Agreement or under the other Inclusionary Loan Documents by Developer's Limited Partner shall be deemed to be a cure by Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer.

20.2 **Remedies Upon Default.** Upon the occurrence of any Event of Default, City may, at its option and in its absolute discretion, do any or all of the following:

(a) By written notice to Developer, declare the principal of all amounts owing under the Loan Documents, together with all accrued interest and other amounts owing in connection therewith, to be immediately due and payable, regardless of any other specified due date; provided that any Event of Default described in Section 20.1 (e) shall automatically, without notice or other action on City's part, cause all such amounts to be immediately due and payable;

(b) In its own right or by a court-appointed receiver, take possession of the Property, enter into contracts for and otherwise proceed with the completion of the construction by expenditure of its own funds;

(c) Exercise any of its rights under the Loan Documents and any rights provided by law, including, without limitation, the right to seek specific performance and the right to foreclose on any security and exercise any other rights with respect to any security, all in such order and manner as City elects in its sole and absolute discretion; and,

(d) Suspend or terminate the award of City funds if Developer fails to comply with any term of such award.

20.3 **Cumulative Remedies: No Waiver.** City's rights and remedies under the Loan Documents are cumulative and in addition to all rights and remedies provided by law. The exercise by City of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice the City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City to take action on account of such default if

such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Loan Document shall be construed as a waiver of any subsequent breach of the same provision. City's consent to or approval of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act. The City's acceptance of the late performance of any obligation shall not constitute a waiver by City of the right to require prompt performance of all further obligations; City's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of either party's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's acceptance of any partial performance shall not constitute a waiver by City of any rights.

21. MISCELLANEOUS

21.1 **Obligations Unconditional and Independent.** Notwithstanding the existence at any time of any obligation or liability of City to Developer, or any other claim by developer against City, in connection with the Loan or otherwise, Developer hereby waives any right it might otherwise have: (a) to offset any such obligation, liability or claim against Developer's obligations under the Loan Documents; or, (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Developer of any of its obligations under the Loan Documents.

21.2 **Notices.** All notices, demands, approvals and other communications provided for in the Loan Documents shall be in writing and be delivered to the appropriate party by personal service or U.S. mail at its address as follows:

If to Developer:	Legacy Square, L.P. c/o National Community Renaissance of California 9421 Haven Avenue Rancho Cucamonga, CA Attention: Legal Counsel
With a copy to:	Klein Hornig LLP 1325 G Street NW, Suite 700 Washington, DC 20005 Attention: Chris Hornig
With a copy to:	Mercy House CHDO, Inc. 807 North Garfield Santa Ana, CA 92701 Attn: Larry Haynes
With a copy to:	Banc of America CDC Special Holding Company, Inc. MA1-225-02-02 225 Franklin Street Boston, MA 02110

With a copy to: Buchalter, A Professional Corporation
 1000 Wilshire Boulevard
 Suite 1500
 Los Angeles, CA 90017-1730
 Attn: Michael Williamson (Ref. B0965-0521)

If to City: Community Development Agency of the City of Santa Ana
 Housing Manager
 20 Civic Center Plaza (M-26)
 P.O. Box 1988
 Santa Ana, California 92702

With a copy to: Office of the City Attorney
 City of Santa Ana
 20 Civic Center Plaza, 7th Floor (M-29)
 Santa Ana, California 92702

Addresses for notice may be changed as required by written notice to all other parties. All notices personally served shall be effective when actually received. All notices mailed shall be effective three (3) days after deposit in the U.S. Mail, postage prepaid. The foregoing notwithstanding, the non-receipt of any notice as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such notice.

21.3 **Survival of Representations and Warranties.** All representations and warranties in the Loan Documents shall survive the making of the Loan(s) described herein and have been or will be relied on by City notwithstanding any investigation made by either party.

21.4 **No Third Parties Benefited.** This Agreement is made for the purpose of setting forth rights and obligations of Developer and the City, and no other person shall have any rights hereunder or by reason hereof.

21.5 **Binding Effect; Assignment of Obligations.** This Agreement shall bind, and shall inure to the benefit of, Developer and City and their respective successors and assigns. Other than as expressly provided to the contrary in this Agreement, Developer shall not assign any of its rights or obligations under any Loan Document without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any such assignment without such consent shall, at City's option, be void.

21.6 **Prior Agreements; Amendments; Consents.** This Agreement (together with all other Loan Documents) contains the entire agreement between the City and Developer with respect to the Loan and the Property, and all prior negotiations, understandings and agreements are superseded by this Agreement and such other Loan Documents. No modification of any Loan Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

21.7 **Governing Law.** All of the Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California and Federal law, whichever is more stringent. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Orange or the United States District Court of the Central District of California, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the Loan Documents. Assuming proper service of process, Developer also waives any objection regarding personal or in rem jurisdiction or venue.

21.8 **Severability of Provisions.** No provision of any Loan Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Loan Documents are hereby declared to be severable.

21.9 **Headings.** Article and section headings are included in the Loan Documents for convenience of reference only and shall not be used in construing the Loan Documents.

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

21.11 **Time of the Essence.** Time is of the essence under this Agreement and in the performance of every term, covenant, and obligation contained herein.

21.12 **Conflict of Interest.** No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

21.13 **Warranty Against Payment of Consideration.** Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

21.14 **[RESERVED]**

21.15 **Plans and Data.** Where Developer does not proceed with the work and construction of the Project, and when this Agreement is terminated with respect thereto for any reason, Developer shall deliver to City any and all plans and data concerning the Property, and City or any person or entity designated by City shall have the right to use such plans and data without compensation to Developer. Such right of City shall be subject to any right of the preparer of the plans to their use.

21.16 **Authority to Enter Agreement.** Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties

to each of the terms of this Agreement, and shall indemnify the City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed on the date set forth at the beginning of this Agreement.

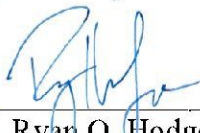
ATTEST:

CITY OF SANTA ANA

Norma Mitre
Acting Clerk of the Council

Steven A. Mendoza
Acting City Manager

APPROVED AS TO FORM
Sonia R. Carvalho
City Attorney



By: Ryan O. Hodge
Assistant City Attorney

RECOMMENDED FOR APPROVAL

Steven A. Mendoza
Executive Director
Community Development Agency

{Signatures continue on following page}

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed on the date set forth at the beginning of this Agreement.

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Assistant City Attorney

RECOMMENDED FOR APPROVAL

Steven A. Mendoza
Executive Director
Community Development Agency

{Signatures continue on following page}

No other revisions will be requested
Zoe Kranemann
Senior Project Manager
11/23/2020

55A-58

EXHIBITS

- A. Legal Description
- B. Affordability Restrictions on Transfer of Property
- C. Inclusionary Deed of Trust
- D. Inclusionary Promissory Note
- E. Project Budget
- F. Scope of Work / Schedule of Performance
- G. Form of Residual Receipts Report

Exhibit A: Legal Description

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA ANA IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

ALL THOSE PORTIONS OF LOTS 4 AND 5 OF THE THOMAS ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER LINE INTERSECTION OF STAFFORD STREET AND FRENCH STREET AS SHOWN ON A MAP OF THE FRUIT ADDITION TO SANTA ANA EAST, IN THE CITY OF SANTA ANA, RECORDED IN [BOOK 5, PAGE 186](#), MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA;

THENCE ALONG SAID CENTER LINE OF FRENCH STREET SOUTH 00° 15' 06" WEST A DISTANCE OF 99.95 FEET;

THENCE NORTH 89° 44' 54" WEST A DISTANCE OF 30.00 FEET TO THE INTERSECTION OF THE WEST LINE OF FRENCH STREET WITH A LINE PARALLEL WITH AND DISTANT 15.00 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF SAID LOT 5, BEING THE TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID PARALLEL LINE NORTH 89° 44' 54" WEST A DISTANCE OF 91.29 FEET;

THENCE NORTH 63° 48' 21" EAST A DISTANCE OF 61.60 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 25.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE 116° 26' 45" AN ARC DISTANCE OF 50.81 FEET TO A TANGENT LINE, BEING SAID WEST LINE OF FRENCH STREET;

THENCE ALONG SAID WEST LINE, SOUTH 00° 15' 06" WEST, A DISTANCE OF 5.05 FEET TO THE TO THE TRUE POINT OF BEGINNING.

PARCEL B:

THE SOUTH 35 FEET OF LOT 5 AND THE NORTH 20 FEET OF LOT 8 OF THE THOMAS ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPT THEREFROM THAT PORTION OF SAID LOT 5 DESCRIBED IN THE DEED TO THE CITY OF SANTA ANA, A MUNICIPAL CORPORATION, RECORDED FEBRUARY 25, 1974 IN [BOOK 11081, PAGE 466](#) OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

THE SOUTH 30 FEET OF LOT 8 AND THE NORTH 20 FEET OF LOT 9 OF THOMAS' ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

PARCEL D:

THE NORTH 20 FEET OF LOT 12 AND THE SOUTH 30 FEET OF LOT 9 OF THE THOMAS ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

PARCEL E:

LOT 11 AND THE SOUTH 14 FEET OF LOT 10 OF THE THOMAS ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

PARCEL F:

THOSE PORTIONS OF LOTS 12 AND 13 OF THOMAS' ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF SAID LOT 13, DISTANT THEREON 15 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 13,

AND RUNNING THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOTS 13 AND 12, A DISTANCE OF 65 FEET;

THENCE WESTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 12, 125 FEET TO THE WESTERLY LINE OF SAID LOT 12;

THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOTS 12 AND 13, 65 FEET;

THENCE EASTERLY 125 FEET TO THE POINT OF BEGINNING.

PARCEL G:

THAT PORTION OF LOTS 13, 18 AND 19 OF THOMAS' ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 85 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 19;

THENCE NORTH 55 FEET;

THENCE WEST 125 FEET;

THENCE SOUTH 55 FEET;

THENCE EAST 125 FEET TO THE POINT OF BEGINNING.

PARCEL H:

LOTS 14, 15, 16 AND 17 AND THE SOUTH 85 FEET OF LOTS 18 AND 19 OF THOMAS' ADDITION TO SANTA ANA, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 19, PAGE 17](#) OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE NORTH 40 FEET OF THE EAST 25 FEET OF SAID LOT 17

Exhibit B: Affordability Restrictions on Transfer of Property

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

When Recorded Mail to:

City of Santa Ana
Clerk of the Council
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702
Attention: Clerk of the Council

**AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY**

{Address: 609 N. Spurgeon St., Santa Ana, California}

THESE AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (the "Restrictions") are entered into by and between Legacy Square, L.P., a California limited partnership ("Developer") and the City of Santa Ana, a charter city and municipal corporation ("City").

RECITALS:

A. The City's Housing Opportunity Ordinance ("Ordinance") was originally adopted by the City Council on November 28, 2011 (Ordinance No. NS-2825), and is codified in Article XVIII.I of the Santa Ana Municipal Code ("SAMC"). The Ordinance was amended by the City Council on September 1, 2015 (Ordinance No. NS-2881), and on October 6, 2015 (Ordinance No. NS-2885). The Ordinance established standards and procedures to encourage the development of housing that is affordable to a range of households with varying income levels. Pursuant to SAMC section 41-1904(c), developers may pay an in-lieu fee in certain instances to satisfy the inclusionary requirements. These funds are deposited into the Inclusionary Housing Fund, as defined by SAMC section 41-1901, and are to be used to increase and improve the supply of affordable housing per SAMC section 41-1909.

B. Developer, acting by and through its representative and agent, National Community Renaissance of California, a California public benefit corporation ("NCRC"), requested financial assistance in connection with the proposed acquisition, development, construction, ownership, occupancy, and operation of a ninety-three (93) unit affordable housing complex ("Project") to be located at 609 N. Spurgeon St., Santa Ana, California (to be re-designated as 301 East Santa Ana Boulevard), and legally described within **Exhibit A** of the Inclusionary Loan Agreement hereto and incorporated herein ("Property"). By voluntary decision of the Developer (but subject to restrictions set forth below), at least forty-four (44) of the units will be affordable to family households earning no more than 30% of the Area Median Income ("AMI") and of those units thirty-three (33) will be reserved as permanent supportive housing ("PSH"); thirty-one (31) of the

units affordable to family households earning no more than 50% of the AMI; seventeen (17) of the units affordable to family households earning no more than 60% of the AMI; and one (1) manager's unit. The Project unit mix adopted voluntarily by the Developer consists of:

	PSH - 30% AMI	30% AMI	50% AMI	60% AMI	Total
1-bedroom	30				30
2-bedroom	3	6	18	11	38
3-bedroom		5	13	6	24
2-bedroom Manager					1
Total	33	11	31	17	93

Mercy House Living Centers ("Mercy House") will manage onsite residential services coordination for all households.

C. The City and the Housing Authority of the City of Santa Ana ("Housing Authority") reviewed Developer's request for assistance and at the City Council/Housing Authority meeting on January 15, 2019, the City Council authorized and approved issuance of a conditional, pre-commitment letter evidencing the preliminary award of \$3,170,547 of funds to the Project ("Inclusionary Loan"), to be funded exclusively from the Inclusionary Housing Fund.

