



Supplemental Agenda Related Writings/ Documents Provided To A Majority Of The Ridgecrest City Council / Redevelopment Agency Board Members After Distribution Of The November 16, 2011 Agenda Packet

Amend Item 8 – Additional supporting documents and a second OPA received after the posting of the agenda for Council consideration.

Redevelopment Agency Owner Participation Agreements (OPA's) Approval And Modification From The Letter Of Commitment For AMG Senior And Market Rate Housing, 901 And 929 W. Church. APN 508-020-13 & 12

McRea

Add Item 11 – Discussion and Other Action Item

A Letter of Opposition to Kern Council of Governments (Kern Cog) regarding a Highway 14 Proposal

Morgan

This information is available for viewing on
The City of Ridgecrest web page

<http://ci.ridgecrest.ca.us>

City Council Agendas

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**OWNER PARTICIPATION AGREEMENT
(Southwest Corner of Down Street and Church Avenue)**

by and between

**RIDGECREST REDEVELOPMENT AGENCY,
a public body, corporate and politic,**

and

**RIDGECREST PACIFIC ASSOCIATES,
a California limited partnership**

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ATTACHMENTS

Attachment No. 1	Legal Description
Attachment No. 2	Site Map
Attachment No. 3	Completion Guaranty
Attachment No. 4	Scope of Development
Attachment No. 5	Release of Construction Covenants
Attachment No. 6	Schedule of Performance
Attachment No. 7	Memorandum of Agreement

OWNER PARTICIPATION AGREEMENT
(Southwest Corner of Down Street and Church Avenue)

This **OWNER PARTICIPATION AGREEMENT** (“Agreement”), dated for purposes of identification only as of _____, 2011, is entered into by and between **RIDGECREST REDEVELOPMENT AGENCY**, a public body, corporate and politic (“Agency”), and **RIDGECREST PACIFIC ASSOCIATES**, a California limited partnership (“Developer”).

RECITALS

The following recitals are a substantive part of this Agreement.

A. Agency is a public body, corporate and politic and a California redevelopment agency acting under the California Community Redevelopment Law, Part 1 of Division 24, Section 33000, *et seq.*, of the Health and Safety Code (“Act”).

B. The Redevelopment Plan for the Ridgecrest Redevelopment Project (herein, the “Redevelopment Project”) was adopted by the City Council of the City of Ridgecrest (“City”) by Ordinance Nos. 86-37 on November 19, 1986 (and, as subsequently amended, is referred to herein as the “Redevelopment Plan”).

C. The Site is owned by the Developer and is comprised of approximately ____ acres located at the southwest corner of Down Street and Church Avenue and identified as Assessor’s Parcel No. _____ and Assessor’s Parcel No. _____ as shown on the Site Map (the “Site”). The Site is owned by the Developer.

D. The Developer proposes to construct and operate on the Site a market rate apartment project housing comprised of forty (40) Units in two (2) phases, with not less than twenty (20) Housing Units being in Phase 1.

E. Agency is authorized and empowered under the Act to provide funding for the production, improvement, or preservation of affordable housing including the construction of new apartments housing Senior Citizens and appurtenant improvements with tax increment revenues from the Agency’s Housing Fund.

F. Capitalized terms used in this Agreement are defined in these Recitals and in Section 100, *et seq.*

G. Developer is experienced in the construction, development, operation and management of high quality apartment units.

H. Developer desires to: (i) develop the Site with the “Project,” consisting of forty (40) Housing Units, with not less than twenty (20) Housing Units in Phase 1, and parking and community facilities, for rental, and (ii) operate the Project.

I. Agency and Developer [a developer affiliate] has concurrently herewith entered into an Owner Participation Agreement with the Agency pursuant to which the Developer has committed to construct on the adjacent site a thirty-two (32) unit apartment project housing senior citizens (the “Senior Citizen OPA”). The Developer of the Senior Citizen OPA recognizes and acknowledges that

the Agency would not fund the Agency Loan as defined in the Senior Citizen OPA unless and until Commencement of Construction (as defined hereinafter) has occurred hereunder.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

100. DEFINITIONS

101. **Defined Terms.** The defined terms set forth in this Section 101 shall be used to interpret this Agreement and all attachments hereto except to the extent such terms are otherwise defined in the attachments hereto.

“Act” shall mean the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.*, as the same may from time to time be amended.

“Affiliate” shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer, which shall include each of the constituent partners or members of Developer’s limited partnership. The term “control,” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

“Agency” shall mean the Ridgecrest Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Act, and any assignee of or successor to its rights, powers and responsibilities.

“Agreement” shall mean this Owner Participation Agreement, including all attachments hereto, between Agency and Developer.

“City” shall mean the City of Ridgecrest, a California municipal corporation and charter city. The City is not a party to this Agreement and shall have no obligations hereunder; provided, however, City is an intended third-party beneficiary of the covenants and restrictions, as well as the enforcement rights (without any obligation), set forth in this Agreement.

“Commencement of Construction” means vertical construction pursuant to validly issued building permits under a Construction Contract following the funding of one hundred percent (100%) of the Construction Costs.

“Completion Guaranty” shall mean the Completion Guaranty in substantially the form attached hereto as Attachment No. 3 and incorporated herein. The Completion Guaranty shall be executed by the Guarantor and delivered to the Agency as a Condition Precedent to the Commencement of Construction.

“Conditions Precedent” shall mean the conditions precedent to the Commencement of Construction.

“Construction Contract” shall mean each and every contract between Developer, the General Contractor, and/or any Subcontractor for the construction of the Project, or any part thereof,

including construction of any on-site or off-site improvements included in the Scope of Development and the Entitlements approved by the City. The Construction Contract between Developer and the General Contractor shall be for a fixed fee to complete all work to be performed or caused to be performed by the General Contractor under such Construction Contract. The Construction Contract shall be reviewed and reasonably approved (or disapproved) by Agency Executive Director.

“Construction Costs” means all hard and soft costs issued in connection with the construction of the Project to the Construction Contract.

“County” shall mean the County of Kern, California.

“Default” or **“Event of Default”** shall mean the failure of a party to perform any action or comply with any covenant required by this Agreement, including the attachments hereto, within the time periods provided herein following notice and opportunity to cure, as set forth in Section 601 hereof.

“Developer” shall mean Ridgecrest Pacific Associates, a California limited partnership and its permitted successors and assigns. The General Partner of Developer is

“Effective Date” shall mean the date the Executive Director of the Agency executes this Agreement.

“Entitlements” shall mean and include each application and discretionary action of the City, through its administrators and, if applicable, by its City Council, Planning Commission, or other boards or commissions for the Project, the Improvements, and this Agreement, including the findings in compliance with the California Environmental Quality Act (“CEQA”), Conditional Use Permits, and any and all conditions of approval related thereto, including, without limitation, and any amendments, supplements, and modifications thereto, as set forth in the conditions of approval for the Project.

“Environmental Claims” shall mean (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of non-compliance or violation and notices to comply), requests for information or investigation instituted or threatened by any governmental authority pursuant to any Governmental Requirements, or (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate, in the case of either (i) or (ii), to any damage, contribution, cost recovery, compensation, loss or injury resulting from the release or threatened release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirements, or the generation, manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

“Environmental Laws” shall mean all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”),

42 U.S.C. Section 9601, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Agency, Developer, or the Site.

“Executive Director” shall mean and include the Agency’s Executive Director and his/her authorized designee(s). Whenever the consent, approval or other action of the “Executive Director” is required herein, such consent may be provided by the Agency’s Executive Director or his authorized designee(s), or the Executive Director in his sole discretion may submit such request to the Agency Board for action to approve or disapprove such request.

“Final Budget” shall mean the final budget for the construction and development of the Project, as approved by Agency pursuant to Section 310 hereof.

“General Contractor” shall mean the general contractor to be hired by Developer to engage and supervise the subcontractors in the performance and completion of the construction of the Project and all other on-site and off-site improvements required to be constructed in connection with the Project, all in accordance with the Scope of Development and the Entitlements to be approved by City. The General Contractor shall be reasonably acceptable to and approved by Agency Executive Director, in his/her reasonable discretion. The parties acknowledge that the General Contractor will not be performing actual construction work for any portion of the Project, but instead shall hire Subcontractors who shall be reasonably approved by Agency Executive Director in accordance with this Agreement.

“Governmental Requirements” shall mean all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of California, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over Developer or the Site, as may be amended from time to time.

“Guarantors” shall mean Caleb J. Roope, Pacific West Building, Inc., Roope LLC, Roope-Sun, LLC, Pacific West Communities, Inc., and which shall also be the “Guarantors” under the Completion Guaranty, Attachment No. 3 hereto.

“Hard and Soft Costs” mean _____.

“Hazardous Material” or **“Hazardous Materials”** shall mean and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety

Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol, aspirin, tobacco and saccharine.

“Housing Unit” and **“Housing Units”** shall mean, individually and collectively, the ____, individual apartment units in the Project to be constructed and operated by Developer on the Site.

“Indemnitees” is defined in Section 202.

“Legal Description” shall mean the description of the Site which is attached hereto as Attachment No. 1 and incorporated herein.

“Lender” shall mean each of the responsible financial lending institutions or persons or entities approved by Agency in its reasonable discretion, which provide the Primary Loans, including acquisition loan(s), construction loan(s) or permanent loan(s) for the construction, development, and/or operation of the Project, as set forth in Section 310 hereof.