D. The amount of the Inclusionary Loan was determined based upon the City's review of the Developer's request for the receipt of the Inclusionary Loan and the development proforma and projected cash flows for the Project submitted by the Developer to the City as of January 15, 2019 ("Proforma"). The City Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Inclusionary Loan is not materially increased or extended.

E. In furtherance of the Inclusionary Housing Program, Developer has applied to the City for a loan with which to:

1. Acquire, develop and construct the project, and
2. Thereafter to maintain, operate and professionally manage the Project as decent, safe, sanitary and affordable rental housing.

F. The City, on certain terms and conditions, desires to make such Inclusionary Loan to Developer in order to make possible the acquisition, development, construction, ownership, maintenance and operation of the Project, thereby expanding the supply of decent, safe, sanitary and affordable housing within the City.

G. If there is any inconsistency between State, and local guidelines with regard to any of the terms and conditions contained herein, the more stringent shall apply.

H. The Inclusionary Loan Agreement, Inclusionary Deed of Trust, Inclusionary Promissory Note and these Restrictions, dated concurrently herewith (collectively the "Inclusionary Loan Documents") are entered into for the purpose of providing for affordable residential rental units in the City of Santa Ana pursuant to the Inclusionary Housing Fund regulations and guidance.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, City and Developer agree as follows:

1. Definitions:

"Affordable Housing" means housing in which households whose incomes qualify them as Extremely Low, Very Low or Low Income, pay Affordable Rents.

"Affordable Rent" means the monthly rents which do not exceed the maximum amount applicable to Extremely Low, Very Low and Low Income households, as promulgated by the California Tax Credit Allocation Committee (TCAC), or by the State of California, as applicable.

"Agency" means the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the CRL. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. "Agency" shall also refer to the City where the context dictates, to the effect that City shall have all rights granted to the Agency hereunder.

"Agreement" means the Loan Agreement by and between the City and Developer for Inclusionary Housing Funds.

"Applicable Law" shall mean those federal, state and local laws, ordinances, regulations, policies and procedures applicable to the Inclusionary Housing Funds.

"Building Permit" means the building permit(s) issued by the City of Santa Ana and required for the construction.

"Business Day" means any Monday, Tuesday, Wednesday, Thursday or Friday on which Santa Ana City Hall is open to the public for the conduct of City affairs.

"Calendar Year" means each consecutive twelve (12) month period from January 1 to December 31.

"Certificate of Completion" has the meaning set forth in Article 17 of the Agreement.

"City" means the City of Santa Ana, California, a charter city and municipal corporation. "City" shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder.

"City Project Manager" shall mean the City's Housing Manager and/or his/her designee.

"County" means the County of Orange, California.

"Developer" means Legacy Square L.P., a California limited partnership.

"Event of Default" has the meaning set forth in Section 20.1 of the Agreement.

"Extremely Low Income" means an adjusted income which does not exceed thirty percent (30%) of the Median Income for the Area, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.

"Governmental Authority" means any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and any public utility.

"Housing Authority" means the Housing Authority of the City of Santa Ana (CA093), a public body, corporate and politic.

"HUD" means the United States (U.S.) Department of Housing and Urban Development, and any successors or assigns thereof.

"Improvements" means all improvements and fixtures now and hereafter comprising any portion of the Property, including, without limitation, landscaping, trees and plant materials; and offsite improvements, as required through the City of Santa Ana Planning and Building Agency entitlement process.

"Inclusionary Deed of Trust" means the deed of trust encumbering the Property, in the form attached hereto as **Exhibit C**, to be executed by Developer pursuant to Section 5.B.1 in order to secure the Inclusionary Loan Note.

"Inclusionary Loan" or **"Inclusionary City Loan"** means a loan in the original principal amount of up to three-million, one-hundred seventy thousand five hundred forty-seven dollars (\$3,170,547) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund.

"Inclusionary Promissory Note" means that certain promissory note for Inclusionary Loan funds in the original principal amount of \$3,170,547 in the form attached hereto as **Exhibit D**, and to be executed by Developer in favor of City to evidence the obligation of Developer to repay the Inclusionary Loan through residual receipts as further described in the Inclusionary Promissory Note.

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Authority.

"Lien" means any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any lien or security interest.

"Loan Documents" or "Inclusionary Loan Documents" means, collectively, the Agreement, the Inclusionary Promissory Note, the Inclusionary Deed of Trust, and these Restrictions, and any other agreement, document, or instrument that the City reasonably requires in connection with the execution of these Restrictions or from time to time to effectuate the purposes of these Restrictions.

"Low Income" means an adjusted income which does not exceed eighty percent (80%) of the Median Income for the Area, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD).

"Median Income for the Area" means the median income for Orange County, California PMSA as most recently determined by HUD. Also may be referred to interchangeably in the Inclusionary Loan Documents as "Area Median Income" or "AMI".

"Project" means the construction of the Improvements upon the Property by Developer pursuant to the Agreement.

"Property" means the property that is to be located at 301 East Santa Ana Boulevard in the City of Santa Ana, and as more fully described in the "Legal Description" of the Property attached as **Exhibit A** to the Agreement.

"Restricted Units" means the forty-five (45) "Housing Units" at the Project that shall be operated as Affordable Housing for the Term of Affordability. Twenty-seven (27) of the Restricted Units shall and will be restricted to households earning no more than 30% of the AMI and eighteen (18) Restricted Units shall and will be restricted to a household earning no more than 50% of the AMI.

"Senior Lender" means a commercial or institutional financial institution providing the Senior Loan or any other holder of the Senior Loan Note.

"Senior Loan" means a loan from the Senior Lender concurrent to the Inclusionary Loan for payment of a portion of the acquisition and rehabilitation costs, and shall include any subsequent loan that refinances the initial Senior Loan.

"Senior Loan Deed of Trust" means the first deed(s) of trust securing the Senior Loan by encumbering the Property.

"Senior Loan Documents" means, collectively, the loan agreement governing the Senior Loan, the Senior Loan Note, the Senior Loan Deed of Trust, and any other agreement, document or instrument that the Senior Lender requires in connection with the Senior Loan.

"Senior Loan Note" means the promissory note evidencing the Senior Loan from the Senior Lender.

"Term of Affordability" or "Affordability Period" means a period of fifty-five (55) years from the date of issuance of the Certificate of Occupancy for the Project, or repayment of the Inclusionary Loan, whichever is longer.

"Very Low Income" means an adjusted income which does not exceed fifty percent (50%) of the Median Income for the Area, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.

2. Use of the Property. Developer covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Property of any part thereof, that Developer, such successors, and assigns shall use the Restricted Units to provide Affordable Housing, for low-, very-low, and extremely-low-income households, as provided in the Inclusionary Loan Agreement and these Restrictions. Developer agrees that the Restricted Units shall be used only for decent, safe, sanitary and Affordable Housing pursuant to the affordability requirements of California Health and Safety Code ("H&S") sections 50052.5 and 33334.3, as applicable.

3. Affordability Requirements, Use and Maintenance of the Property.

3.1 Use Covenants and Restrictions:

A. Developer agrees and covenants, which covenants shall run with the land and bind Developer, its successors, its assign and every successor in interest to the Property that Developer will make all Restricted Units available to extremely-low, very low and low income households (as applicable) at rents affordable to such households pursuant to these Restrictions for fifty-five (55) years from the date of issuance of the Certificate of Occupancy for the Project, or repayment of the Inclusionary Loan, whichever is longer.

B. These Restrictions shall be recorded in the Official Records of the County and shall not be subordinated to the lien of any financing.

3.2 Affordability Levels/Unit Mix:

A. The Project shall consist of ninety-three (93) residential units (including one (1) unit for the onsite manager). The unit mix and levels of affordability voluntarily adopted by Developer are as follows:

	PSH - 30% AMI	30% AMI	50% AMI	60% AMI	Total
1-bedroom	30				30
2-bedroom	3	6	18	11	38
3-bedroom		5	13	6	24
2-bedroom Manager					1
Total	33	11	31	17	93

The unit mix and levels of affordability required for the Restricted Units are as follows:

	PSH - 25% AMI	PSH - 30% AMI	30% AMI	50% AMI	Total
1-bedroom	16				16
2-bedroom		3	6	18	27
3-bedroom			2		2
Total	16	3	8	18	45

- B. The affordable rents charged at the Project must comply with the standards set forth by the California Tax Credit Allocation Committee (TCAC).
- C. Utility allowances must be deducted from the maximum gross monthly Affordable Rent. The Housing Authority publishes a Utility Allowance Schedule on an annual basis, which shall be used by Developer in connection with units receiving Rental Subsidies as defined below for so long as may be required by the Housing Authority.
- D. The Project will receive eight (8) project based vouchers from the Housing Authority of the City of Santa Ana (the “Rental Subsidies”) during the Term of Affordability of this Agreement. If, during the Term of Affordability of this Agreement, any change in federal law occurs or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidies, such that the rental subsidy projected on the budget for the Project is reduced or no longer available, the Developer may increase the rents on the eight project-based voucher assisted-units during the remainder of the Term of Affordability of this Agreement to the maximum rent published by the California Tax Credit Allocation Committee for a “60% AMI Household” in Orange County for the applicable bedroom size subject to the City Project Manager’s prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. If Developer demonstrates to the satisfaction of the City that such rental increase is necessary to maintain the financial stability of the Project and no alternative rental subsidies are available, the City will review and consider such rental increase.

3.3 Calculation of Rent for Restricted Units:

- A. The affordable rents charged for the Restricted Units must comply with the standards set forth by the California Tax Credit Allocation Committee (TCAC).
- B. Utility allowances must be deducted from the maximum gross monthly Affordable Rent. The Housing Authority publishes a Utility Allowance Schedule on an annual basis, which shall be used by Developer in connection with units receiving Rental Subsidies for so long as may be required by the Housing Authority.

C. On an annual basis, the City shall confirm the Developer's submission of the maximum allowable schedule of incomes and rents (less utility allowance appropriate for the Restricted Units), which shall correspond to the maximum rent levels allowed by TCAC. In no event can Developer charge any tenant of a Restricted Unit more than such amount.

D. Developer, its successors and assigns, shall not charge rents for the Restricted Units in excess of the amounts set forth in the tables as adjusted from time-to-time by TCAC.

E. In no event shall the rent charged to the tenant of a Restricted Unit be more than that amount of the rent as published by TCAC on an annual basis.

F. Utility allowances must be deducted from the maximum gross monthly Affordable Rent. Utility allowances are deducted from rents using the amounts established by the California Utility Allowance Calculator as allowed by TCAC regulations or, in connection with units receiving Rental Subsidies, for so long as may be required by the Housing Authority, as set annually by the Housing Authority.

G. Recertification of Tenant Income:

- (1) Developer shall take all necessary steps to review the income of all tenants prior to renting to them, as well as reviewing current tenants on an annual basis.
- (2) Developer shall allow the City to conduct periodic reviews of tenant files and files relating to affirmative marketing and outreach to ensure the Project's compliance with applicable regulations and guidelines.
- (3) Restricted Units continue to qualify as Affordable Housing despite a temporary non-compliance caused by increases in the incomes of existing tenants if actions satisfactory to the City are being taken to ensure that all vacancies are filled in accordance with this section until the non-compliance is corrected.
- (4) All tenant certifications and related files shall be made available to the City either on-site or via an internet based document sharing platform selected by the Managing General Partner. Upon City's request therefore, the Managing General Partner will make available documents or certifications containing tenant information or personal information.
- (5) The City will indemnify and hold the Developer and each of the Managing General Partner and Administrative General Partner (and their respective affiliates) harmless from and against any and all losses, damages and liabilities (including reasonable attorney's fees) which any of them may incur by reason of the unauthorized release or disclosure of tenant files, or any portion thereof, or information included therein (including any information that could be used, either directly or indirectly, to identify any

person, whether a natural person or a legal entity), including any such release or disclosure that violates any applicable State, federal or other local laws, ordinances, regulations, or codes, by the City or its officers, employees, agents and/or personnel and such unauthorized release or disclosure is due to the fraud, gross negligence or willful misconduct by the City or such officers, employees, agents and/or personnel.

3.4 Construction and Maintenance of the Property:

A. Construction and Maintenance. Solely at Developer's expense, Developer agrees to maintain the Property (and all abutting grounds, sidewalks, roads, parking and landscape areas which Developer is otherwise required to maintain) in a clean and good condition and repair in compliance with all applicable housing quality standards and state and local code requirements, and keep the Property free from any accumulation of debris and waste materials. City, and any of its employees, agents, contractors or designees, shall have the right to enter upon the Property at reasonable times and in a reasonable manner to inspect the Project. If at any time Developer fails to maintain, or cause to be maintained, the Property as required by this section, and said condition is not corrected after the expiration of a reasonable period of time not to exceed thirty (30) days from the date of written notice from the City, unless such condition cannot reasonably be cured within thirty (30) days, in which case Developer shall have such additional time as reasonably necessary to complete such cure, the City may perform the necessary maintenance and Developer shall pay all reasonable costs incurred for such maintenance. The City shall inspect the Property annually after the date of issuance of the Certificate of Completion as described in Section 17 of the Agreement.

B. Renovations. Following issuance of a Certificate of Completion, Developer shall not remove, demolish or materially alter any Improvement without City's prior consent, except to make non-structural repairs that preserve or increase the Property's value, and shall promptly restore, in a good and professional manner, any Improvement (or other aspect or portion of the Property) that is damaged or destroyed from any cause, subject to Force Majeure.

C. Handicapped Accessibility. Developer shall comply with: (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulations at 24 CFR 8C; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR 35-36 in order to make the Project readily accessible to and usable by individuals with disabilities.

D. Local Sourcing Plan. Developer agrees to make a good faith effort to encourage contractors and suppliers to hire and procure locally. The City has reviewed and approved Developer's local sourcing plan for the Project targeting, to the extent feasible, the hiring of qualified workers, construction contractors, or the purchasing of goods locally within the City of Santa Ana.

E. Lead-Based Paint. Developer shall comply with the requirements, as applicable of the Lead-Based Paint Poisoning Prevention Act.

F. Equal Opportunity and Fair Housing. Developer shall carry out the construction and perform its obligations under this Agreement in compliance with all of the state and federal

laws and regulations regarding equal opportunity and fair housing. Developer must also follow the requirements of California Health and Safety Code section 33435.

G. Property Standards. Developer shall cause the Property to meet all applicable local, state and federal codes and ordinances, including zoning ordinances. Developer shall also cause the Property to meet the current edition of the Model Energy Code published by the Council of American Building Officials.

H. Alternative Transportation and Energy Source, Resource Conservation, and LEED Certification. In recognition of the City's desire to optimize the energy efficiency of the Project, Developer agrees to consult with the Project design team, a CABEC certified 2016 Certified Energy Analyst, a LEED AP Homes (low-rise and mid-rise), LEED AP BD+C (high rise), National Green Building Standard (NGBS) Green Verifier, or GreenPoint Rater (one person may meet both of these latter qualifications) early in the Project design process to evaluate a building energy model analysis and identify and consider energy efficiency or generation measures beyond those required by the TCAC minimum construction standards.

I. Property Maintenance Agreement. Developer shall execute a maintenance agreement with the City prior to occupancy, which shall be in a form reasonably satisfactory to the City Attorney.

J. Monitoring. Developer shall allow the City to conduct annual inspections of each of the assisted units on the Property as required by the Housing Opportunity Ordinance after the date of construction completion, with reasonable advance notice and only during normal business hours. Developer shall cure any defects or deficiencies found by the City while conducting such inspections within thirty ten (10) business days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City.

3.5 Management Plan:

A. Management Plan. Prior to issuance of a Certificate of Occupancy, Developer shall submit for the reasonable approval of the City a "Management Plan" that sets forth in detail Developer's property management duties, a tenant selection process in accordance with this Agreement, a security system and crime prevention program, the procedures for the collection of rent, the procedures for eviction of tenants, the rules and regulations for the Property and manner of enforcement, a standard lease form, an operating budget, the identity and emergency contact information of the professional property management company to be contracted with to provide onsite property management services at the Property, and other matters relevant to the management of the Property, including, but not limited to, the following:

- (1) Management Agent. The Management Agent will be National Community Renaissance of California or an affiliate thereof. If Developer proposes a different Management Agent, Developer shall submit the name and qualifications of the proposed Management Agent. The City Project Manager shall approve or disapprove the proposed Management Agent in

writing based on the experience and qualifications of the Management Agent.

- (2) Management Agreement. Developer shall submit a copy of the proposed management agreement specifying the amount of the management fee, and the relationship and division of responsibilities between Developer and Management Agent.
- (3) Annual Budget and Projected Cash Flows. Prior to the issuance of a certificate of occupancy for the Project, and annually thereafter not later than one hundred fifty (150) days after the close of each Calendar Year thereafter, Developer shall submit an updated operating budget and cash flow to the City Project Manager. The budget and cash flow shall be in a form that is reasonably acceptable to the City Project Manager.
- (4) Tenant Selection Policies. Developer shall adopt and include as part of its Management Plan, written tenant selection policies and criteria for the Restricted Units that meet the following requirements:
 - (a) Are consistent with the purpose of providing housing for Extremely-Low, Very-Low and Low Income households;
 - (b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
 - (c) Provide for:
 - (i) the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, but subject to screening requirements and selection preferences as set forth in the approved tenant selection plan; and,
 - (ii) the prompt written notification to any rejected applicant of the grounds for any rejection;
 - (d) Carry out the Affirmative Marketing procedures of the City of Santa Ana, which are designed to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market area to the Restricted Units. Developer shall cooperate to effectuate this provision prior to the initial renting, or upon occurrence of a vacancy, and the re-renting of any Restricted Units;
- (5) Local Preference. Local preference for Santa Ana residents and workers in tenant selection shall be a requirement of the Project. Subject to the

prohibition of discrimination and the granting of preferences in housing occupancy imposed by federal laws and regulations, the State of California, and by the City of Santa Ana Affordable Housing Funds Policies and Procedures, the Developer shall use its best efforts to lease units in the following order of priority, as further elaborated in the tenant selection policies:

1. First priority shall be given to persons who have been permanently displaced or face permanent displacement from housing in Santa Ana as a result of any of the following:
 - a. A redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.) -- applicable only to projects funded by the Low and Moderate Income Housing Asset Fund.
 - b. Ellis Act, owner-occupancy, or removal permit eviction;
 - c. Earthquake, fire, flood, or other natural disaster;
 - d. Cancellation of a Housing Choice Voucher HAP Contract by property owner; or
 - e. Governmental Action, such as Code Enforcement.
 2. Second priority shall be given to persons who are either:
 - a. Residents of Santa Ana and/or
 - b. Working in Santa Ana.
- (6) Affirmative Marketing. Prior to the issuance of a Certificate of Occupancy, Developer shall prepare and obtain City's approval of an affirmative marketing program for leasing the affordable units at the Project.
 - (7) Crime Free Housing. Developer shall work with City staff to develop a crime free housing policy, procedure, and design plan.
 - (8) Onsite Parking Management Plan. Developer shall provide onsite parking for residents and visitors of the Project and actively monitor the parking demand of the Project site. Developer shall continually monitor and take appropriate measures to manage the parking demand of the Project site to mitigate the use of offsite parking spaces on private or public properties and/or right-of-way. Prior to issuance of a Certificate of Occupancy,

Developer shall submit a Parking Management Plan and obtain approval from the City for said plan.

- (9) Tenant Satisfaction Survey. The Developer shall complete and submit to the City biennial tenant satisfaction surveys of tenants.

B. Rental Inclusionary Housing Manual. The Developer shall also maintain compliance with the City's Inclusionary Housing Manual for Rental Projects.

C. Cure Period. If at any time the City determines that the Restricted Units are not being managed or maintained in accordance with the approved Management Plan, City shall provide Developer and Investor Limited Partner (as defined in the Agreement) with written notice thereof which notice shall include a reasonable cure period not less than thirty (30) days. If the deficiencies are not cured within the cure period provided in the City notice, Developer shall change the management agent or the practices complained of, upon receipt of written notice from the City Project Manager. The City Project Manager may require Developer to change management practices or to terminate the management contract and designate and retain a different management agent. The management agreement shall provide that it is subject to termination by Developer without penalty, upon thirty (30) days prior written notice, at the direction of the City Project Manager. Within ten (10) days following a direction of the City Project Manager to replace the management agent, the Developer shall select another management agent or make other arrangements satisfactory to the City Project Manager or designee for continuing management of the Restricted Units.

3.6 Supportive Services:

A. Onsite Services. The Developer shall provide on-site services that are available to the residents and shall report to the City annually the services provided.

B. Application and Financial Preparedness. Developer shall submit for review and approval by the City a pamphlet or flyer to inform interested persons regarding application and eligibility requirements and to assist interested persons with application and financial preparedness and eligibility for residency at the Project at the initial leasing of the affordable units. Developer shall also work with the City to hold a minimum of two (2) workshops to be coordinated by the Developer at least twelve (12) months prior to the initial leasing of the affordable units.

C. Programs and Amenities. Developer shall provide residents of the Project access to discounted or no-cost onsite supportive services, programming, and amenities.

D. Coordination with the WORK Center: The Developer and the Property Manager shall enter into a Memorandum of Understanding ("MOU") with the City's WORK Center to provide tenants with information about WORK center opportunities to find better jobs and careers. The goal of the MOU is to ensure that all tenants have been provided an opportunity to connect with the WORK Center and be assisted with the tools and knowledge necessary to enter the workforce or obtain a higher-paying job.

3.7 **Obligation to Refrain from Discrimination:**

A. In Use of Property. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, disability, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property, as required by the Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

B. In Affordable Housing Restrictions. Developer, its successors and assigns, shall not refuse to lease a unit to a holder of a rental voucher under 24 CFR part 982 (Housing Choice Voucher Program) or to a holder of a comparable document evidencing participation in a federally funded tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable tenant-based assistance document.

C. In Employment. Developer shall take affirmative action to ensure that applicants are subject to employment decisions, and that employees are treated during employment, without regard to their race, color, disability, creed, religion, sex, marital status, disability, national origin, or ancestry.

D. In all Contracts. Developer shall cause the foregoing covenants to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor for the benefit of City, provided that the foregoing covenant shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. **Miscellaneous Provisions:**

A. Any lease of any of the Restricted Units must be for not less than one year, unless by mutual agreement between the tenant and the Developer. Should the tenant and Developer agree to a term of less than one year, said agreement shall be expressed in written form, signed by the tenant, and maintained in the tenant's rental file held by the Developer. The lease may not contain any of the following provisions (in which references to "Developer" shall mean the Developer, its successors or assigns):

- (1) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;
- (2) Agreement by the tenant that the Developer may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal

property remaining in the Restricted Unit after the tenant has moved out of the Restricted Unit. The Developer may dispose of this personal property in accordance with state law;

- (3) Agreement by the tenant not to hold the Developer or the Developer's agent legally responsible for any action or failure to act, whether intentional or negligent;
- (4) Agreement of the tenant that the Developer may institute a lawsuit without notice to the tenant;
- (5) Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- (6) Agreement by the tenant to waive any right to a trial by jury;
- (7) Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and,
- (8) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Developer against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

B. Developer, its successors or assigns, must adhere to state law requirements with regard to termination of tenancy.

C. Developer shall comply with and be bound by the conflict of interest provisions set forth in all applicable state regulations pertaining to conflict of interest.

D. The covenants established in these Restrictions, and any amendments hereto approved by the City, shall be binding for the benefit of and in favor of the City and its respective successors and assigns, without regard to technical classification and designation. These Restrictions shall remain in effect for fifty-five (55) years from the date of issuance of the Certificate of Occupancy for the Project, or repayment of the Inclusionary Loan, whichever is longer. In its discretion, the City may defer repayment of the Loan or the City may agree to such reasonable modifications to the requirements of these Restrictions, as the City may determine are necessary for the continued maintenance and operation of the Restricted Units. The covenants against discrimination shall remain in effect for the period of these Restrictions. Upon expiration of the Restrictions in accordance with this paragraph, the City shall execute and record a release.

E. Records and Audits.

- (1) Owner shall maintain the following general program records, and make them available for inspection by the City, the State or HUD:

- (a) Records which demonstrate compliance with the Equal Opportunity and Fair Housing requirements outlined in these Restrictions; and,
 - (b) Any other reports issued by other monitoring agencies.
- (2) All records pertaining to each Calendar Year of Inclusionary Housing funds must be retained for the most recent five year period, except that for rental housing projects, records may be retained for five years after the Project completion date; except that records of individual tenant income verifications, Project rents and Project inspections must be retained for the most recent five year period, until five years after the Affordability Period terminates. Developer shall cooperate with the City to retain all books and records relevant to the Loan Agreement for a minimum of five years after the expiration of the Loan Agreement and any and all amendments hereto, or for five years after the conclusion or resolution of any and all audits or litigation relevant to the Loan Agreement, whichever is later. The City, the State, and/or their representatives shall have unrestricted reasonable access to all locations, books, and records for the purpose of monitoring, auditing, or otherwise examining said locations, books, and records with or without prior notice.
- (3) If so directed by the City upon termination of the Loan Agreement, Developer shall cause all records, accounts, documentation and all other materials relevant to the work to be delivered to the City, as depository.
- (4) All records, accounts, documentation and other materials relevant to the Project shall be accessible at any time to the authorized representatives of the City on reasonable prior notice, for the purpose of examination or audit.
- (5) The City may perform an annual audit at the close of each Calendar Year in which these Restrictions are in effect. Developer shall reasonably cooperate with City in performing such audit.
- (6) Developer shall permit the City to perform an Annual Physical Inspection of the Property with at least ten (10) Business Days' notice. Developer shall cooperate with this Inspection and shall take all steps necessary to quickly correct any code deficiencies identified during the Inspection.

F. If there is a discrepancy between local, state and federal law with regard to any of the aforementioned covenants, the more stringent shall apply.

G. The City is the beneficiary of the terms and provisions of these Restrictions and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit these Restrictions and the covenants running with the land have been provided. The City shall have the right if the covenants

are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiary designated by the City is entitled.

H. The covenants and agreements contained herein shall run with the land and shall remain in effect for the term of the Agreement. Upon the sale, conveyance or other transfer of the Property (a "Transfer") and the assumption of the obligations hereunder by a transferee, Developer's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.

I. Upon a Transfer of the Property, the transferee will be obligated to meet with the City prior to closing of the Transfer to review the terms of these Restrictions and requirements of the transferee therein. Any failure of transferee to meet with the City as required would constitute a default under these Restrictions.