“Memorandum of Agreement” shall mean the Memorandum of Owner Participation Agreement to be executed by the parties in substantially the form attached hereto as Attachment No. 6 and fully incorporated by this reference, which Memorandum of Agreement shall include notice of this Agreement and the obligations of Developer to complete the construction of the Project and operate the Project as affordable rental housing pursuant to the terms of this Agreement.

“Notice” shall mean a notice in the form prescribed by Section 702 hereof.

“Official Records” shall mean the official land records of the County.

“Phase I” means not less than twenty (20) Housing Units.

“Phase 2” means the remaining Housing Units after construction of Phase 1.

“Primary Loan” and **“Primary Loans”** shall mean, individually and collectively, the permanent and construction financing obtained by Developer for the Project from one or more lender(s), as approved by Agency Executive Director.

“Project” shall mean the construction, development and/or operation at the Site of the apartment complex described pursuant to Section 301.1 and Section 400 *et seq.*

“Project Costs” means Hard and Soft Costs incurred in connection with the construction of the Project.

“Release of Construction Covenants” shall mean the document which shall evidence Developer’s satisfactory completion of the Project, as set forth in Section 305 hereof, substantially in the form of Attachment No. 5 hereto.

“Schedule of Performance” shall mean that certain Schedule of Performance attached hereto as Attachment No. 6 and incorporated herein by reference.

“Scope of Development” shall mean that certain Scope of Development attached hereto as Attachment No. 4 and incorporated herein, which describes the scope and quality of the apartment complex to be constructed by Developer at the Site pursuant to the terms and conditions of this Agreement.

“Site” shall mean approximately ____ acres of real property, generally located at _____ Down Street and Church Avenue in the City of Ridgecrest, as more particularly described in the Legal Description. After completion of the construction of the Project, the Improvements shall be deemed a part of the Site and whenever the term “Site” is used in this Agreement it shall mean and include the land and all Improvements.

“Site Map” shall mean the map of the Site which is attached hereto as Attachment No. 2 and incorporated herein.

“Subcontractor” and **“Subcontractors”** shall mean, individually and collectively, one or more subcontractors hired by Developer’s General Contractor for the Project to perform and complete, or to engage and supervise others to perform and complete, the construction of the Project and all other on-site and off-site improvements required to be constructed in connection with the Project, all of which shall be in accordance with the Scope of Development and the Entitlements. Developer shall submit to Agency information regarding the entity serving as the Subcontractor for any portion of the construction of the Project and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Development and the Entitlements, including all required licenses, certifications, insurance, etc., as reasonably requested by Agency Executive Director.

“Third Party Costs” is defined in Section 716.

200. ENVIRONMENTAL COVENANTS/AGENCY LOAN CLOSING.

201. **Developer Representations to Agency re Existing Condition of Site.** Except as disclosed in the following environmental reports: [Insert list of all reports provided by Developer].

Developer represents, to and for the benefit of Agency, to the best of its knowledge, that it is not aware of and it has not received any notice or communication from any governmental agency having jurisdiction over the Site, the owner of the Site, or any other person or entity, notifying it of the presence of Hazardous Materials (both as hereinafter defined) in, on, or under the Site, or any portion thereof or the violation of any Environmental Laws (hereinafter defined). Developer represents that any inspection reports with respect to the Site, environmental audits, reports and studies which concern the Site, or inspection reports from applicable regulatory authorities with respect to the Site, which Developer has received, have been delivered to the Agency. Developer knows of no circumstances, conditions or events that may, now or with the passage of time, give rise to any Environmental Claim (hereinafter defined) against or affecting the Site. As and when obtained or received by Developer from the current owner or from any other person or entity, true and correct copies of internal inspection reports with respect to the Site, environmental audits, reports and studies which concern the Site, and inspection reports from applicable regulatory authorities with respect to the Site, if any, shall be promptly delivered to Agency.

Developer acknowledges that Developer located the Site without any assistance from (or involvement by) Agency; prior to the Effective Date, Developer has independently conducted all necessary and appropriate due diligence and determined that the condition of the Site and all improvements located thereon were suitable for the development and operation of the Project; and all such due diligence and Developer's investigations of the condition of the Site were conducted independently and not in consultation with Agency or Agency's officers, employees, agents, or consultants. Agency reasonable approval of the environmental condition of the Site is a Condition Precedent, as set forth in Section 207.

202. **Indemnification.** Developer shall save, protect, pay for, defend (with counsel acceptable to Agency, and City, as applicable), indemnify and hold harmless Agency, City, and their respective elected and appointed officials, officers, employees, attorneys, representatives, volunteers, contractors and agents (collectively, "Indemnitees") from and against any and all Environmental Claims and any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs and third-party claims or costs) (the foregoing are hereinafter collectively referred to as "Liabilities") that may now or in the future be incurred or suffered by Indemnitees by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of: (i) the presence, use, release, escape, seepage, leakage, spillage, emission, generation, discharge, storage, or disposal of any Hazardous Materials in, on, under, or about, or the transportation of any such Hazardous Materials to or from, the Site; (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, leakage, spillage, emission, escape, discharge, storage, disposal, or transportation of Hazardous Materials in, on, under, about, to or from, the Site; (iii) the physical and environmental condition of the Site, (iv) any Liabilities relating to any Environmental Laws and other Governmental Requirements relating to Hazardous Materials and/or the environmental and/or physical condition of the Site, and (v) any Environmental Claims relating to the Project or the Site; provided, however, that the foregoing indemnity shall not apply to any Liabilities arising or occurring (a) prior to the Effective Date, (b) as a result of the grossly negligent or wrongful acts or omissions of Agency or City or (c) after any transfer by Developer of the Site with the Agency's approval pursuant to Section 704, *et seq.* This indemnification supplements and in no way limits the indemnification set forth in Section 307.

203. **Duty to Prevent Hazardous Material Contamination.** During the construction, development, operation and management of the Project, Developer shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Site. Such precautions shall include, but not be limited to, compliance with all Environmental Laws and other Governmental Requirements. Developer shall notify Agency, and provide to Agency a copy or copies of any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to all Environmental Laws and other Governmental Requirements, and Developer shall report to Agency, as soon as possible after each incident, any unusual or potentially important incidents in the event of a release of any Hazardous Materials into the environment.

204. **Release of Agency and City by Developer.** Developer hereby waives, releases and discharges forever the Indemnitees from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, including attorneys fees, court and litigation costs and fees of expert witnesses, present and future, arising out of or in any way connected with Developer's possession or use of the Site, improvement of the Site in accordance with this Agreement (provided that such waiver and release shall not apply to Agency's covenants and agreements hereunder which Agency shall be obligated to perform in accordance with this Agreement), the Scope of Development, and the Entitlement, and for the operation of the Project at the Site, of any Hazardous Materials on the Site, or the existence of Hazardous Materials contamination in any state on, under, or about the Site, however they came to be located there.

In connection with the foregoing, Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code that provides as follows:

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

As such relates to this Section 204, Developer hereby waives and relinquishes all rights and benefits that it may have under Section 1542 of the California Civil Code.

Notwithstanding the foregoing, this waiver, discharge, and release shall not be effective in the event the presence or release of Hazardous Materials on the Site occurs as a result of the gross negligence or willful misconduct of Agency or City or their officers, employees, representatives and agents.

205. **Environmental Inquiries.** Developer shall notify Agency upon receipt, and provide to Agency a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Site and the Project: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Environmental Laws and other applicable Governmental Requirements relating to Hazardous Materials and underground tanks, and Developer shall report to Agency, as soon as possible after each incident, all

material information relating to or arising from such incident, including, but not limited to, the following:

- (a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirements;
- (b) All notices of suspension of any permits relating to Hazardous Materials;
- (c) All notices of violation from federal, state or local environmental authorities relating to Hazardous Materials;
- (d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;
- (e) All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders;
- (f) Any notices of violation from OSHA or Cal OSHA concerning employees' exposure to Hazardous Materials;
- (g) All complaints and other pleadings filed against Developer relating to Developer's storage, use, transportation, handling or disposal of Hazardous Materials on or about the Site; and
- (h) Any and all other notices, citations, inquiries, orders, filings or any other reports containing information which would have a materially adverse effect on the Site or Agency's liabilities or obligations relating to Hazardous Materials.

In the event of a release of any Hazardous Materials into the environment, Developer shall, as soon as possible after the release, furnish to Agency a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Agency, but subject to any limitations imposed by law or by court order, Developer shall furnish to Agency a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site in Developer's possession and/or shall notify Agency of any environmental entitlements or inquiries relating to or affecting the Site within Developer's actual or constructive knowledge if Developer is not in possession of same, including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

206. **Conditions Precedent.**

206.1 **Conditions Precedent to Commencement of Construction.** The Commencement of Construction is subject to the fulfillment by Developer or waiver by Agency of each and all of the Conditions Precedent described in this Section 207, which are solely for the benefit of Agency, and each of which, if it requires action by Developer, shall also be a covenant of Developer, and any of which may be waived by the Executive Director in his/her sole and absolute discretion.

206.2 **Final Budget.** Developer shall have submitted to Agency for its approval an updated and final pro forma and detailed Final Budget for the acquisition, development and operation of the Project (consistent with the Scope of Development), and Executive Director shall have approved the Final Budget in his reasonable discretion. The use of Agency Loan proceeds shall be consistent with the approved Final Budget.