J. The Agreement and all of its attachments shall be enforceable by the City in accordance with the terms thereof. Each of the Loan Documents, provide a means of enforcement by the City if Developer is in breach of its obligations hereunder and thereunder, including liens on the Property, deed restrictions and covenants running with the land.

K. The City agrees to provide Developer's Investor Limited Partner (as defined in the Agreement) with notice of and an opportunity to cure any default. Any cure made or tendered by the Investor Limited Partner shall be deemed a cure by Developer.

[Signature Page on the Following Page]

IN WITNESS WHEREOF, the parties hereto have caused these Affordability Restrictions on Transfer of Property to be executed on the date set forth at the beginning of these Restrictions.

ATTEST:

CITY OF SANTA ANA

Daisy Gomez
Clerk of the Council

Kristine Ridge
City Manager

APPROVED AS TO FORM
Sonia R. Carvalho
City Attorney

By: Ryan O. Hodge
Assistant City Attorney

RECOMMENDED FOR APPROVAL

Steven A. Mendoza
Executive Director
Community Development Agency

[Signatures continue on following page]

DEVELOPER:

LEGACY SQUARE, L.P.,
a California limited partnership

By: NCRC Legacy MGP, LLC,
a California limited liability company,
its managing general partner

By: National Community Renaissance of
California, a California nonprofit public benefit
corporation, its sole member and manager

By: _____
Michael Finn, Chief Financial Officer

Exhibit C: Inclusionary Deed of Trust

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

When Recorded Mail to:

City of Santa Ana
Clerk of the Council
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702
Attention: Clerk of the Council

INCLUSIONARY LEASEHOLD DEED OF TRUST
AND ASSIGNMENT OF RENTS

(609 North Spurgeon St., Santa Ana, California)

THIS INCLUSIONARY LEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS (the "Deed of Trust") made this 15th day of December, 2020, by and between Legacy Square L.P., a California limited partnership (the "Trustor"), [] (the "Trustee"), and the City of Santa Ana, a charter city and municipal corporation (the "Beneficiary"). Capitalized terms not defined in this Deed of Trust shall have the meanings given such terms in the Agreement (defined in Section 1 below and in the Inclusionary Promissory Note).

Trustor, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, its leasehold interest in the property located in the City of Santa Ana, County of Orange, State of California, described in the attached Exhibit A and more commonly known as 609 North Spurgeon St., Santa Ana, California (to be re-designated as 301 East Santa Ana Boulevard) (the "Property");

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and all fixtures now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Inclusionary Deed of Trust; provided that so long as Trustor is not in default hereunder, it shall be permitted to control the Property in accordance with the requirements of that certain Inclusionary Loan Agreement entered into between the Trustor and the Beneficiary, dated concurrently herewith, which Agreement is on file with the Beneficiary as a public record;

TOGETHER with the right, power and authority during the continuance of this Trust, to collect the rents, issues, and profits of the Property, reserving unto the Trustor the right, prior to any default by Trustor in payment of the indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues and profits as they become due and payable; and,

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected, or hereafter to be erected, on the Property

which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein referred to as the "Security";

To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever; and,

TO SECURE to the Beneficiary: (a) the repayment of the sums evidenced by a Promissory Note to the Beneficiary executed by Trustor of even date herewith in the principal amount of THREE-MILLION, ONE-HUNDRED SEVENTY THOUSAND, FIVE HUNDRED FORTY-SEVEN AND NO/DOLLARS (\$3,170,547) (the "Inclusionary Promissory Note"); (b) the performance of the covenants and agreements of Borrower contained in a certain Agreement as hereinafter defined; and, (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Trustor contained herein.

TRUSTOR AND THE BENEFICIARY COVENANT AND AGREE AS FOLLOWS:

1. The Agreement. This Deed of Trust is executed and delivered, along with the Inclusionary Promissory Note, the Inclusionary Loan Agreement (the "Agreement"), and Affordability Restrictions on Transfer of Property to benefit the Property. Trustor acknowledges that but for the execution of this Deed of Trust, the Beneficiary would not enter into the Agreement or Inclusionary Promissory Note secured by this Deed of Trust.

2. Trustor's Estate. Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security; that other than this Deed of Trust, the Security is not encumbered except for obligations secured by deeds of trust, or any other security agreement, to secure financing or refinancing for the purchase and rehabilitation of the Property.

3. Repayment of the Loan. Trustor will promptly repay, when due, the principal loan amount, as required by the Inclusionary Promissory Note secured by this Deed of Trust.

4. Subordination. This obligation secured by this Deed of Trust shall be subordinated to the Senior Loan and the Senior Loan Deed of Trust, but the Inclusionary Affordability Restrictions on Transfer of Property shall remain in a senior position to the Senior Loan and the Senior Loan Deed of Trust.

5. Prior Mortgages and Deeds of Trust; Charges; Liens. Trustor shall perform all of Trustor's obligations under any mortgage, deed of trust or other security agreement with a lien that has priority over this Instrument, including Trustor's covenants to make payments when due (subject to all applicable notice and cure provisions). Trustor will pay all taxes, assessments and other charges, fines and impositions attributable to the Security that may attain a priority over this Deed of Trust, by Trustor making any payment, when due, directly to the payee thereof. Trustor will promptly furnish to the Beneficiary all notices of amounts due under this paragraph, and in the event Trustor makes

payment directly, Trustor will promptly discharge any lien that has priority over this Deed of Trust; provided that Trustor will not be required to discharge the lien of the Deed of Trust securing any senior lender or any other lien described in this paragraph so long as Trustor will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the Beneficiary, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings, which operate to prevent the enforcement of the lien or forfeiture of the Security, or any part thereof.

6. Hazard Insurance. Trustor will keep the Security insured by such insurance policies in such amounts and for such periods as called for in the Agreement. All insurance policies and renewals thereof will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of any Senior Lender and the Beneficiary as their interests may appear and in a form acceptable to the Beneficiary. The Beneficiary shall have the right to hold, or cause its designated agent to hold, copies of the policies and renewals thereof, and Trustor shall promptly furnish to the Beneficiary, or its designated agent, copies of the insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums subject to the rights of any senior lender. In the event of loss, Trustor will give prompt notice to the insurance carrier and the Beneficiary or its designated agent. The Beneficiary, or its designated agent, may make proof of loss if not made promptly by Trustor. The Beneficiary shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this Section.

Unless the Beneficiary and Trustor otherwise agree in writing, insurance proceeds, subject to the rights of any senior lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, again, subject to the rights of any senior lender, the insurance proceeds will be used to repay the loan secured by this Deed of Trust, with the excess, if any, paid to Trustor. If the Security is abandoned by Trustor, or if Trustor fails to respond to the Beneficiary, or its designated agent within thirty (30) days from the date notice is mailed by either of them to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the Beneficiary, or its designated agent, is authorized to collect and apply the insurance proceeds at the Beneficiary's option, either to restoration or repair of the Security or to repay the loan.

If the Security is acquired by the Beneficiary, all right, title and interest of Trustor in and to any insurance policy, and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition, will pass to the Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition, subject to the rights of any senior lender.

7. Preservation and Maintenance of Security. Trustor will keep the Security in good repair and will not commit waste or permit impairment or deterioration of the Security.

8. Protection of the Beneficiary's Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced that materially affects the Beneficiary's interest in the Security, including, but not limited to, default under the Deed of Trust securing any senior lender, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankruptcy or decedent, then the Beneficiary, at the Beneficiary's option, upon notice to Trustor, may make such appearances, disburse such sums and take such action as it determines necessary to protect the Beneficiary's interest, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs.

Any amounts disbursed by the Beneficiary pursuant to this paragraph, with interest thereon, will become an indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and the Beneficiary agree to other terms of payment, such amount will be payable upon notice from the Beneficiary to Trustor requesting payment thereof, and will bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Inclusionary Promissory Note, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts will bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph will require the Beneficiary to insure any expense or take any action hereunder.

9. Inspection. The Beneficiary may make, or cause to be made, reasonable entries upon and inspections of the Security upon reasonable prior notice during normal business hours; provided that, the Beneficiary will give Trustor reasonable notice of inspection.

10. Forbearance by the Beneficiary Not a Waiver. Any forbearance by the Beneficiary in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the Beneficiary will not be a waiver of the Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

11. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust, or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the Beneficiary and Trustor subject to the provisions of this Deed of Trust.

13. Notice. Except for any notice required under applicable law to be given in another manner: (a) any notice to Trustor provided for in this Inclusionary Deed of Trust will be given by certified mail, return receipt requested, addressed to Trustor at c/o National Community Renaissance of California, Attention: Legal Counsel, 9421 Haven Avenue, Rancho Cucamonga, California, with a copy to: Klein Hornig LLP, 1325 G Street NW, Suite 700, Washington, DC20005, Attention: Chris Hornig; and to Trustor's Investor Limited Partner at Bank of America, N.A. at MA1-225-02-02, 225 Franklin Street, Boston, MA 02110, Attention Asset Management; and to Buchalter, A Professional Corporation, 1000 Wilshire Boulevard, Suite 1500, Los Angeles, CA 90017-1730, Attention: Michael Williamson (B0965-0521); (b) any notice to the Beneficiary will be given by certified mail, return receipt requested, to the Beneficiary at City of Santa Ana, 20 Civic Center Plaza, P.O. Box 22030, Santa Ana, CA 92702, or at such other address as the Beneficiary may designate by notice to Trustor as provided above; and, (c) to Trustee at [____]. Notice shall be effective as of the date received as shown on the return receipt.

13. Governing Law. This Deed of Trust shall be governed by the laws of the State of California with venue in Orange County.

14. Severability. In the event that any provision or clause of this Deed of Trust or the Inclusionary Promissory Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Inclusionary Promissory Note that can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Inclusionary Promissory Note are declared to be severable.

15. Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

16. Default in Foreclosure; Remedies. Upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust or the Inclusionary Promissory Note secured by this Deed of Trust, including, but not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustor notice thereof, specifying: (1) the breach; (2) the action required to cure such breach; (3) a date not less than thirty (30) days from the date the notice is received by Trustor, as shown on the return receipt, by which such breach is to be cured, provided, however, that if such default is not reasonably susceptible to being cured within thirty (30) days, Trustor shall have a reasonable period to cure the defect, so long as Trustor is diligently prosecuting the cure to completion; and, (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Security. The notice will also inform Trustor of Trustor's right to reinstate after acceleration and the right to bring a court action to assert the non-existence of default, or any other defense of Trustor to acceleration and sale.

Notwithstanding anything to the contrary contained herein, a "default" shall not include any transaction not considered a "transfer" under Section 16.2 of the Agreement or permitted under Section 16.3 or 16.4 of the Agreement.

If the breach is not cured on or before the date specified in the notice, or such longer period as provided above or in the Inclusionary Promissory Note or the Agreement, the Beneficiary, at the Beneficiary's option, may: (a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to the Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code sections 2924, et seq., as amended from time to time; or, (e) exercise all other rights and remedies provided herein, in the instruments by which Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Notwithstanding anything to the contrary herein, Beneficiary hereby agrees that any cure of any default made or tendered by Trustor's limited partner shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor.

In addition, if an Event of Default occurs hereunder or under the Note, prior to taking any remedy under this Deed of Trust or any other documents evidencing or securing this Note, Beneficiary shall first give notice of the occurrence of such Event of Default to the Limited Partner and the Limited Partner shall have not less than 30 days to cure such Event of Default, provided if in order to cure such Event of Default the Limited Partner gives notice to the Beneficiary that Limited Partner must remove and replace the general partner or general partners of Trustor, Limited Partner shall have until 30 days following the effective date of such removal and replacement to cure such Event of Default.

The Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

17. Trustor's Right to Reinstate. Notwithstanding the Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor will have the right to have any proceedings begun by the Beneficiary to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays the Beneficiary all sums that would be then due under this Deed of Trust as if no acceleration under the Inclusionary Promissory Note had occurred; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by the Beneficiary and the Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust and in enforcing the Beneficiary's and the Trustee's remedies, including, but not limited to, reasonable attorneys' fees; and, (d) Trustor takes such action as the Beneficiary may reasonably require to assure that the lien of this Deed of Trust, the Beneficiary's interest in the Security and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

18. Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, the Beneficiary will request the Trustee to reconvey the Security and will surrender this Deed of Trust and the Inclusionary Promissory Note to the Trustee. The Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

20. Substitute Trustee. The Beneficiary, at the Beneficiary's option, may from time to time remove the Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

21. Request for Notice. Trustor requests that copies of the notice of default and notice of sale be sent to Trustee at the address set forth in Section 14 above.

24. Nonrecourse Liability. Neither Trustor nor any partner of Trustor nor any other person or entity shall have any personal liability under the Agreement, Inclusionary Promissory Note, or this Deed of Trust, and any judgment, decree or order for payment of money obtained in any action to enforce the obligation of Trustor to repay the loan evidenced by such documents shall be enforceable against Trustor only to the extent of Trustor's interest in the Property.

25. Beneficiary agrees to provide Trustor's Investor Limited Partner (as defined in the Agreement) with notice of and an opportunity to cure any default hereunder. Any cure made or tendered by the Limited Partner shall be deemed a cure by Trustor.

(Signatures on Following Page)

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

LEGACY SQUARE, L.P.,
a California limited partnership

By: NCRC Legacy MGP, LLC,
a California limited liability company,
its managing general partner

By: National Community Renaissance of California,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Michael Finn, Chief Financial Officer

Exhibit D: Inclusionary Promissory Note

**INCLUSIONARY HOUSING FUNDS PROMISSORY NOTE
SECURED BY SUBORDINATED DEED OF TRUST
TO THE CITY OF SANTA ANA
(609 North Spurgeon St., Santa Ana, California)**

\$3,170,547

December 15, 2020
Santa Ana, California

1. Principal Amount of Loan

FOR VALUE RECEIVED, Legacy Square L.P., a California limited partnership ("Borrower"), hereby promises to pay to the City of Santa Ana, a charter city and municipal corporation ("City"), or order, a principal amount not to exceed THREE-MILLION, ONE-HUNDRED THOUSAND SEVENTY FIVE HUNDRED FORTY-SEVEN DOLLARS (\$3,170,547), or so much thereof as may be advanced by the City to the Borrower, due and payable with 3% [simple] interest [compounding annually] from residual receipts over the fifty-five (55) year term, pursuant to the Inclusionary Loan Agreement (the "Agreement") between Borrower and the City dated concurrently herewith, which is incorporated herein by this reference. This loan is funded exclusively from the Inclusionary Housing Fund held by the City (the "City Funds"). Any capitalized term not otherwise defined in this Inclusionary Promissory Note ("Note") shall have the meaning ascribed to such term in the Agreement. The obligation of Borrower to City hereunder is subject to the terms of said Agreement, the Affordability Restrictions on Transfer of Property, Inclusionary Deed of Trust and this Note. Said documents are public records on file in the offices of the City, and the provisions of said documents are incorporated herein by this reference.

This Note, said Agreement, the Affordability Restrictions on Transfer of Property, and the Inclusionary Deed of Trust are sometimes collectively referred to herein as the "Loan Documents". The rights and responsibilities provided for in the Loan Documents shall inure to the benefit of the City. Any capitalized term that is not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

This Note evidences the obligation of Borrower to the City for repayment of the Inclusionary Loan of Inclusionary Housing Funds attributable to the acquisition, development, and construction of the Property, and related soft costs.

This Note is payable at the principal office of the City of Santa Ana – Community Development Agency, 20 Civic Center Drive, Santa Ana, California 92702, Attn: Housing Division, or at such other place as the holder hereof may inform Borrower in writing, in lawful money of the United States.

2. Definitions.

For the purpose of calculating the payments to be made by Borrower to City pursuant to this Note, the following terms shall have the following respective meanings:

“Agreement” means the Inclusionary Loan Agreement between the City and the Developer, and any attachments or amendments thereto.

“Applicable Law” shall mean those federal, state and local laws, ordinances, regulations, policies and procedures applicable to the City Housing Program, and the Inclusionary Housing Funds.

“Area Median Income” means the median income for the Orange County, California PMSA as most recently determined by the U.S. Department of Housing and Urban Development (“HUD”). Also may be referred to interchangeably in the Inclusionary Loan Documents as “Median Income for the Area” or “AMI”.

“Borrower” means Legacy Square, L.P., a California limited partnership.

“Calendar Year” means each consecutive twelve (12) month period from January 1 to December 31.

“City Assisted Units” shall mean those affordable rental units constructed on the Property, which are designated as Restricted Units subject to the 55-year Term of Affordability.

[“City’s Percentage” with reference to the Residual Receipts, shall mean ____ percent (---%) of fifty percent (50%) of the total Residual Receipts from the Property as further described in section 5 hereof.]

“Closing Costs” shall mean:

- (i) In the case of a Sale, reasonable brokerage commissions payable to a broker as a result of the Sale, which shall not in any event exceed the customary amount charged for similar transactions in the immediate market place, costs of title insurance premiums, documentary stamp taxes, escrow fees, recording charges, loan repayment charges and other costs reasonably incurred with respect to the Property, in each case actually paid by Borrower as a condition of the Sale.
- (ii) In the case of a Refinancing, the reasonable and necessary costs of consummating such Refinancing, including, without limitation, loan fees, loan repayment charges, costs of title insurance premiums, escrow fees, recording fees and attorneys' fees.

“Extremely Low Income” means an adjusted income which does not exceed thirty percent (30%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HUD.

“Gross Revenues” shall mean all revenues and receipts of every kind actually received by Borrower from operating the Property, and all parts thereof, including, but not limited to, income from both cash and credit transactions, rental from leased and/or subleased spaces and parking fees and charges, but not including security deposits and other tenant deposits, except to the extent such deposits are forfeited to the Borrower under the tenant's lease. Gross Revenues also includes any casualty insurance proceeds in excess of those used to restore the Property, and any rental interruption insurance proceeds. Any credit consideration shall be included in Gross Revenues at the time cash proceeds (principal and/or other) are received. Borrower shall establish and maintain accounts for the Gross Revenues (the “Project Accounts”) that are segregated from revenues and income received by Borrower from all other projects. Gross Revenues shall also include all interest earned on the Project Accounts, and shall specifically exclude any capital contributions made by the Investor Limited Partner.

“Inclusionary Deed of Trust” shall mean the deed of trust encumbering the Property, in the form attached to the Agreement as Exhibit C, which is incorporated herein by this reference, to be executed by Developer pursuant to section 6.1(e) of the Agreement in order to secure the Inclusionary Promissory Note.

“Inclusionary Housing Funds” shall mean the money provided by the City from the Inclusionary Housing Fund for the construction of the City Assisted Units hereunder.

“Inclusionary Loan” means a loan in the original principal amount of up to Three-million, one-hundred seventy thousand five hundred forty-seven dollars (\$3,170,547) to be made to Developer by the City to be funded exclusively from the Inclusionary Housing Fund held by the City.

“Interest” shall mean that the NOTE shall bear simple interest at the rate of Three percent (3%) per annum, from the date of issuance of the Certificate of Occupancy/Completion.

“Low Income” means an adjusted income which does not exceed eighty percent (80%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HUD.

“Operating Expenses” shall mean the sum of the following:

- (i) payments of principal and interest and all other charges relating to the Senior Loan(s);
- (ii) property management fee not to exceed 5% [to confirm] of gross rents;

- (iii) owner administration fee not to exceed 5% of gross rents which will include Investor Limited Partner local administration fee of \$5,500 per year and General Partner management fee of \$12,000 per year pursuant to the Partnership Agreement, which shall increase by 3% per year;
- (iv) deposits into required reserves;
- (v) any deferred developer fee;
- (vi) all other actual, reasonable cash operating costs and expenses, calculated on an annual basis, that are directly attributable to managing and operating the Property, including, without limiting the generality of the foregoing, the following: costs and expenses for real and personal property taxes, special assessments or similar charges; water, fuel, electricity and other utilities; heating, ventilation and air conditioning expenses; labor; supplies; tools; equipment; insurance; advertising and marketing; accounting and legal fees; brokerage commissions and other leasing expenses; reasonable reserves for all anticipated expenses as approved by the City; and other such items constituting operation, maintenance and repair costs actually paid by the Borrower, subject to the following conditions:
 - (a) Depreciation and amortization expenses shall not be considered Operating Expenses, except as otherwise provided herein; and,
 - (b) Any expenses, compensation or fees paid to any affiliate of Borrower, excluding those payable under (iii), shall only be included as Operating Expenses to the extent they are not in excess of the reasonable expenses, compensation or fees that would be payable to unrelated third parties in arms-length transactions for similar services in the Orange County, California area;
- (vii) Any other expenses necessary to meet Senior Lender requirements, and requirements of the Investor Limited Partner, or its assignee, as set forth in Borrower's Amended and Restated Agreement of Limited Partnership dated as of [____], 2020, as may be amended (the "Partnership Agreement"), or as may be permitted by CalHFA and California HCD, with the intent that all lenders entitled to payment of Residual Receipts will utilize a common calculation..

"Property" shall mean that property located at 609 North Spurgeon St., Santa Ana, California (to be re-designated as 301 East Santa Ana Boulevard) .

"Refinancing" shall mean changing the then existing financing on the Property by, without limitation, modifying the interest rate and/or the term of the existing Senior Loan, increasing or reducing the amount of the existing Senior Loan, paying off the existing Senior

Loan and obtaining a new Senior Loan, except for the payoff of the construction loan and its replacement with permanent financing as contemplated by that Commitment with California Community Reinvestment Corporation dated as of September 3, 2020, and any subsequent transfer of the loan in whole or in part by CCRC

"Refinancing Proceeds" shall be disbursed as set forth in section 6 hereof.

"Residual Receipts" shall mean the Gross Revenues from the Property for each year, less deductions for Operating Expenses from the same Property, applicable to each such year to the extent not previously deducted as an Operating Expense.

"Sale" shall mean any transfer, assignment, conveyance or lease of the Property, or any portion thereof, or any interest therein by the Borrower. Sale includes a sale in condemnation or under threat thereof. Sale does not include dedications and grants of easements to public and private utility companies of the kind customary in real estate development. Notwithstanding anything to the contrary contained herein, a "Sale" shall not include any transaction not considered a "transfer" under section 13, or under Section 16.2 of the Agreement or as otherwise permitted under Section 16.3 or 16.4 of the Agreement.

"Senior Loan" shall mean a loan from the Senior Lender concurrent to the Inclusionary Loan for payment of a portion of the acquisition and construction costs, and shall include any subsequent loan that refinances the initial Senior Loan.

"Term of Affordability" or "Term" means the terms and conditions contained herein shall remain in effect for fifty-five (55) years from the date of issuance of the Certificate of Occupancy for the Project, or repayment of the Inclusionary Loan, whichever is longer.

"Very Low Income" means an adjusted income which does not exceed fifty percent (50%) of the area median income for the Orange County, California PMSA, adjusted for household size, as published by HUD.

3. Loan Repayment.

Borrower shall make payments to the City as provided in sections 5 (Residual Receipts), 6 (Refinancing Proceeds), 7 (Sale Proceeds) and 9 (Accelerated Loan Repayment) of this Note.

4. Operating Capital Improvement Loan.

If the replacement reserve account ("Reserves") is depleted due to unforeseen repairs and the General Partner makes a loan to the Partnership, the Reserves must be fully funded prior to payment of said loan. The outstanding loan balance will be reflected in the annual report.

5. Annual Loan Repayment/ Residual Receipts. [To be Updated]

a. Commencing on the date one hundred and fifty (150) days after the close of the initial Calendar Year following the issuance of the Certificate of Occupancy, and on or before the 150th day of each Calendar Year thereafter, the Borrower shall thereafter make a loan payment, including any payment processing fee charged by the City's loan processor, as applicable, to the City annually, in the amount of the lesser of the outstanding balance due under this Note or the City's Percentage of the Residual Receipts, as provided herein.

b. Within one hundred and fifty (150) days after the close of the initial Calendar Year, following the Issuance of the Certificate of Occupancy, and on or before the 150th day of each Calendar Year thereafter, the Borrower shall submit to the City an audited financial statement of Gross Revenues and Operating Expenses attributable to the Property for the applicable Calendar Year, along with a computation of the amount of the Residual Receipts applicable to such Calendar Year with which to make an Inclusionary Loan payment then due.

c. [Except as otherwise provided, the Borrower shall pay to the City the City's Percentage of the Residual Receipts as payment of the City Inclusionary Loan until the City Inclusionary Loan has been fully repaid. At least fifty percent (50%) of the Residual Receipts shall remain with the Borrower, [with all Residual Receipts remaining with Borrower once the City Inclusionary Loan and other subordinate loans have been fully repaid].

d. Borrower shall retain fifty percent (50%) of the Residual Receipts. The other 50% shall be divided with [] % applied to this City Inclusionary Loan, []% applied to [California HCD Loan], and []% applied to [CalHFA Loan]. [As Borrower repays this Loan, the payment percentage applied to the remaining loans shall increase.

e. The Residual Receipts payment shall be made no later than one hundred and fifty (150) days after the close of the Calendar Year. Such payment shall be applied first to any late fees, then to reduce the principal balance of the loans in accordance with Section 5(d) hereof.]

6. Loan Repayment from Refinancing Proceeds.

The Borrower shall make a loan payment to the City from every Refinancing that occurs during the term of this Note (other than refinancing of the Senior Loan), not to exceed the outstanding balance of principal on this Note, to the extent of the City's Percentage of the Refinancing Proceeds (if any), as follows: the cash proceeds from such Refinancing shall be applied first to pay Closing Costs; next, the amount necessary to pay in full the balance remaining on the Senior Loan and any deferred developer fee in full, as the Senior Lender may permit; and next, the Borrower shall pay to the City the City's Percentage of the Refinancing Proceeds to the extent of the outstanding balance on this Note and to other subordinate lenders any amounts due to them under their respective loan documents. All remaining Refinancing proceeds shall remain with the Borrower to the extent the outstanding balance (including interest) of the Note has been fully paid. Such payment shall be due on the date of such Refinancing, and shall be applied to reduce the principal balance of the Loan in accordance with this Section 6. The City shall not be required to reconvey the lien of the Deed of Trust if Refinancing Proceeds are insufficient to repay the Loan in full.