206.3 **Evidence of Financing.** Developer shall have provided written proof reasonably acceptable to Agency that Developer has obtained a commitment for equity contributions and loans, subject to customary conditions, for construction and permanent financing of the Project, such financing shall fund and record concurrently with the Commencement of Construction.

206.4 **Insurance.** Agency shall have received evidence, satisfactory to Executive Director or a Agency risk management designee(s), that all of the insurance policies, certificates, and endorsements required by this Agreement have been duly submitted, reviewed and approved and such insurance policies, certificates and endorsements are and remain in full force and effect.

206.5 **Title to Site.** Developer shall, as of the close of Escrow, have good and marketable fee simple title to the Site and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than the financing approved by Agency pursuant to Section 310, *et seq.*, and liens for current real property taxes and assessments not yet due and payable, and any other matters approved in writing by the Agency. Agency shall have no obligation to make the Commencement of Construction not occur.

206.6 **Recordation.** Prior to Commencement of Construction, the Developer shall record the Memorandum of Agreement.

206.7 **Environmental Compliance.** All Governmental Requirements including all Environmental Laws applicable to the Project shall have been satisfied if and to the extent such satisfaction is required prior to Commencement of Construction.

206.8 **Environmental Condition.** The environmental condition of the Site shall be reasonably acceptable to Agency, as determined by Executive Director and Agency legal counsel in their reasonable discretion.

206.9 **Building Permits.** Developer shall have received all final grading and building permits and other approvals necessary for the development of the Project and all fees required to obtain such permits and approvals for the Project shall have been paid.

206.10 **Representations and Warranties.** The representations and warranties of Developer contained in this Agreement shall be correct in all material respects as of the initial disbursement of the Agency Loan as though made on and as of those dates, and Executive Director shall have received a certificate to that effect signed by an officer of Developer.

206.11 **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, and Executive Director shall have received a certificate to that effect signed by an officer of Developer.

All Conditions Precedent set forth in this Section 207, *et seq.*, to the initial disbursement of the Agency Loan and close of the Escrow for Developer's acquisition of the Site, or to Agency's obligations hereunder, are for Agency's benefit only and the Executive Director may waive all or any part of such rights by written notice to Developer. If Executive Director shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to Agency's approval (and such items are not cured by Developer within applicable time frames), or if any of the conditions set forth in this Agreement are not met within the times called for, Agency may thereafter terminate this Agreement without any further liability on the part of Agency by giving written notice of termination to Developer. Escrow Agent shall thereupon, without further consent from Developer, return to each party the documents and funds deposited by them as to the Site.

207. **Condition Precedent re Senior Citizen OPA.** The Agency's obligation to fund the Agency Loan under the Senior Citizen OPA is conditioned upon commencement of construction hereunder.

300. DEVELOPMENT OF THE PROJECT.

301. **Development of the Project.**

301.1 **Developer's Obligations.** Subject to the terms of this Agreement, Developer agrees to construct and develop or cause construction and development through completion of the Project, including all on-site and off-site improvements required to be constructed in accordance with the Scope of Development and in compliance with the Entitlement approved by the City and all applicable local codes, development standards, ordinances and zoning ordinances, and other applicable Governmental Requirements.

(a) **Scope of Development.** The "Project" shall include forty (40) Housing Units of which not less than twenty (20) shall be constructed in Phase 1, an approximately _____ square foot community center including a management office, and an outdoor swimming pool. The Project (including the off-site improvements anticipated to be required in connection with the Project) is described in more detail in the Scope of Development attached hereto as Attachment No. __.

302. **Design Review of Development Plans.**

302.1 **Construction Drawings.** Agency shall not perform any design review or have any approval rights over drawings, plans or specifications for the Project (together, "Construction Drawings"). The Agency shall rely on the City's review and approval of such Construction Drawings pursuant to the City's permitting process. Notwithstanding the foregoing, Developer shall provide Agency with change orders or other revisions or modifications to the construction drawings which are permitted hereunder without the Agency's review and approval provided that such change orders do not materially change the size, scope or quality of each Housing Unit or the Project, as a whole.

302.2 **Defects in Development Plans.** Neither Agency nor City shall be responsible to Developer or to any third parties in any way for (a) any defects in any development plans, (b) any structural or other defects in any work done according to the approved development plans, nor (c) any delays caused by the review and approval processes established by this Section 302. Developer shall hold harmless, indemnify and defend the Indemnitees from and against

any claims or suits for damages to property or injuries to persons (including death) arising out of or in any way relating to defects, latent or patent, in the development plans, or the actual construction work and improvements comprising the Project, including, without limitation, the violation of any Governmental Requirements, or arising out of or in any way relating to any defects in any work done and/or improvements completed according to the approved development plans.

302.3 Agency Construction Manager. Agency shall have the right to employ (at its sole cost and expense) a construction manager of its choosing (“Construction Manager”) to oversee the construction and other development work performed at the Site pursuant to this Agreement, and, in particular, the Commencement of Construction. The Construction Manager shall be retained to provide Agency with assurances that all work is performed in a timely and safe manner and in accordance with this Agreement, the Scope of Development, the Entitlements, the approved Construction Contracts, any approved change orders and other legal requirements. Developer shall ensure that Agency’s Construction Manager shall have full access to the Site and to all records of Developer, the General Contractor, and each and all Subcontractors relating to the Project to permit the Construction Manager to perform its duties as described in this Section 302.3, and each Construction Contract shall provide appropriate provisions to effectuate this Section 302.3.

303. Timing of Development of the Project. Developer hereby covenants and agrees to commence the construction and development of the Project within the time set forth in the Schedule of Performance (subject to force majeure pursuant to Section 603 hereof). Developer further covenants and agrees to diligently prosecute to completion the construction and development of the Project in accordance with the approved Entitlement and to file a notice of completion therefor pursuant to California Civil Code Section 3093 within the time set forth in the Schedule of Performance.

304. City and Other Governmental Permits. As a Condition Precedent to Commencement of Construction pursuant to Section 206, Developer shall secure or cause its General Contractor (and subcontractors) to secure any and all permits and approvals which may be required by City or any other governmental agency affected by such construction, including, without limitation, rough grading permits, final grading permits, conditional building permits, and final building permits. The conditional building permits may state that the final unconditional building permits shall be issued upon satisfactory completion of rough and complete grading, subject to the sole discretion of the City’s Building and Planning Departments. Developer shall pay all necessary fees and timely submit to the City final drawings with final corrections to necessary plans to obtain any and all such permits. Agency staff will, without obligation to incur liability or expense therefor, use their reasonable efforts to expedite the City’s issuance of final building permits and certificates of occupancy that meet Governmental Requirements and this Agreement.

305. Release of Construction Covenants. Promptly after the completion of the development of the Project in conformity with this Agreement (as reasonably determined by Agency Executive Director or his/her designee) and as determined completed by the City’s building official, upon the written request of Developer, Agency shall furnish Developer with a Release of Construction Covenants for the Project (substantially in the form attached hereto as Attachment No. 7, and incorporated herein) which evidences and determines the satisfactory completion of the construction and development of the Project in accordance with this Agreement. The issuance and recordation of the Release of Construction Covenants with respect to the Project shall not supersede, cancel, amend or limit the continued effectiveness of any obligations relating to the maintenance, operation, uses, payment of monies, or any other obligations, except for the obligation to complete

the development of the Project as of the time of the issuance of the Release of Construction Covenants for the Project.

306. **Insurance Requirements.** Developer shall secure from a company or companies licensed to conduct insurance business in the State of California, pay for, and maintain in full force and effect from and after the Commencement of Construction, insurance for the Project as required herein, issued by an “A:VI” or better rated insurance carrier as rated by A.M. Best Company. Developer shall furnish certificates of insurance and endorsements to Agency not fewer than fifteen (15) days prior to the Commencement of Construction and shall furnish complete copies of such policy or policies upon request by Agency or City.

306.1 **Minimum Coverage/Endorsements.** Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection afforded by these policies shall be written on an occurrence basis in which Agency and City, and their respective elected and appointed officials, officers, employees, agents and representatives (together, “Additional Insureds”) are named as additional insureds on all coverage, except for Workers’ Compensation coverage, but including Employers Liability coverage, and shall:

(a) Name the Additional Insureds (from above) as additional insureds on a Commercial General Liability (“CGL”) policy;

(b) Include an endorsement to the CGL policy naming the Additional Insureds as additional insureds, and said endorsement shall be delivered to Agency Executive Director prior to and as a Condition Precedent to the Commencement of Construction (and maintained as required herein); provided, however, that an individual endorsement specifically naming the Additional Insureds shall not be required if Developer provides documentation which, in the sole discretion of Agency, demonstrates that the Additional Insureds are otherwise automatically covered under some sort of blanket policy language that clearly establishes the Additional Insureds’ status as additional insureds under the policy, without the need for a separate endorsement in favor of the Additional Insureds;