7. Loan Repayment from Sale Proceeds.

The Borrower shall make a loan payment, not to exceed the outstanding balance of principal on this Note, subject to section 14 herein, to the City from any Sale that occurs during the term of the Inclusionary Loan, to the extent of the City's Percentage of the Sale Proceeds, as follows: gross sale proceeds are applied first to pay Closing Costs; next, to pay in full the balance remaining on the Senior Loan; next, the amount necessary to pay any deferred developer fee in full; and next, the Borrower shall pay to the City the City's Percentage of the Refinancing Proceeds, not to exceed the outstanding amount of principal due on this Note. All remaining Sale Proceeds shall remain with the Borrower to the extent the outstanding balance (including interest) of the Note has been fully paid. Such payment shall be due on the date of such Sale, and shall be applied to reduce the principal balance of the Loan in accordance with this Section 7. The City shall not be required to reconvey the lien of the Deed of Trust if Sale Proceeds are insufficient to repay the Loan in full.

8. Accelerated Loan Payment.

The full principal amount outstanding shall be due and payable on the earlier to occur of the following:

a. Sale or Refinancing of the Property as provided further in section 13 hereof, unless: (i) in the case of a Sale in which the Sale Proceeds are insufficient to repay in full the Inclusionary Loan, the City approves such sale and the purchaser assumes the balance of the Inclusionary Loan in accordance with the terms of this Note; or (ii) in the case of a Refinancing in which the Refinancing Proceeds (applied in accordance with Paragraph 6) are insufficient to repay in full the Inclusionary Loan, the City approves such Refinancing and the Borrower remains obligated pursuant to the terms of this Note;

b. In the event of default (subject to any applicable notice and cure provisions) pursuant to any of the Loan Documents or the Senior Loan Documents;

c. Any default (subject to any applicable notice and cure provisions) by Borrower as to any other loan or loans by City to Borrower with respect to the Property that is/are senior to the Loan in lien priority; or

d. The date that is fifty-five (55) years after the date of execution of this Note. To the extent the Loan is not repaid by that date, the City agrees to review the performance of the Property and consider in good faith any reasonable request by Borrower to modify the terms or extend the Term of this Inclusionary Note, if applicable.

9. Prepayment

Borrower may prepay the outstanding principal balance under this Note, in whole or in part, at any time without penalty. However, the Affordability Covenants and Restrictions will remain for the entire Affordability Period of fifty-five (55) years.

10. Lawful Money.

Principal is payable in lawful money of the United States of America.

11. Application of Payments; Late Charges.

a. Any payments received by the City pursuant to the terms hereof shall be applied first to sums, other than principal, due the City pursuant to this Note, and the balance, if any, to the payment of principal.

b. If any payment is not received by the City within ten (10) Business Days after Developer's receipt of written notice that such payment was not received when due; then in addition to the remedies conferred upon the City pursuant to this Note and the other Loan Documents: (i) a late charge of four percent (4%) of the amount due and unpaid will be added to the delinquent amount to compensate the City for the expense of handling the delinquency; and, (ii) the amount due and unpaid, excluding the late charge, shall bear interest at the highest annual rate which may lawfully be charged and collected under applicable law on the obligation, evidenced by this Note, computed from the date on which the amount was due and payable until paid. Without prejudice to the rights of the City hereunder, or under any of the other Loan Documents, Borrower shall indemnify the City against, and shall pay the City on demand, any expense or loss which it may sustain or incur as a result of the failure by Borrower to pay when due any installment of principal, fees, or other amounts payable to the City under this Note or any other Loan Document that exceeds the amount of the late charge described above, to the extent that any such expense or loss is not recovered pursuant to such foregoing provisions. A certificate of the City setting forth the basis for the determination of the amounts necessary to indemnify the City in respect of such expenses or direct loss, submitted to Borrower by the City, shall be conclusive and binding for all purposes except as immediately corrected by Borrower notice to City.

12. Security

This Note is secured by the recorded Deed of Trust.

13. Acceleration by Reason of Transfer or Financing.

a. In order to induce City to make the loan evidenced hereby, Borrower agrees that in the event of any transfer of the Property without the prior written consent of City (other than a transfer resulting from a foreclosure, or conveyance by deed in lieu of foreclosure, by the holder of the Senior Loan Deed of Trust), City shall have the absolute right at its option, without prior

demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. City may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this section 13, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Borrower from any liability thereunder without the prior written consent of City.

b. As used herein, "transfer" includes the Sale, agreement to sell, transfer or conveyance of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property, or the lease of all or substantially all of the Property. 'Transfer' shall not include the leasing of individual residential units on the Property, so long as Borrower complies with the provisions of the Agreement and the Affordability Covenants and Restrictions relating to such leasing activity, nor shall it include a conveyance of the Property to a limited partnership in which Borrower is a general partner, or to a corporation or limited liability company that is wholly owned by the Borrower or its affiliates and that is formed for the sole purpose of owning and operating the Property, or the sale back to the Borrower. In the event of any Refinancing or partial Refinancing in an amount in excess of the balance of the Senior Loan, without the prior written consent of City (which consent City may grant or deny in its sole discretion), then the entire outstanding balance of the Inclusionary Loan shall be repaid to the City at the time of each Refinancing or partial Refinancing. Additionally, a "Transfer" shall not include any transaction not considered a "transfer" under section 16.2 of the Agreement or which is otherwise permitted under Section 16.3 or 16.4 of the Agreement.

14. Event of Default.

Subject to the provisions of Sections 21 and 23 hereof, the occurrence of any of the following shall be deemed to be an event of default which is not cured within the applicable time period described therein ("Event of Default") hereunder: (a) failure by Borrower to make any payments provided for herein, and if such default is not made good within ten (10) Business Days after Developer's receipt of written notice that such payment was not received when due; (b) failure by Borrower to perform any covenant or agreement in the Deed of Trust, the Agreement, or the Affordability Covenants and Restrictions within thirty (30) days after written demand therefor by City (or, in the event that more than thirty (30) days is reasonably required to cure such default, should Borrower fail to promptly commence such cure, and diligently and continuously prosecute same to completion); or (c) a default under the Senior Loan Deed of Trust that remains uncured after any applicable notice has been provided and the expiration of any applicable cure period therefore, if any, provided therein.

15. Remedies.

Upon the occurrence of an Event of Default, after any applicable notice has been provided and the expiration of any applicable cure period, City may declare all sums evidenced hereby immediately due and payable by delivery to the Trustee named in the Deed of Trust securing this

Note, and to Borrower, written declaration of default and demand for sale, and written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and City may foreclose on the Deed of Trust. City shall also deposit with Trustee the Deed of Trust, this Note and all documents evidencing expenditures secured thereby and evidenced hereby. Upon the occurrence of an Event of Default (and so long as such Event of Default shall continue), the entire balance of principal shall bear interest at the rate of the Note plus four percent (4%). No delay or omission on the part of the City in exercising any right under this Note or under any of the other Loan Documents shall operate as a waiver of such right.

16. Attorney Fees.

If this Inclusionary Promissory Note is not paid when due or if any Event of Default occurs, Borrower promises to pay all costs of enforcement and collection, including, but not limited to, reasonable attorneys' fees, whether or not any action or proceeding is brought to enforce the provisions hereof.

17. Severability.

Every provision of this Note is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction, to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

18. Number and Gender.

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

19. Non-recourse.

The Inclusionary Loan is a nonrecourse obligation of the Borrower. Neither Borrower, nor its partners, nor any other person or entity shall have any personal liability for repayment of the Inclusionary Loan or for any other amounts under any of the documentation evidencing, securing or describing the Inclusionary Loan. The sole recourse of City under this Note and the Deed of Trust for repayment of the Inclusionary Loan and for such other amounts arising therefrom shall be the exercise of its rights against the Property and related security thereunder.

20. Subordination.

It is hereby expressly agreed and acknowledged by Borrower and City that the Deed of Trust is a subordinate deed of trust, and that this Note is subject and subordinate to any Senior Deed of Trust.

21. Notice of Default.

a. Subject to the applicable cure periods set forth in section 14, and subject to the further provisions of this section 21, failure or delay by the Borrower to perform any term or provision of this Note constitutes a default under this Note. The Borrower must commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The City shall give written notice of default to the Borrower and the Investor Limited Partner (as defined in the Agreement) specifying the default complained of by the City. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

c. Except in the case of a monetary event of default, the Borrower shall not be in default so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by the City to be reasonably necessary to correct the default).

d. Any failures or delays by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

e. If a monetary event of default occurs under the terms of this Note or the Deed of Trust, prior to exercising any remedies thereunder, City shall give Borrower written notice of such default. Borrower shall have a period of ten (10) Business Days after such notice is received within which to cure the default prior to exercise of remedies by City under this Note and the Deed of Trust.

f. If a non-monetary event of default occurs under the terms of this Note or the Deed of Trust, prior to exercising any remedies thereunder, City shall give Borrower notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Borrower shall have such period to effect a cure prior to exercise of remedies by the City under this Note and the Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower: (i) initiates corrective action within said period; and, (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred and eighty (180) days after the first notice of default is given.

22. Insurance and Condemnation

In the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property, or any part thereof, Borrower shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefor,

provided that: (a) such proceeds are sufficient to keep the Inclusionary Loan in balance and rebuild the Property in a manner that provides adequate security to City for repayment of the Inclusionary Loan, or if such proceeds are insufficient, then Borrower shall have funded any deficiency; (b) City shall have the right to approve plans and specifications for any major rebuilding, and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement; and, (c) no material uncured default then exists under this Note or the Deed of Trust. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Inclusionary Loan in a manner that provides adequate security for repayment of the remaining balance of the Inclusionary Loan.

23. Force Majeure.

Notwithstanding specific provisions of this Note, performance hereunder shall not be deemed to be in default where delays or defaults are due to: war; terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or supplier; acts of the other party; acts or failure to act of the City or any other public or governmental Agency or entity (except that any act or failure to act of City shall not excuse performance by City); epidemic or pandemic; or any other causes beyond the reasonable control, or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time the party claiming such extension gives notice to the other party, provided notice by the party claiming such extension is given within thirty (30) days after the commencement of the cause. Times of performance under this Note may also be extended in writing by the City and the Borrower.

24. Assignments.

The City, and the assignee of the City, shall have the right to assign this Note and the Deed of Trust securing this Note, without any further act of Borrower. The assignee shall give notice to Borrower as soon as practicable after such assignment.

[Signature Page on Following Page]

This Inclusionary Promissory Note is hereby agreed to and executed on the date first set forth above.

"BORROWER"

LEGACY SQUARE, L.P.,
a California limited partnership

By: NCRC Legacy MGP, LLC,
a California limited liability company,
its managing general partner

By: National Community Renaissance of California,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Michael Finn, Chief Financial Officer

Exhibit E: Project Budget

EXHIBIT 5

IV. SOURCES AND USES BUDGET - SECTION 4: SOURCES AND USES BUDGET																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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Exhibit F: Scope of Work/Schedule of Performance

EXHIBIT H**SCOPE OF WORK & SCHEDULE OF PERFORMANCE**

Located at 609 N. Spurgeon Street, at the northwest corner of the intersection of French Street and E. Santa Ana Boulevard, the 1.74-acre Project site was home to Santa Ana United Methodist Church, a well-established anchor in the community. The Project site is one contiguous, rectangular shaped parcel which previously had two church buildings fronting Santa Ana Boulevard and a large surface parking lot located on the northern half of the site fronting French Street. Both church buildings have been demolished. The entire site is designated Urban Neighborhood in the City of Santa Ana 1998 General Plan and zoned Urban Neighborhood 2 (UN-2) in the Transit Zoning Code.

The Proposed Project includes the development of a single residential building with 93 units surrounding an interior, landscaped courtyard. In total, the Project proposes 81,883 square feet of habitable residential building area and 29,297 square feet of open space. Developed at an overall density of 53.4 units per acre, there will be an estimated 30 1-bedroom units, 38 2-bedroom units, and 24 3-bedroom units. Seven of the 2-bedroom units and seven of the 3-bedroom units will be two story townhomes accessible from the street. The remaining 79 units will be flats/typical apartment units located on the 2nd, 3rd and 4th floors over ground level parking. The building has been designed with the two-story townhome units on the exterior fronting Spurgeon and French Streets and transitioning to a four-story courtyard building in the center of the site. This provides a gradual transition from any surrounding lower density uses and visually breaks up the mass of the building. A 2,576 square foot community center, 984 square foot leasing/property management office and 7,267 square feet of flexible non-residential space will be located on the ground floor facing Santa Ana Boulevard activating the street frontage and interfacing with the proposed Santa Ana Streetcar platform to be located at the corner of Santa Ana Boulevard and French Street. One vehicular entry point to the site is provided off French Street. The entry point is a 24-foot driveway providing direct access to the parking garage. Careful consideration for the character and scale of surrounding neighborhood was taken to ensure that the project architecture and massing blends in with the existing surrounding uses.

The Project proposes the Main Street Modern architectural style fronting Santa Ana Boulevard and the Mission Revival architectural style fronting the other three streets to be complementary with the church and the surrounding neighborhoods. The Main Street Modern design is intended to complement the OC Streetcar and activate the street frontage. The Project includes both wall and roof plane articulation, with an entry plaza and grand staircase entry from Santa Ana Boulevard and carries the design elements to each elevation, including the inner portions of the site. The maximum building height of the Proposed Project is 52 feet for the buildings at the interior of the site. Trash enclosures are provided at the northwest corner of the parking garage with pick-up conveniently accessible from Spurgeon Street. The layout of the building creates several unique outdoor areas including both passive and active spaces – a central landscaped courtyard, tot lot, raised planters, drought-tolerant and native ground covers, breezeways and walkways for residents to access community spaces and the surrounding neighborhood.

I. SCHEDULE OF PERFORMANCE:

A. GENERAL

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 1. <u>Insurance</u> . Developer shall furnish or cause to be furnished appropriate certificates of insurance and/or endorsements to City which meet all requirements of the Agreement. | As a Condition Precedent to disbursement of any portion of the loan, but no later than ten days after close of escrow. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|

B. PROJECT FINANCING

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| 1. <u>Submission of Evidence of Financing</u> . Developer shall submit to City evidence of financing for the Project | Not later than thirty (30) days after allocation of tax credit financing by CTCAC. |
| 2. <u>Receipt of All Funding Commitments Necessary to Complete Construction of the Improvements</u> . Developer shall use its best and good faith efforts to secure irrevocable funding commitments from TCAC, Senior Lender, and other available funding sources which when combined with the Loans shall equal no less than the total cost to construct the Improvements, as set forth in the approved Project Budget. Developer shall submit such commitments to City for review. | Not later than thirty (30) days before Construction Close. |
| 3. <u>Approval of Developer's Evidence of Financing</u> . City must approve Developer's evidence of financing as required by the Agreement. | Not later than twenty (20) business days after receipt of a complete submittal from Developer |

C. CONSTRUCTION OF IMPROVEMENTS

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| 1. <u>Approval of Building Plans</u> . Developer shall secure all required construction building plans permits from the City's Building and Safety Department. | No later than ten days after close of escrow. |
| 2. <u>Management Plan</u> . Developer shall submit its proposed Management Plan to City for review and approval. | 180 days prior to obtaining Certificate of Completion. |

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3. <u>Approval of Management Plan.</u> City shall review and approve, approve with conditions, or disapprove the Management Plan | Not later than twenty (20) business days after receipt of a complete submittal from Developer |
| 4. <u>Revision to Management Plan.</u> Developer shall revise Management Plan if conditionally approved or disapproved by City. | Within fourteen (14) days of receipt of disapproved Management Plan from City. |
| 5. <u>Approval of Revised Management Plan.</u> City shall review and approve, approve with conditions, or disapprove revised Management Plan. | Within fourteen (14) days of receipt of a complete submittal of revised Management Plan from Developer, but not later than 120 days prior to project completion. |
| 6. <u>Construction Progress Reports.</u> During construction Developer shall prepare monthly written progress reports and submit to City Manager | Commencing thirty (30) days after start of the Construction work through completion. |
| 7. <u>Commencement of Construction of the Improvements.</u> Developer shall cause the Construction of the Improvements to be commenced by Contractor. | No later than 15 days after close of escrow |
| 8. <u>Completion of Construction of the Improvements.</u> Developer shall complete all work of the Construction of the Improvements. | On or before 24 months after the close of escrow (subject to extension by City based upon substantial progress toward completion of construction by Developer). |

The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the City Manager or his/her designee ("City Manager"), and City Manager is authorized on behalf of City to agree to make such revisions as he deems reasonably necessary. The City Manager, in his/her sole discretion, may elect to bring to the City Council for consideration and action any modifications to this Schedule of Performance. It is understood that the Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in the Schedule of Performance is not intended to supersede or modify the more complete description in the text of the Agreement; in the event of any inconsistency between the Schedule of Performance and the text of the Agreement, the text shall govern. In the event the City Manager deems it necessary to bring to City Council for consideration one or more modifications to this Schedule of Performance, the discretion to do so is expressly reserved to the City Manager. The time periods set forth herein for City approval of plans and drawings and other submittals that are submitted to City by Developer shall only apply and commence upon Developer's complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any City obligations of review and/or approval hereunder; provided, however, that City shall notify Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for City action on the particular item in question. If any of the foregoing performance measurements are not met then it will be deemed a default as defined in Section 20 and any remedies shall be cured according to said Section of the Agreement.

Exhibit G: Form of Residual Receipts Report

EXHIBIT G

FORM OF RESIDUAL RECEIPTS REPORT
 Community Development Agency of the City of Santa Ana

Residual Receipts Report
for the Year Ending, _____

Date Prepared _____

Please complete the following information and execute the certification at the bottom of this form.

Annual Project Revenue

Please report Annual Project Revenue for the year ending _____ on the following lines:

Rent Payments (including Section 8 tenant assistance payments, if any) (1) \$ _____

Interest Income (do **not** include interest income from replacement and operating reserves nor interest income on tenant security deposits) (2) \$ _____

Additional Income (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association) (3) \$ _____

Total Annual Project Revenue (Add lines 1, 2, and 3) (4) \$ _____

Operating Expenses¹

Please report Operating Expenses incurred for the year ending _____ on the following lines:

Operating and Maintenance Expenses (5) \$ _____

Utilities (6) \$ _____

Property Management Expenses and On-Site Staff Payroll (7) \$ _____

Administrative Expenses (8) \$ _____

Property Taxes (9) \$ _____

Insurance (10) \$ _____

Other Expenses (11) \$ _____
 Please list these expenses: _____

Total Annual Operating Expenses for the Housing Project (12) \$ _____
 (Add lines 5, 6, 7, 8, 9, 10, and 11)

Net Operating Income (Subtract Line 12 from Line 4) (13) \$ _____

Do not include expense unrelated to the operation of the Rental Portion of the Project, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures.

Additional Cash Flow Payments

Obligated First Mortgage Debt Service Payments (as approved by the Agency and other parties that may have such approval rights) and Obligated Secondary Subordinate Debt Service Payments (as approved by the Agency and other parties that may have such approval rights) (14) \$ _____

Scheduled Deposits to Reserves (as approved by the Agency) (15) \$ _____

Additional Payment Obligations (such as partnership management fees, deferred developer fees, or repayments on loans to partners, as approved by the Agency to have priority over Residual Receipt Payment to the Agency) (16) \$ _____

Total Additional Cash Flow Payments (Add lines 14, 15, and 16) (17) \$ _____

Residual Receipts for Year Ending (Subtract Line 17 from Line 13) (18) \$ _____

Percentage of Residual Receipts to be Paid to the Agency (as shown in the Promissory Note by and between the Agency and Borrower dated (19) _____ %

Amount Payable to the Agency (Multiply Line 18 by Line 19) (20) \$ _____

The amount payable to the Agency listed on Line 20 is subject to payment according to the terms of the Promissory Note by and between the Agency and Borrower dated _____. If Line 20 is \$0.00 or negative, you owe nothing to the Agency this year. If Line 20 is a positive number, remit check payable to _____ and attach to this report.

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

Buchalter, a Professional Corporation)
1000 Wilshire Blvd., Suite 1500)
Los Angeles, CA 90017)
Attention: Mercedes O. Martin, Esq.)

11-18-2020
Form Approved. No
further changes
- M. Martin

----- [Space Above This Line For Recording Data] -----

SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT (this "**Agreement**") dated as of [December ___, 2020], is executed by and among (i) BANK OF AMERICA, N.A., a national banking association ("**Majority Owner**"), (ii) the CITY OF SANTA ANA, a charter city and municipal corporation ("**Subordinate Lender**"), (iii) LEGACY SQUARE, L.P., a California limited partnership ("**Borrower**"), and (iv) WILMINGTON TRUST, N.A., a national association, ("**Bond Trustee**", and together with the Majority Owner as senior lender sometimes collectively referred to herein as "**Senior Lender**").

RECITALS:

A. Reference is made to that certain (i) \$[_____] California Statewide Communities Development Authority Multifamily Housing Revenue Bonds (Legacy Square Apartments) 2020 Series X, and (ii) \$[_____] California Statewide Communities Development Authority Multifamily Housing Revenue Bonds (Legacy Square Apartments) 2020 Series X-T (Taxable) (collectively, the "**Bonds**") issued by California Statewide Communities Development Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California (the "**Issuer**"), in the aggregate principal amount of [_____]. The Bonds are being issued pursuant to a certain Trust Indenture dated on or about the date hereof (the "**Indenture**") by and between Issuer and Bond Trustee. Pursuant to that certain Loan Agreement dated on or about the date hereof (the "**Senior Loan Agreement**") by and among Borrower, Bond Trustee and Issuer, Issuer has agreed to make a loan to Borrower (the "**Senior Loan**"), funded with proceeds of the sale of the Bonds.

B. The obligations of Borrower for repayment of the Senior Loan are evidenced by (i) a certain Promissory Note Secured by Deed of Trust dated on or about the date hereof, made by Borrower to the order of Issuer in the original principal amount of \$[_____] and (ii) a certain Promissory Note Secured by Deed of Trust dated on or about the date hereof, made by Borrower to the order of Issuer in the original principal amount of \$[_____] (collectively, the "**Senior Note**") and secured by, among other things, that certain Construction and Permanent Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing dated

on or about the date hereof (the **"Senior Deed of Trust"**), executed by Borrower, as trustor, for the benefit of Issuer, as beneficiary, and being recorded substantially concurrently herewith in the Official Records of Orange County, California (the **"Official Records"**). Senior Lender requires that the Senior Deed of Trust shall be the first mortgage lien (specifically excluding the Unsubordinated Regulatory Agreement, as defined below) on Borrower's interest in certain land located in Santa Ana, California and more particularly described on Exhibit A attached hereto (the **"Property"**). Pursuant to that certain Assignment of Deed of Trust and Related Documents dated on or about the date hereof (the **"Assignment of Deed of Trust"**) made by Issuer, as assignor, in favor of Bond Trustee, as assignee, and being recorded substantially concurrently herewith in the Official Records, Issuer has assigned and is assigning to Bond Trustee all of the Issuer's right, title and interest in, to and under, among other things, the Senior Loan Agreement, the Senior Note and the Senior Deed of Trust. Also in connection with the Bonds, Borrower, Issuer and Bond Trustee have executed that certain Regulatory Agreement and Declaration of Restrictive Covenants (the **"Bond Regulatory Agreement"**), dated on or about the date hereof, to be recorded substantially concurrently herewith in the Official Records. The Senior Loan Agreement, the Senior Note, the Senior Deed of Trust, Bond Regulatory Agreement and all other documents evidencing or securing the Senior Loan are collectively referred to herein as the **"Senior Loan Documents,"** including without limitation the Permanent Loan Documents on and after the Conversion Date (as such terms are defined below).

C. The Borrower has requested the Senior Lender to permit the Subordinate Lender to make a loan to Borrower in the aggregate principal amount of \$[3,170,547] (the **"Subordinate Loan"**), made pursuant to that certain Loan Agreement, dated on or about the date hereof, by and between Borrower and Subordinate Lender (the **"Subordinate Loan Agreement"**), and to secure the Subordinate Loan by, among other things, placing a junior mortgage lien against the Property.

D. Senior Lender has agreed to permit the Subordinate Loan and to allow the subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement (specifically excluding the Unsubordinated Regulatory Agreement, as defined below).

E. If Borrower satisfies the **"Conversion Conditions"** contained in that certain Bond Purchase Agreement dated on or about the date hereof (the **"Bond Purchase Agreement"**) by and between Borrower, Majority Owner, and California Community Reinvestment Corporation, a California nonprofit public benefit corporation (**"Permanent Lender"**), Permanent Lender will purchase a portion of the Bonds and the Senior Loan will convert to a term loan on the Conversion Date (as defined in the Bond Purchase Agreement). On the Conversion Date, Permanent Lender and Borrower will purchase the Senior Loan Documents (as hereinafter defined), and the holder of the Construction Note shall become the Senior Lender hereunder. All documents evidencing or otherwise relating to the Permanent Loan are collectively referred to herein as the **"Permanent Loan Documents."**

AGREEMENTS:

NOW, THEREFORE, in order to induce the Senior Lender to make the Senior Loan to finance the development of the Property, and to permit the Subordinate Lender to make the

Subordinate Loan to Borrower and to place a subordinate mortgage lien against the Property, and for other consideration the receipt and sufficiency of which is acknowledged, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term **"control"** for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender or Subordinate Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Senior Loan Default has occurred under the Senior Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

"Majority Owner" has the meaning set forth for such term in the introductory paragraph to this Agreement; provided, however, that from and after the Conversion Date, all references herein to "Majority Owner" shall mean the Permanent Lender, and its successors and/or assigns.

"Person" means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person(s) becomes the legal holder(s) of the Senior Note, such other

Person(s) shall automatically become the Senior Lender. From and after the Conversion Date, the Permanent Lender, and its successors and/or assigns, shall become the Senior Lender hereunder.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"Subordinate Lender" means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Agreement" means the loan agreement dated on or about the date hereof by and between Borrower and Subordinate Lender in the aggregate principal amount of \$[3,170,547].

"Subordinate Loan Default" means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage, the Subordinate Loan Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan, provided, however, the Unsubordinated Regulatory Agreement is not a Subordinate Loan Document for purposes of this Agreement.

"Subordinate Mortgage" means that certain Inclusionary Leasehold Deed of Trust and Assignment of Rents dated as of [_____, 2020], encumbering the Borrower's interests in the Property as security for the Subordinate Loan, to be recorded in the Official Records substantially concurrently herewith.