(c) Provide a broad form commercial general liability insurance in the amount of Ten Million Dollars (\$10,000,000) per occurrence, which will be considered equivalent to the required minimum limits, and such insurance shall (i) be written on an occurrence form, (ii) be written with a primary policy form with limits of not less than \$1,000,000 per occurrence; (iii) be written with one or more excess layers to bring the total of primary and excess coverage limits to not less than \$10,000,000 per occurrence, (iv) not be written with a deductible greater than \$20,000 per occurrence (without prior written approval by Agency, which approval shall be granted or denied in Agency’s sole and absolute discretion), (v) not be written with a self-insured retention (without prior written approval by Agency, which approval shall be granted or denied in Agency’s sole and absolute discretion), and (vi) contain a waiver of subrogation in favor of the Agency and City. Such insurance shall include independent contractor coverage and shall cover the acts, errors, omissions, or works of any of Developer’s subcontractors and any other person(s) acting on behalf of Developer, as respects any liability that may occur to Developer and/or any Additional Insureds from such acts, errors, omissions or work;

(d) Provide primary Automobile Liability insurance for owned, non-owned, and hired vehicles, as applicable to, or for any use related to, the Project, in an amount not less than One Million Dollars (\$1,000,000) combined single limit, with excess insurance coverage to

bring the total amount of Automobile Liability insurance coverage to an amount not less than Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage;

(e) Bear an endorsement or shall have attached a rider providing that Agency shall be notified not less than thirty (30) days before any expiration, cancellation, non-renewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium (collectively, "Cancellation Notice"), provided, however, that an individual endorsement specifically naming the Agency shall not be required if Developer provides documentation which, in the sole discretion of Agency, demonstrates that the Agency will automatically receive such Cancellation Notice under some sort of blanket policy language, without the need for a separate endorsement in favor of the Agency; and

(f) Developer shall also file with Agency the following signed certification:

"I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

Developer shall comply with Sections 3700 and 3800 of the Labor Code by securing, paying for and maintaining in full force and effect from and after the Commencement of Construction, and during the course of construction, complete Workers' Compensation insurance, to statutory limits, with Employers Liability limits not less than One Million Dollars (\$1,000,000) per occurrence, and shall furnish a Certificate of Insurance to Agency before the commencement of construction. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, Agency shall be notified, giving Developer a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium.

(g) All Additional Insureds shall not be responsible for any claims in law or equity occasioned by the failure of Developer to comply with this Section 306.1. Agency shall have the right, but not the obligation, to pay a premium on behalf of Developer

(h) Should any of the insurance coverage required herein be written with an annual aggregate: (i) such aggregate shall be disclosed in writing to Agency, (ii) should total incurred claims (paid plus reserves) against such insurance exceed fifty percent (50%) of the applicable aggregate, Developer shall promptly notify Agency in writing, and (iii) should total incurred claims (paid plus reserves) against such insurance exceed seventy-five percent (75%) of the applicable aggregate, Developer shall promptly notify Agency in writing and promptly take whatever action is necessary to have the aggregate reinstated to an amount not less than fifty percent (50%) of the original aggregate amount.

(i) For all insurance required under this Section 306.1, Agency shall have the right, at every ten (10) year period from the Commencement of Construction, to review the types and limits of insurance coverage required herein and to make reasonable adjustments, provided that

such types and limits shall not exceed that typically carried by the owner and operator of a first class apartment complex, of approximately the same size, in Kern County, California, based on reasonable research and investigation by Agency.

306.2 Property Insurance. Commencing upon the Commencement of Construction and continuing until the issuance of the Release of Construction Covenants for the Project, Developer shall secure, maintain, and pay for the following all-risk Property Insurance for the Project and the Site; provided, however, in the case of Builder's Risk insurance where Developer is not the General Contractor, Developer may cause the required Builder's Risk insurance to be secured, maintained, and paid for by the General Contractor:

(a) Prior to the Commencement of Construction and continuing until the issuance of the Release of Construction Covenants for the Project: all-risk Builder's Risk (course of construction) insurance coverage but excluding the perils of earthquake (land movement) and flood, in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall be written on an all-risk form, and shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as it is accepted by the City; and storage and transportation risks; and such coverage shall not be terminated until permanent Property Insurance is in place, as required in Section 306.2(b). Such insurance shall protect/insure the interests of Developer/owner and the General Contractor, and other contractor(s), and all subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. Such insurance shall include an insurer's waiver of subrogation in favor of each protected/insured party thereunder and the Agency and City.

(b) Commencing with the Completion of Construction and continuing until the issuance of the Release of Construction Covenants for the Project: (a) all-risk physical damage insurance coverage ("Property Insurance"), on an all-risk basis, covering all insurable structures and equipment, including coverage for building code changes, but excluding the perils of earthquake (land movement) and flood, in an amount not less than 100% of the replacement cost of the total values at risk, which shall be adjusted for increased costs of construction and replacement on an annual basis, to protect against loss of, damage to, or destruction of the Project; such insurance shall not contain a coinsurance clause; (b) business interruption and extra expense insurance to protect Developer and all additional loss payees covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project, or any portion thereof, caused by loss or damage to or destruction of any part of the insurable real property structures or equipment as a result of the perils insured against under such Property Insurance, covering a period of suspension, delay or interruption of at least eighteen (18) calendar months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during any such period; such insurance shall not contain a deductible in an amount in excess of a thirty (30) day period; and (c) as applicable, boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance. On the coverage required under this subparagraph 306.2(b), Agency shall be named as an additional loss payee, as its interests may appear, with a Lenders Loss Payable endorsement whenever possible, and if not attainable for Additional Insured other than Agency, then a loss payable endorsement may be utilized, which shall be delivered to Agency at the completion of construction and prior to the expiration of the Builders Risk insurance coverage required herein.

(c) For all insurance required under this Section 306.2, said policies shall provide, by endorsement, that they will not be cancelled, non-renewed or reduced in scope or coverage, without at least thirty (30) days prior written notice to Agency, except in the event of non-payment of premium which shall provide for at least ten (10) days prior written notice to Agency.

306.3 **Reduction in Requirements.** Agency's Risk Manager is hereby authorized to reduce the requirements set forth herein, on a temporary or permanent basis, in the event he determines, in his sole discretion, that such reduction is in Agency's best interest.

306.4 **Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** Subject to Section 306.5 below, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be constructed pursuant to this Agreement, if and to the extent the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Project can be occupied in accordance with this Agreement. Subject to force majeure delays pursuant to Section 603 hereof, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date Developer obtains insurance proceeds unless Agency's Executive Director, in his/her reasonable discretion, approves a longer period of time. Agency shall cooperate with Developer, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Developer may elect not to repair, replace, or restore the Project by giving notice to Agency (in which event Developer will be entitled to all insurance proceeds but Developer shall be required to remove all debris from the Site) or Developer may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the Agency and the other governmental agency or agencies with jurisdiction.

306.5 **Damage or Destruction Due to Cause Not Required to be Covered by Insurance.** If the Project is completely destroyed or suffers Substantial Damage (as hereinafter defined) caused by a casualty for which Developer is not required to (and has not) insured against, or if insurance proceeds are insufficient to rebuild then Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing Agency with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. As used in this Section 306.5, "Substantial Damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Project. In the event Developer does not timely elect not to repair, replace, or restore the Project as set forth in the first sentence of this Section 306.5, Developer shall be conclusively deemed to have waived its right not to repair, replace, or restore the Project and thereafter Developer shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Project in accordance with Section 306.4 above.

307. **Indemnity.** Developer shall defend, indemnify, pay for, assume all responsibility for, and hold the Indemnitees, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the validity, applicability,

interpretation or implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of Developer under this Agreement, whether such activities or performance thereof be by Developer or by anyone directly or indirectly employed or contracted with by Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement and arising prior to the date Developer vacates the Site. Developer shall not be liable for property damage or bodily injury to the extent occasioned by the gross negligence or willful misconduct of Agency or City or their agents or employees. Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Developer shall compromise or settle such action in a way that fully protects Indemnitees from any liability or obligation. In this regard, Developer's obligation and right to defend shall include the right to hire (subject to written reasonable approval by Agency and City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Indemnitees. If Developer defends any such action, as set forth above, (i) Developer shall indemnify and hold harmless Indemnitees from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Agency shall be entitled to settle any such claim only with the written consent of Developer and any settlement without Developer's consent shall release Developer's obligations under this Section 307 with respect to such settled claim.

308. **Entry by Agency.** From and after the Effective Date hereof, Developer (and its successor and assigns) shall permit Agency and City, and their officers, employees, consultants, and agents at all reasonable times, and in compliance with the reasonable safety policies and procedures of Developer and its contractor, to enter onto the Site and inspect the work of development of the Project to determine that the same is in conformity with the Entitlements and all the requirements hereof. Developer acknowledges that City and Agency are under no obligation to supervise, inspect, or inform Developer of the progress of construction, and Developer shall not rely upon Agency or City therefor. Any inspection by Agency and City is entirely for their purposes in determining whether Developer is in compliance with this Agreement and is not for the purpose of determining or informing Developer of the quality or suitability of construction or any other work at the Site. Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

309. **Compliance with Laws.** Developer shall carry out the design, construction, development and operation of the Project in conformity with all applicable federal, state and local laws, including, without limitation, all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Ridgecrest Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and any other applicable Governmental Requirements. Developer (and its Affiliates and successors and assigns) shall pay prior to delinquency all *ad valorem* real estate taxes, possessory interest taxes, and assessments as to the Project, subject to Developer's (and its Affiliates and successors and assigns) right to contest in good faith any such taxes. Developer may apply for and receive any exemption from the payment of

property taxes or assessments on any interest in or as to the Project without the prior approval of Agency.

309.1 **Prevailing Wage Laws.** Developer shall carry out the construction through completion of the Project and the overall development of the Site in conformity with all applicable federal, state and local labor laws and regulations, including, without limitation, and if applicable, the requirements to pay prevailing wages under federal law (the Davis-Bacon Act, 40 U.S.C. Section 3141, *et seq.*, and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, “Davis-Bacon”)) and California law (Labor Code Section 1720, *et seq.*).

309.2 Developer shall be solely responsible, expressly or impliedly, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, labor laws and standards, and Agency and City make no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state and local laws to the Project, either onsite or offsite. Developer expressly, knowingly and voluntarily acknowledges and agrees that Agency and City have not previously represented to Developer or to any representative, agent or Affiliate of Developer, or its General Contractor or any subcontractor(s) for the construction or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction undertaken pursuant to this Agreement is (or is not) a “public work,” as defined in Section 1720 of the Labor Code or under Davis-Bacon.

309.3 Developer knowingly and voluntarily agrees that Developer shall have the obligation to provide any and all disclosures or identifications with respect to the Project as required by Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time and, to the extent applicable, any other similar law or regulation. Developer shall indemnify, protect, pay for, defend (with legal counsel acceptable to Agency and City) and hold harmless the Indemnitees, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Developer with any applicable local, state and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages); (ii) the implementation of Section 1781 of the Labor Code and/or of Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law or regulation) of the Project, including, without limitation, any and all public works (as defined by applicable law or regulation), Developer shall bear all risks of payment or non-payment of prevailing wages under applicable federal, state and local law or regulation and/or the implementation of Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, and/or any other similar law or regulation. “Increased costs,” as used in this Section 309.1, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Project by Developer.

310. **Financing of the Project.**

310.1 **Sources of Financing.** Developer and Agency anticipate the following funding sources to be obtained by Developer and utilized in addition to the Agency Loan for the acquisition, development, and operation of the Project. The final sources and amounts of funding for the Project as well as the final cost estimates with respect to the acquisition, development and operation of the Project shall be set forth in the Final Budget which is required to be submitted to Agency as a Condition Precedent pursuant to Section 207.

(a) **Primary Loan.** Developer shall use its reasonable and best efforts to apply for and obtain the Primary Loan, including construction and permanent financing, in an approximate amount of not less than \$_____ for the construction loan and approximately \$_____ for the permanent loan or such other amount as is reasonably necessary in the reasonable discretion of the Executive Director, as determined in accordance with the approved Final Budget submitted by Developer to Agency.

310.2 **No Agency Subsidy.** In no event shall Agency be obligated to provide any financial assistance or subsidy to the Project.

310.3 **Submission of Evidence of Financing.** Prior to and as a Condition Precedent to the Commencement of Construction, Developer shall submit to Agency, and Agency (and its financial consultant(s) and legal counsel(s)) shall review and approve (or disapprove) evidence that Developer has obtained sufficient equity capital and firm and binding commitments for financing necessary to undertake the construction, completion and operation of the Project, in accordance with this Agreement.

(a) **Required Financing Submittals; Submittal of Construction Contract.** Such evidence of financing for the Project and readiness for the Commencement of Construction of the Project shall include all of the following:

(i) An updated pro forma and Final Budget for the Project showing the projected costs of construction of the Project, including all onsite and offsite improvements to be constructed in connection therewith.

(ii) A copy of the Lender's binding commitment obtained by Developer for the Primary Loan for the Project, and, when available, copies of all loan documents evidencing the Primary Loan therefor. The Primary Loan commitments for financing shall be in such form and content acceptable to Agency and its financial advisor(s) and its legal advisor(s) and as such reasonably evidences a legally binding, firm and enforceable commitment, subject only to the Lender's customary and normal conditions and terms and subject to the requirements of this Section 310. Developer shall provide written certification to Agency that the loan documents submitted are correct copies of the actual loan documents to be executed by Developer concurrently with the Commencement of Construction.

(iii) A current certified financial statement of Developer (and all partners and members thereof, and/or other documentation satisfactory to Agency as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference, if any, between construction and completion costs, and the financing authorized by the Primary Loan.

(iv) Copies of the Construction Contract(s) and all other contracts between Developer and its General Contractor (and all available contracts with Subcontractors) for the construction of the Project and any other on-site or off-site improvements required to be constructed for the Project, certified by Developer to be a true, correct, and fully executed copy thereof, and which shall include reference to this Agreement and General Contractor's (and all Subcontractors') specific obligation to carry out the construction and completion of the Project (or part thereof) in conformity with the Entitlements, the Act, all applicable federal and state prevailing wage laws, applicable Environmental Laws, and all applicable Governmental Regulations. The scope of work in the Construction Contracts shall conform in all respects to the Scope of Development, and the Entitlements, and such scope of work shall be subject to the Executive Director's sole and absolute approval.

(v) Agency shall have the right to approve or disapprove such evidence of financing within ten (10) days of submission by Developer to Agency of all complete items required by this Section 310 or as otherwise reasonably imposed by Developer's financing. In this regard, Developer agrees it shall use best efforts to cause its Lender to timely provide complete drafts of documents for review by Agency and its legal counsel(s) to perform within such time frames. Approval shall not be unreasonably withheld or conditioned. If Agency disapproves any such evidence of financing, Agency shall do so by written notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to Agency new evidence of financing within reset but equal time periods. If Developer's submission of new evidence of financing is timely and complete and provides Agency with adequate time to review such evidence within the times established in this Section 310, Agency shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 310 for the approval or disapproval of the evidence of financing as submitted to Agency initially.

The evidence of financing shall be deemed to be an ongoing representation by Developer that the sum total of all sources of financing are equal to and not greater than the amount of the Project costs as set forth in the Final Budget for the Project and that such Final Budget is consistent with the Construction Contract and Primary Loan, submitted by Developer to TCAC. Once the complete evidence of financing is approved by Agency. The representations made by Developer with respect to the budgets and costs for the Project and the sources of funding and method of financing for the Project, inclusive of all submittals and information related to the Tax Credits, were and remain the basis used by Agency to negotiate the financial terms of this Agreement and the Senior Citizens OPA and any change in such budgets and sources of Project funding or financing for the Project shall, at the sole discretion of Agency, be cause to renegotiate the financial terms hereof for the Project.

310.4 Holder Performance of Development of the Project. The holder of any mortgage or deed of trust authorized by this Agreement, other than Developer or an Affiliate or Guarantors, shall not be obligated by the provisions of this Agreement to develop the Project or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder.

310.5 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever Agency may deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder or under any other document executed pursuant to this Agreement, Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust

authorized by this Agreement a copy of such notice or demand. Each holder shall (insofar as the rights granted by Agency are concerned) have the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize any holder to undertake or continue the construction or completion of the Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to Agency under this Agreement by a written assumption agreement reasonably satisfactory to Agency and its legal counsel(s). The holder, in that event, must agree to complete, or cause to be completed by a party which is reasonably acceptable to Agency, in the manner provided in this Agreement, the improvements to which the lien or title of holder relates. Any holder (or assignee approved by Agency) properly completing the improvements for the Project shall be entitled, upon compliance with the requirements of Section 305 of this Agreement, to a Release of Construction Covenants as to the Project. It is understood that a holder (or assignee approved by Agency) shall be deemed to have satisfied the sixty (60) day time limit set forth above for commencing to cure or remedy a Developer default which requires possession of the Site (or portion thereof), if and to the extent any holder (or assignee approved by Agency) has within the sixty (60) day period commenced proceedings to obtain possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

Notwithstanding anything to the contrary contained herein, Agency agrees that any cure of any default made or tendered by one or more of Developer's limited partners 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. Copies of all notices which are sent to Developer under the terms of this Agreement shall also be sent to all approved limited partners who have requested such notice.

310.6 Failure of Holder to Complete Project. In any case where, ninety (90) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site, or any part thereof, receives a notice from Agency of a default by Developer in completion of construction of all or any part of the Project under this Agreement, and the holder has not exercised the option to construct or cause to be constructed the Project as set forth in Section 310.7, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, Agency may fully assume the mortgage or deed of trust by assuming all payment and performance obligations due to the holder for and in the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the possession of the Site or any part thereof has vested in the holder, Agency, if it so desires, shall be entitled to a conveyance from the holder to Agency upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt, less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings;

(b) All reasonable and customary expenses with respect to foreclosure, including reasonable attorneys' fees;

(c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Project or part thereof;

(d) The costs of any necessary improvements made by the holder (or assignee approved by Agency) pursuant to the requirements of this Agreement or as otherwise approved by Agency;

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by Agency; and

(f) Any reasonable and customary prepayment charges imposed by the Lender pursuant to its Primary Loan documents and agreed to by Developer.

310.7 Right of Agency to Cure Mortgage or Deed of Trust Default. In the event of Developer's default or breach of the Primary Loan, including the loan agreement, promissory note, mortgage or deed of trust, or a default under the terms of Developer's Partnership Agreement for the Project, Developer shall immediately deliver to Agency a copy of any default notice pertaining thereto. If the holder of the Primary Loan, including the loan agreement, promissory note, mortgage or deed of trust has not exercised its option to construct prior to the issuance of the Release of Construction Covenants as to the Project, pursuant to Section 310.7, Agency shall have the right but not the obligation to cure the default of the Primary Loan, including the loan agreement, promissory note, mortgage or deed of trust. Agency shall likewise have the right but not the obligation to cure any Partnership Agreement default. In such event, Agency shall be entitled to reimbursement from Developer of all proper costs and expenses incurred by Agency in curing any default.