"Subordinate Note" means the promissory note dated on or about the date hereof, issued by Borrower to Subordinate Lender, or order, to evidence the Subordinate Loan.

"Unsubordinated Regulatory Agreement" means the Affordability Restrictions on Transfer of Property dated on or about the date hereof, by Borrower for the benefit of Subordinate Lender, in connection with the Subordinate Loan, encumbering the property and to be recorded in first position concurrently herewith in the Official Records.

3. Permission to Place Mortgage Lien Against Property.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents or the Permanent Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record or retain the Unsubordinated Regulatory Agreement, the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which, with the exception of the

Unsubordinated Regulatory Agreement, is subordinate in all respects to the lien of the Senior Deed of Trust, only) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on the date of this Agreement, the provisions of the Senior Loan Documents and Permanent Loan Documents applicable to unpermitted liens on the Property shall apply.

4. Borrower's and Subordinate Lender's Representations and Warranties.

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

(a) Relationship of Borrower to Subordinate Lender and Senior Lender.

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

(b) Term.

The term of the Subordinate Note does not end before the stated term of the Senior Note.

(c) Subordinate Loan Documents.

The executed Subordinate Loan Documents are substantially in the same forms as those reviewed by Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(d) Senior Loan Documents.

The executed Senior Loan Documents will be substantially in the same forms as those reviewed by Subordinate Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

5. Terms of Subordination.

(a) Agreement to Subordinate.

The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to

the liens, terms, covenants and conditions of the Senior Deed of Trust and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Deed of Trust and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Deed of Trust, curing defaults by the Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Deed of Trust, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

(b) Subordination of Subrogation Rights.

The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Deed of Trust, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Deed of Trust.

(c) Payments Before Senior Loan Default.

Until the Subordinate Lender receives a Default Notice of a Senior Loan Default from the Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After Senior Loan Default.

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 5 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 5(d).

(e) Remitting Subordinate Loan Payments to Senior Lender.

If, after Subordinate Lender receives a Default Notice from Senior Lender in accordance with Section 5(d), Subordinate Lender receives any payments under the Subordinate Loan

Documents, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Intentionally Omitted.

(g) Affordability Restrictions Following Foreclosure of Senior Deed of Trust.

Subordinate Lender agrees that, although the Unsubordinated Regulatory Agreement remains senior to the lien of the Senior Deed of Trust, in the event title to the Property is transferred as a result of a foreclosure, a deed in lieu of foreclosure or other realization upon the Property under the Senior Loan Documents, notwithstanding anything to the contrary contained in the Unsubordinated Regulatory Agreement, 92 of the units subject to restriction under the Unsubordinated Regulatory Agreement shall be restricted for rental to and occupancy by households whose income does not exceed 60% of the area median income for the Orange County, California PMSA, adjusted for household size, as published by the U.S. Department of Housing and Urban Development, and rent in such units shall be restricted to the product of 30% of 60% of the area median income adjusted for family size appropriate for the unit.

6. Default Under Subordinate Loan Documents or the Unsubordinated Regulatory Agreement.

(a) Notice of Subordinate Loan Default and Cure Rights.

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within ninety (90) days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 90-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement to the extent permitted under Section 6(b). All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) Subordinate Lender's Agreement to Standstill.

If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action specifically related to the enforcement of any terms of the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement without first giving at least ninety (90) days' notice of a default under the Subordinate Loan and Subordinate Lender's intent to exercise one of the preceding actions; provided, however, that such limitation on the remedies of Subordinate Lender shall not derogate or otherwise limit Subordinate Lender's rights, following an event of default under the Subordinate Loan Documents to (a) compute interest on all amounts due and payable under the Subordinate Loan at the default rate described in the Subordinate Loan Documents, (b) compute prepayment premiums and late charges, (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Subordinate Loan, and (d) seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Unsubordinated Regulatory Agreement, and (e) appear in, defend or bring an action in connection with the Property in Subordinate Lender's capacity as a municipal authority to the extent required by law.

(c) Cross Default.

The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

7. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five (5) Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the First Mortgage Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default as provided below. Subordinate Lender may have up to thirty (30) days from the date of the Default Notice to cure

any monetary default under the Senior Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to sixty (60) days from the date of the Default Notice to cure a non-monetary default if during such 60-day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) Cross Default.

The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior Lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising solely from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

8. Conflict.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

9. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest.

The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty.

In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Deed of Trust remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior

Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) No Modification of Subordinate Loan Documents.

The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever and Subordinate Lender agrees that it shall not transfer or assign the Subordinate Loan or the Subordinate Loan Documents without the prior written consent of the Senior Lender.

10. Conversion, Modification or Refinancing of Senior Loan.

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to the Permanent Loan Documents, as well as to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) so long as the new mortgage debt does not increase the maximum principal amount of the Senior Loan and, in the event of new mortgage debt, Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement. Notwithstanding anything to the contrary in this Section 10, or in Section 5(a) above, the Senior Lender shall not, without the prior written consent of the Subordinate Lender in each instance, which shall not be unreasonably withheld, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Senior Loan Documents, increasing the required payments due under the Senior Loan, decreasing the term of the Senior Loan, or increasing the interest rate on the Senior Loan, except that the Senior Lender shall have the right to advance funds to cure Subordinate Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Senior for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Senior Loan Documents. From and after the Conversion Date, all the terms and covenants of this Agreement shall inure to the benefit of any holder of the Permanent Loan; and all references to the Senior Loan, the Senior Note and the Senior Loan Documents shall mean, respectively, the Permanent Loan, the Permanent Note and the Permanent Loan Documents.

11. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER (prior to the Conversion Date):	Bank of America, N.A. 2000 Clayton Road 6th Floor Mail Code: CA4-704-06-06 Concord, CA 94520 Attention: Loan Administration Manager
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SENIOR LENDER (on and after the Conversion Date):	California Community Reinvestment Corporation 100 West Broadway, Suite 1000 Glendale, California 91210 Attention: President
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in either case, with copy to:

Buchalter, a Professional Corporation
1000 Wilshire Blvd., Suite 1500
Los Angeles, California 90017-2457
Attention: Michael Williamson, Esq.

SUBORDINATE LENDER:	City of Santa Ana Community Development Agency 20 Civic Center Plaza (M-26) P.O. Box 1988 Santa Ana, CA 92702 Attention: Housing Manager
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With copy to:

Office of the City Attorney
City of Santa Ana
20 Civic Center Plaza, 7th Floor (M-29)
Santa Ana, CA 92702

BORROWER:

Legacy Square, L.P.
c/o National Community Renaissance of California
9421 Haven Ave.
Rancho Cucamonga, CA 91730
Attn: Legal Counsel

With copy to:

Klein Hornig LLP
1325 G Street NW, Suite 770
Washington, DC 20005
Attn: Chris Hornig

BOND TRUSTEE:

Wilmington Trust, N.A.
370 San Marin Drive
Novato, CA 94945
Attn: Tom Demchuk

With copy to:

Taboada Rochlin Govier
4212 E. Los Angeles Ave., Suite 3158
Simi Valley, CA 93603
Attn: William Govier

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

13. General.

(a) Assignment/Successors.

This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and, the Subordinate Lender.

(b) No Partnership or Joint Venture.

The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent.

Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances.

The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Deed of Trust, or to further evidence the intent of this Agreement.

(e) Amendment.

This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law.

This Agreement shall be governed by the laws of the State in which the Property is located.

(g) Severable Provisions.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term.

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power

of sale contained in, the Senior Deed of Trust; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SENIOR LENDER:

BANK OF AMERICA, N.A.,
a national banking association

By: _____
Name: Michael Petty
Title: Senior Vice President

Address for Notices:

Bank of America, N.A.
2000 Clayton Road, Building D, 6th Floor
Concord, CA 94520
Mail Code: CA4-704-06-06
Attention: Loan Administration Manager

And a copy to (and after Conversion to):

California Community Reinvestment
Corporation
100 West Broadway, Suite 1000
Glendale, California 91210
Attention: President

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)
) ss.
COUNTY OF _____)

On _____, before me, _____, 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.

Signature _____ (Seal)

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SUBORDINATE LENDER:

CITY OF SANTA ANA,
a charter city and municipal corporation

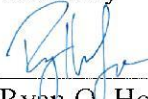
By: _____
Kristine Ridge
City Manager

ATTEST:

Daisy Gomez
Clerk of the Council

APPROVED AS TO FORM:

Sonia R. Carvalho
City Attorney

By:  _____
Ryan O. Hodge
Assistant City Attorney

RECOMMENDED FOR APPROVAL

Steven A. Mendoza
Executive Director
Community Development Agency

[Notary acknowledgement page follows]

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)
) ss.
COUNTY OF _____)

On _____, before me, _____, 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.

Signature _____ (Seal)

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

LEGACY SQUARE, L.P.,
a California limited partnership

By: NCRC Legacy MGP, LLC,
a California limited liability company,
its managing general partner

By: National Community Renaissance of California,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Michael Finn, Chief Financial Officer

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)
) ss.
COUNTY OF _____)

On _____, before me, _____, 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.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of Santa Ana, State of California, described as follows:

[To be attached]

Exhibit 7: Legacy Square Loan Agreement

<http://clerk/WebLink/DocView.aspx?dbid=1&id=114895&page=1&cr=1>

RESOLUTION NO. 2020-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA
APPROVING THE ISSUANCE BY THE CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY OF MULTIFAMILY HOUSING REVENUE BONDS
FOR THE LEGACY SQUARE APARTMENTS

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is authorized pursuant to the provisions of California Government Code Section 6500 et seq. and the terms of an Amended and Restated Joint Exercise of Powers Agreement, dated as of June 1, 1988 (the "Agreement"), among certain local agencies throughout the State of California, including the City of Santa Ana (the "City"), to issue revenue bonds in accordance with Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code for the purpose of financing multifamily rental housing projects; and

WHEREAS, Legacy Square, L.P., a California limited partnership or a partnership of which National Community Renaissance of California (the "Developer") or a related person to the Developer is the general partner, has requested that the Authority adopt a plan of financing providing for the issuance of exempt facility bonds for a qualified residential rental project pursuant to Section 142(a)(7) of the Internal Revenue Code of 1986 (the "Code") in one or more series issued from time to time, including bonds issued to refund such exempt facility bonds in one or more series from time to time, and at no time to exceed \$40,000,000 in outstanding aggregate principal amount (the "Bonds"), to finance or refinance the acquisition, construction and development of a multifamily rental housing project located at 609 and 615 North Spurgeon Street, Santa Ana, California (the "Project"); and

WHEREAS, pursuant to Section 147(f) of the Code, prior to their issuance, the Bonds are required to be approved by the "applicable elected representative" of the governmental units on whose behalf such bonds are expected to be issued and by a governmental unit having jurisdiction over the entire area in which any facility financed by such bonds is to be located, after a public hearing held following reasonable public notice; and

WHEREAS, the members of this City Council (this "City Council") are the applicable elected representatives of the City and are required to approve the issuance of the Bonds, but do not need to be present at the public hearing; and

WHEREAS a Tax Equity and Fiscal Responsibility Act (the "TEFRA") public hearing was previously held for the Project on December 17, 2019, and was approved by the City Council. However, the matter is being brought back to the City Council because the previous approval is set to expire; and

WHEREAS, there has been published, at least 7 days prior to the hearing date, in a newspaper of general circulation within the City, a notice that a public hearing regarding the Bonds would be held on a date specified in such notice; and

WHEREAS, on December 4, 2020, the City of Santa Ana has, conducted such public hearing on such date, telephonically, as permitted by the Internal Revenue Service to satisfy the public hearing requirement in light of the COVID-19 pandemic, at which time and opportunity was provided to interested parties to present arguments both for and against the issuance of the Bonds; and

WHEREAS, the Authority is also requesting that the City Council approve the issuance of any refunding bonds hereafter issued by the Authority for the purpose of refinancing the Bonds which financed the Project (the "Refunding Bonds"), but only in such cases where federal tax laws would not require additional consideration or approval by the City Council; and

WHEREAS, it is intended that this resolution shall constitute the approval of the issuance of the Bonds required by Section 147(f) of the Code and Section 9 of the Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The above recitals are true and correct.

Section 2. The City Council hereby approves the issuance of the Bonds and the Refunding Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute approval of the issuance of the Bonds by the Authority, for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is located, in accordance with said Section 147(f) and (b) Section 9 of the Agreement.

Section 3. The issuance of the Bonds shall be subject to approval of the Authority of all financing documents relating thereto to which the Authority is a party. The City shall have no responsibility or liability whatsoever with respect to repayment or administration of the Bonds.

Section 4. The adoption of this Resolution shall not obligate the City or any department thereof to: (i) provide any financing with respect to the Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary with respect to the Project; (iii) make any contribution or advance any funds whatsoever to the Authority; or (iv) take any further action with respect to the Authority or its membership therein.


Section 5. The City Manager and applicable Executive Directors of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents that they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing approved hereby.

Section 6. This resolution shall take effect immediately upon adoption.

ADOPTED this ____ day of _____, 2020.

Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: 

Ryan O. Hodge
Assistant City Attorney

AYES: Councilmembers

NOES: Councilmembers

ABSTAIN: Councilmembers

NOT PRESENT: Councilmembers