310.8 Failure to Obtain Financing. In the event Developer, despite exercising its reasonable and best efforts to obtain required construction financing for the Project, fails to obtain financing as specified in Section 310.1 and within the time specified in the Schedule of Performance, either Developer or Agency may terminate this Agreement as provided in Sections 604 and 605 hereof, respectively.

400. MAINTENANCE.

401. General Maintenance. Developer shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the terms of the Redevelopment Plan and all applicable provisions of the Ridgcrest Municipal Code. Developer shall maintain in accordance with the Maintenance Standards (as hereinafter defined) the improvements and landscaping on the Site. Such Maintenance Standards shall apply to all buildings, signage, common amenities, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and the Project. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, "Maintenance Standards"):

(a) The Site shall be maintained in conformance and in compliance with the approved final as-built plans, and reasonable maintenance standards which comply with the

industry standard for comparable first quality affordable housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin. The Site shall be maintained in good condition and in accordance with the industry custom and practice generally applicable to comparable first quality affordable housing projects in the County.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Agency agrees to notify Developer in writing if the condition of the Site does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Developer shall have forty-eight (48) hours to rectify the problem. In the event Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards, Agency shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by Agency.

402. Non-Discrimination Covenants. Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land. Developer shall refrain from restricting the rental or lease of the Site on any of the bases listed above. All leases or contracts relating to the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of

persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

The covenants established in this Section 412 shall, without regard to technical classification and designation, be binding for the benefit and in favor of Agency and their successors and assigns, and shall remain in effect in perpetuity.

500. DEFAULT AND REMEDIES.

501. **Events of Default.** An “Event of Default” or “Default” shall occur under this Agreement when there shall be a breach of any condition, covenant, warranty, promise or representation contained in this Agreement and the breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if the breach cannot reasonably be cured within a thirty (30) day period, commencing the cure of the breach within the thirty (30) day period and thereafter diligently proceeding to cure the

breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control.

502. **Remedies.** The occurrence of any Event of Default shall give the non-defaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under the documents executed pursuant hereto or to enjoin acts or things which may be unlawful or in violation of the provisions of such documents, and the right to terminate this Agreement. In addition, the occurrence of any Event of Default by Developer will relieve Agency of any obligation to further perform hereunder.

503. **Force Majeure.** Subject to the party's compliance with the notice requirements as set forth below, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, 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, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that Agency's acts or failure to act shall not excuse performance of Agency hereunder). In no event shall Developer's difficulty or inability to obtain and secure the Primary Loan or other financing become an event of force majeure. An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

504. **Termination by Developer.** In the event that Developer is not in Default under this Agreement and:

(a) Developer is unable to obtain sufficient financing for the development and operation of the Project in accordance with the provisions of Section 310; or

(b) Developer fails to receive an allocation of Tax Credits for the Project;
or

(c) Agency is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 601 hereof;

then this Agreement and any rights of Agency or any assignee or transferee with respect to or arising out of this Agreement shall, at the option of Developer, be terminated by Developer by written notice thereof to Agency. From the date of the written notice of termination of this Agreement by Developer to Agency and thereafter this Agreement shall be deemed terminated, and there shall be no further rights or obligations between the parties as to the Project. If Agency is in default hereunder Developer, after delivery of notice of default and expiration of the cure period provided in Section 601 hereof, may pursue any remedies it has at law or equity.

505. **Termination by Agency.** In the event that neither Agency nor Agency is in Default under this Agreement, and:

(a) Developer is unable to obtain sufficient financing for the development and operation of the Project in accordance with the provisions of Section 310.1; or

(b) One or more of the Conditions Precedent set forth in Section 207, *et seq.*, is not satisfied (or waived by Agency) on or before the time set forth in the Schedule of Performance, and such Condition Precedent is not satisfied after notice and an opportunity to satisfy as provided in Section 601 hereof, and such failure is not caused by Agency or Agency; or

(c) Developer is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 601 hereof;

then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of this Agreement shall, at the option of Agency, be terminated by Agency by written notice thereof to Developer. From the date of the written notice of termination of this Agreement by Agency to Developer and thereafter this Agreement shall be deemed terminated, as provided in more detail therein, and there shall be no further rights or obligations between the parties as to the Project, except that if Developer is in default hereunder Agency, after delivery of notice of default and expiration of the cure period provided in Section 601 hereof, may pursue any remedies it has at law or equity.

506. **Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if any party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the documents executed pursuant hereto, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees, and reasonable attorneys' fees.

507. **Remedies Cumulative.** No right, power, or remedy given to Agency by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to Agency by the terms of any such instrument, or by any statute or otherwise against Developer and any other person.

508. **Waiver of Terms and Conditions.** Agency may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

600. GENERAL PROVISIONS.

601. **Time is of the Essence.** Time is expressly made of the essence with respect to the performance by Agency and Developer of each and every obligation and condition of this Agreement.

602. **Notices.** Any approval, disapproval, demand, document or other notice ("Notice") which any party may desire to give to another party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such

as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice. Service shall be deemed conclusively made at the time of service if personally served; upon confirmation of receipt if sent by facsimile transmission; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

Developer: Ridgecrest Pacific Associates
c/o Valley Initiative for Affordable Housing
1141 “N” Street
Merced, California 95340
Attention: _____
Email: _____

With copies to: Roope LLC
430 East State Street, Suite 100
Eagle, Idaho 83616
Attention: Caleb Roope
Email: _____

Agency: Ridgecrest Redevelopment Agency
100 W. California Avenue
Ridgecrest, California 93555
Attention: Executive Director
Email: _____

With copies to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: David R. McEwen

Such addresses may be changed by Notice to the other party(ies) given in the same manner as provided above.

Notwithstanding anything to the contrary contained herein, Agency agrees that any cure of any default made or tendered by one or more of Developer’s limited partners 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. Copies of all notices which are sent to Developer under the terms of this Agreement shall also be sent to all approved limited partners who have requested such notice.

603. **Representations and Warranties of Developer.** Developer hereby represents and warrants to Agency as follows:

(a) **Organization.** Developer is a California limited partnership duly organized, validly existing, formed, and in good standing under the laws of the State of California that has the power and authority to own property and carry on business as is now being conducted.

(b) **Authority of Developer.** Developer has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) **Valid Binding Agreements.** This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

(d) **Pending Proceedings.** Developer is not in default under any law or regulation or under any order of any federal, state, or local court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Site, at law or in equity, before or by any federal, state, or local court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially affect Developer's ability to perform its obligations hereunder.

604. **Limitation Upon Change in Ownership, Management and Control of Developer.**

604.1 **Prohibition.** The identities and qualifications of Developer, as an Affiliate of Pacific West Communities, Inc., and as an experienced and successful Developer and operator of affordable senior apartment complexes, are of particular concern to Agency. It is because of this identity and these qualifications that Agency has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement by assignment, assumption or otherwise, nor shall Developer make any total or partial transfer, conveyance, encumbrance to secure financing or refinancing, assignment or sublease of the whole or any part of the interest in the Site, nor shall there be any change in the general or limited partners of Developer, without the prior written approval of Agency Executive Director pursuant to Section 704.3 below, except as expressly set forth herein, which approval shall not be unreasonably withheld or delayed.

604.2 **Permitted Transfers.** Notwithstanding other provisions of this Agreement to the contrary, Agency approval of an assignment or transfer of this Agreement or conveyance of Developer's interest in the Site, or any part thereof, shall not be required in connection with any of the following ("Permitted Transfers"):

(a) The granting of temporary easements or permits to facilitate the construction and development of the Project.

(b) Assignment for approved financing purposes, subject to such financing being considered and approved by Agency pursuant to Section 310 hereof.

(c) In the event of a Permitted Transfer by Developer pursuant to this Section 704.2 not requiring Agency's prior approval, Developer nevertheless agrees that at least

fifteen (15) days prior to such pre-approved assignment or transfer it shall give written notice to Agency of such assignment or transfer along with a true and complete copy of the assignment or transfer document conforming to the requirements of this Agreement.

(d) The removal of one or more of the general partners of Developer by one or more of the limited partners of the Developer pursuant to the terms and conditions of the Developer's Agreement of Limited Partnership.

604.3 Agency Consideration of Requested Transfer. Agency agrees that it will not unreasonably withhold approval of a request for an assignment or transfer made pursuant to this Section 704.3, provided (a) Developer delivers written notice to Agency requesting such approval, (b) the proposed assignee or transferee possesses a reasonable level of operational experience and capability with respect to the operation of similar types of affordable rental housing projects in Southern California, (c) the proposed assignee or transferee possesses a reasonable level of net worth and resources as necessary to develop, operate, and manage the Project, and fulfill any ongoing obligations hereunder, including without limitation the indemnification obligations, and (d) the assignee(s) or transferee(s) completely and fully assume(s) the obligations of Developer under this Agreement pursuant to an assignment and assumption agreement(s) in a form which is reasonably acceptable to Agency and its legal counsel(s). Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 704.3 and other criteria as reasonably determined by Agency. Agency shall approve or disapprove the request within thirty (30) days of its receipt of Developer's notice and submittal of complete information and materials required herein. In no event shall Agency be obligated to approve the assignment or transfer of the Site, pursuant to this Section 704.3, except to an approved transferee or assignee of Developer's rights in and to the Site and the Project, based on Agency's reasonable determination that such transferee or assignee has the experience, financial strength, knowledge, and overall capability to own, operate and manage the Project in accordance with the terms, conditions, and restrictions contained in this Agreement. In addition, Agency shall not be required to grant its approval of any proposed transfer or assignment unless all information reasonably requested by Agency relating to the proposed transferee or assignee entity and all general and limited partners of such entity, including true and correct copies of an executed Partnership Agreement, if the proposed assignee/transferee is a partnership, true and correct copies of articles of incorporation if the proposed assignee/transferee is a corporation, plus current certified financial statements of the entity and financial statements relating to other affordable rental housing projects developed and/or operated by such entity(ies) and reporting and compliance documentation for such projects submitted for public entities providing funding to such projects, etc., as applicable.

605. Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and the permitted successors and assigns of Developer. Whenever the term "Developer" is used in this Agreement, such term shall include any of Developer's approved Affiliate assignee(s) or transferee(s), or any other permitted successors and assigns as herein provided.

606. Non-Liability of Officials and Employees of Agency or City. No member, elected or appointed official, or employee of Agency or City shall be personally liable to Developer or any successor in interest in the Event of Default or other breach by Agency or for any amount which may

become due to Developer or its successors, or for performance of any obligations under the terms of this Agreement.

607. **Relationship between Agency and Developer.** It is hereby acknowledged and agreed that the relationship between Agency and Developer is not that of a partnership or joint venture or other investor partner and that Agency and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

608. **Executive Director; Agency Approvals and Actions.** Agency shall maintain authority of this Agreement and the authority to implement this Agreement through Agency's Executive Director (or his/her duly authorized representative). The Executive Director and his/her duly authorized representative(s) shall have the authority to make approvals, issue interpretations, waive provisions, request issuance of warrants and make payments authorized hereunder, make and execute further agreements and/or enter into amendments of this Agreement on behalf of Agency so long as such actions do not materially or substantially change or modify the uses or development permitted on the Site, or materially or substantially add to the costs, responsibilities, or liabilities incurred or to be incurred by City or Agency, as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board. Further, Executive Director shall maintain the right to submit to the Agency Board for consideration and action any non-material or non-substantive interpretation, waiver or amendment, if in his/her reasonable judgment he/she desires to do so.

609. **Counterparts.** This Agreement may be signed in multiple counterparts all of which together shall constitute an original binding agreement.

610. **Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 35, S-1, and Attachment Nos. 1 through 7, which together constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations, approved terms and conditions, or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

611. **Real Estate Brokerage Commission.** Agency and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and Developer and Agency agree to defend and hold harmless each other from any claim to any such commission or fee resulting from any action on its part.

612. **Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to Section and Paragraph numbers are to sections and paragraphs in this Agreement, unless expressly stated otherwise.

613. **Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both parties.

614. **No Waiver.** A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement or the Attachments hereto.

615. **Covenant Not to Sue.** The following covenant relating to Developer’s obligation not to sue regarding the Project or the Site or any issues ancillary thereto (but excluding the specific performance of this Agreement) is a material incentive for and a part of the consideration to Agency to enter into this Agreement with Developer. Therefore, the performance obligations of Agency under this Agreement shall automatically terminate, in the event from and after the Effective Date and until the completion of the Project, Developer, or any Affiliate of Developer or any of its partners, officers, directors, employees, agents, representatives, consultants, attorneys, or any person acting at the direction of Developer, undertakes any act to oppose, or to commence, participate in, prosecute, or otherwise object to, or to litigate, directly or indirectly, any permit or discretionary decision of Agency, City, City’s Planning Commission, or any other City board or commission relating to the Site and/or the Project of whatever form or nature (but excluding the specific performance of this Agreement).

Notwithstanding the foregoing, nothing set forth in this Section 715 shall prevent Developer from asserting its rights relating to the performance and enforcement of this Agreement or due to the abuse of discretion by a governmental entity considering and acting upon a future discretionary decision related to the parameters of this covenant. Further, nothing in the foregoing covenant shall prevent Developer from asserting Developer’s rights with respect to prospective action or future conduct by any person who interferes, opposes, or delays implementation and completion of the Project.

616. **Developer’s Payment and Reimbursement of Agency’s Post-Effective Date Third Party Costs.**

616.1 **Third Party Costs Defined; Obligation.** Developer shall pay for and reimburse Agency for all costs reasonably incurred by Agency and City for any and all out of pocket, third party costs, fees, and expenses incurred by Agency or City (but not in-house staff time) for attorneys, economic consultants, appraisers, engineers, affordable housing consultants, escrow company fees, title company fees, and other consulting and/or professional services incurred by Agency or City arising from and/or related in any respect to the implementation or amendment of this Agreement, including requests of Agency by Developer in connection with any sale or refinancing of the Project or the enforcement of Developer’s obligations under this Agreement from and after the date hereof (together, “Third Party Costs”).

616.2 **Payment of Third Party Costs.** Within ten (10) days of the submittal by Agency staff of copies of invoices or billings for Third Party Costs incurred, it is and shall be the obligation of Developer to reimburse and pay to Agency one hundred percent (100%) of these Third Party Costs.

(a) This reimbursement obligation shall bear interest from the date occurring ten (10) days after Agency gives written demand to Developer at the rate of ten percent (10%), or the maximum rate then permitted by law.

(b) This reimbursement obligation shall survive the issuance of the final Release of Construction Covenants for the Project and termination of this Agreement.

616.3 Exception to Payment of Post-Effective Date Third Party Costs. Notwithstanding Section 716, 716.1, and 716.2 above, Developer shall not be responsible to pay and reimburse for Third Party Costs if the costs incurred are attributable to one or more of the following events:

(a) City Council, Agency Board, Planning Commission, Zoning Administrator, or other City official with discretionary approval and/or disapproval rights over the Project or the implementation of this Agreement disapproves, denies, or refuses to take action on an application for a permit or other discretionary application necessary to commence and complete the Project; or

(b) Default by Agency under this Agreement.

617. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed by a duly authorized representative on behalf of each party.

618. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances or Project shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

619. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

620. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

621. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or

appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or other agreements.

622. **Conflicts of Interest.** No member, elected or appointed public official or employee of Agency (or City) shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, elected or appointed public official or employee participate in any decision relating to the Agreement which affects his personal interests, his economic interests, or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the Agency and the Developer have signed this Owner Participation Agreement (Apartment Project at Southwest Corner of Down Street and Church Avenue) on the respective dates set forth below.

AGENCY:

RIDGECREST REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: _____, 2011

By: _____
Harvey M. Rose, Executive Director

ATTEST:

Rita Gable, Secretary

DEVELOPER:

RIDGECREST PACIFIC ASSOCIATES,
a California limited partnership

Dated: _____, 2011

By: _____

Its: Managing General Partner

Dated: _____, 2011

By: _____

Its: Administrative General Partner

ATTACHMENT NO. 1
LEGAL DESCRIPTION

That real property located in the State of California, County of Kern, City of Ridgecrest, and described as follows:

ATTACHMENT NO. 2

SITE MAP

ATTACHMENT NO. 2

SITE MAP

Page 1 of 1

ATTACHMENT NO. 3
COMPLETION GUARANTY

This **COMPLETION GUARANTY** (“Guaranty”) is made as of _____, 20___, by _____, a California limited partnership (“Guarantor”), in favor of the **RIDGECREST REDEVELOPMENT AGENCY**, a public body, corporate and politic (“Agency”).

R E C I T A L S

A. Ridgecrest Pacific Associates is the owner of that certain real property in the City of Ridgecrest more particularly described on Exhibit “A” attached hereto and made a part hereof (“Site”);

B. Agency and Developer entered into that certain Owner Participation Agreement dated as of _____, 2011 pursuant to which Developer agreed to construct the Project on the Site within the time and in accordance with the terms and conditions of the OPA. All capitalized terms not defined herein shall have the meaning set forth in the OPA;

C. Pursuant to the OPA, the Agency agreed to make a loan to Developer in the amount of Three Million Dollars (\$3,000,000) (“Agency Loan”) to finance the development of the Project on the Site, which loan is evidenced by an Agency Promissory Note and secured by an Agency Deed of Trust encumbering Developer’s fee simple interest in the Site (the “Loan Documents”); and

D. Guarantor is an Affiliate of Developer, has a substantial financial interest in the business and affairs of Developer and it will receive substantial economic benefit should Developer be permitted to develop the Site in the manner and in accordance with the terms of the OPA.

THEREFORE, to induce the Agency to enter into the OPA and to make the Agency Loan, and in consideration thereof, Guarantor unconditionally guarantees and agrees as follows:

1. OPA. Guarantor acknowledges receipt of a copy of the OPA and all of the instruments described therein and/or attached thereto. The OPA is incorporated herein by this reference as though fully set forth herein. OPA as used herein shall mean, refer to and include the OPA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the OPA.

2. Guaranty. Guarantor hereby guarantees the performance by Developer of its obligation to complete construction of the Project and all associated on-site and off-site improvements (collectively, the “Improvements”) on the Site pursuant to the terms and conditions set forth in the OPA and in accordance with the Schedule of Performance attached to the OPA. Without limiting the generality of the foregoing, Guarantor guarantees that: (a) such construction shall be substantially completed within the time limits set forth in the OPA, subject to force majeure delays, as provided in Section 603 of the OPA; (b) the development of the Improvements shall be constructed and substantially completed in accordance with the Construction Drawings and all other

ATTACHMENT NO. 3
COMPLETION GUARANTY

plans, specifications and the other provisions of the OPA (collectively, "Specifications") without substantial deviation therefrom, as the same may be modified from time to time in accordance with the OPA; (c) the development shall be constructed and completed free and clear of any mechanic's liens, materialmen's liens and equitable liens; and (d) all costs of construction shall be paid prior to delinquency.

3. Lien Free Completion. Substantial completion of construction of the Improvements on the Site free and clear of liens shall be deemed to have occurred upon (i) issuance by Agency of Release of Construction Covenants, (ii) Agency's receipt of all required occupancy permit(s) for the Project issued by the local government agency having jurisdiction and authority to issue same, and (iii) the expiration of the statutory period(s) within which valid mechanic's liens, materialmen's liens and/or stop notices may be recorded and/or served by reason of the construction of the Project, or, alternatively, Agency's receipt of valid, unconditional releases thereof from all persons entitled to record said liens or serve said stop notices.

4. Obligations of Guarantor Upon Default By Developer. If the construction of the Improvements is not substantially completed in the manner and within the time required by the OPA, Guarantor shall, within thirty (30) days of receipt of written demand of the Agency: (a) diligently proceed to complete construction at Guarantor's sole cost and expense; (b) fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the Improvements; and (c) release and discharge all claims of stop notices, mechanic's liens, materialmen's liens and equitable liens that may arise in connection with the construction of the Improvements. Guarantor's obligations hereunder shall be subject to Agency's unconditional and irrevocable agreement to make the undisbursed Agency Loan funds available to Guarantor (pursuant to the terms and conditions of the Loan Documents) for the purposes of completing construction of the Improvements and fulfilling Guarantor's other obligations under this Guaranty; provided, however, that the obligation of Agency to make such undisbursed Agency Loan funds available to Guarantor is expressly conditioned upon there being no continuing default by Guarantor under this Guaranty.

5. Remedies. If Guarantor fails to promptly perform its obligations under this Guaranty, the Agency shall have the following remedies:

5.1 At the Agency option, and without any obligation to do so, to proceed to perform on behalf of Guarantor any or all of Guarantor's obligations hereunder and Guarantor shall, upon demand and whether or not construction is actually completed by the Agency, pay to the Agency all sums expended by the Agency in performing Guarantor's obligations hereunder together with interest thereon at the highest rate specified in the Agency Promissory Note; and

5.2 From time to time and without first requiring performance by Developer or exhausting any or all security for the Agency Loan, to bring any action at law or in equity or both to compel Guarantor to perform its obligations hereunder, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by the Agency as a direct or indirect consequence of the failure of Guarantor to perform its obligations.

6. Rights of the Agency. Guarantor authorizes the Agency, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time to: (a) approve modifications to the Development Plans and Specifications so long as

**ATTACHMENT NO. 3
COMPLETION GUARANTY**

such modifications do not materially increase the cost of constructing the Project nor materially increase the time necessary to complete the Project; (b) change the terms or conditions of disbursement of the Agency Loan so long as such changes do not materially interfere with Developer's ability to construct the Project as and when required under the OPA; (c) otherwise modify the Loan Documents, including, without limitation, making changes in the terms of repayment of the Agency Loan or modifying, extending or renewing payment dates; releasing or subordinating security in whole or in part; changing the interest rate; or advancing additional funds in its discretion for purposes related to the purposes specified in the Loan Documents; or (d) assign this Guaranty in whole or in part.

7. Guarantor's Waivers. Guarantor waives: (a) any defense based upon any legal disability or other defense of Developer, any other guarantor or other person, or by reason of the cessation or limitation of the liability of Developer from any cause other than full payment and performance of those obligations of Developer which are guaranteed hereunder; (b) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Developer or any principal of Developer or any defect in the formation of Developer or any principal of Developer; (c) any defense based upon the application by Developer of the proceeds of the Agency Loan for purposes other than the purposes represented by Developer to the Agency or intended or understood by the Agency or Guarantor; (d) any and all rights and defenses arising out of an election of remedies by the Agency, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (e) any defense based upon the Agency's failure to disclose to Guarantor any information concerning Developer's financial condition or any other circumstances bearing on Developer's ability to pay and perform its obligations under the Agency Promissory Note or any of the other Loan Documents; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (g) any defense based upon the Agency's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (h) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (i) any right of subrogation, any right to enforce any remedy which any of the Agency may have against Developer and any right to participate in, or benefit from, any security for the Agency Promissory Note or the other Loan Documents now or hereafter held by the Agency; (j) presentment, demand, protest and notice of any kind; and (k) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof.

Guarantor further waives all rights and defenses that Guarantor may have because the Developer's debt is secured by real property. This means, among other things: (1) the Agency may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer. (2) If the Agency forecloses on any real property collateral pledged by Developer: (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price. (B) the Agency may collect from Guarantor even if the Agency, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Developer's debt is secured by real property. These rights and defenses being waived by Guarantor include, but are not

**ATTACHMENT NO. 3
COMPLETION GUARANTY**

limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

Without limiting the generality of the foregoing or any other provision hereof, Guarantor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections. Finally, Guarantor agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Agency Promissory Note or any of the other Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

8. Guarantor's Warranties. Guarantor warrants and acknowledges that: (a) Agency would not make the Agency Loan but for this Guaranty; (b) Guarantor has reviewed all of the terms and provisions of the Loan Documents, including the OPA, Development Plans, and Specifications; (c) there are no conditions precedent to the effectiveness of this Guaranty; (d) Guarantor has established adequate means of obtaining from sources other than the Agency, on a continuing basis, financial and other information pertaining to Developer's financial condition, the Property, the progress of construction of the Improvements, and the status of Developer's performance of its obligations under the Loan Documents, and the Agency has made no representation to Guarantor as to any such matters; (e) the most recent financial statements of Guarantor previously delivered to lender are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied (or other principles acceptable to the Agency) and fairly present in all material respects the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof and (f) Guarantor has not and will not, without the prior written consent of the Agency, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein, other than in the ordinary course of Guarantor's business.

9. Subordination. Guarantor subordinates all present and future indebtedness owing by Developer to Guarantor to the obligations at any time owing by Developer to the Agency under the Agency Promissory Note and the other Loan Documents. Guarantor assigns all such indebtedness to the Agency as security for this Guaranty, the Agency Promissory Note and the other Loan Documents. Guarantor agrees to make no claim for such indebtedness until all obligations of Developer under the Agency Promissory Note and the other Loan Documents have been fully discharged. Guarantor further agrees not to assign all or any part of such indebtedness unless each of the Agency is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If the Agency so request, (a) all instruments evidencing such indebtedness shall be duly endorsed and delivered to the Agency, (b) all security for such indebtedness shall be duly assigned and delivered to the Agency, (c) such indebtedness shall be enforced, collected and held by Guarantor as trustee for the Agency and shall be paid over to the Agency on account of the Agency Loan but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty, and (d) Guarantor shall execute, file and record such documents and instruments and take such other action as the Agency deem necessary or appropriate to perfect, preserve and enforce the Agency's rights in and to such indebtedness and any security therefor. If Guarantor fails to take such action, the Agency, as attorney-in-fact for Guarantor, is hereby

**ATTACHMENT NO. 3
COMPLETION GUARANTY**

authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

10. Bankruptcy of Developer. In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Developer relating to any indebtedness of Developer to Guarantor and shall assign to the Agency all rights of Guarantor thereunder. If Guarantor does not file any such claim, the Agency, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in the Agency's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of the Agency's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. The Agency or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Agency the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to the Agency all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that the Agency receive cash by reason of any such payment or distribution. If the Agency receive anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the Agency as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of the indebtedness and obligations evidenced and secured by the Loan Documents.

11. Agency Loan Sales and Participations; Disclosure of Information. Guarantor agrees that Agency may elect, at any time, to sell, assign, or grant participations in all or any portion of its rights and obligations under the Loan Documents and this Guaranty, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Agency's sole discretion. Guarantor further agrees that Agency may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Agency with respect to: (a) the Property and Project and their operation; (b) any party connected with the Agency Loan (including, without limitation, the Guarantor, the Developer, any partner, joint venturer or member of Developer, any constituent partner, joint venturer or member of Developer, any other guarantor and any non-borrower trustor); and/or (c) any lending relationship other than the Agency Loan which Agency may have with any party connected with the Agency Loan. In the event of any such sale, assignment or participation, Agency and the parties to such transaction shall share in the rights and obligations of Agency as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such sale, assignment or participation, Guarantor further agrees that the Guaranty shall be sufficient evidence of the obligations of Guarantor to each purchaser, assignee, or participant, and upon written request by Agency, Guarantor shall consent to such amendments or modifications to the Loan Documents as may be reasonably required in order to evidence any such sale, assignment, or participation. Anything in this Guaranty to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Guaranty, including this Section, any lender may at

ATTACHMENT NO. 3
COMPLETION GUARANTY

any time and from time to time pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; provided that no such pledge or assignment shall release such lender from its obligations thereunder.

12. Additional, Independent and Unsecured Obligations. This Guaranty is independent of the obligations of Developer under the Agency Promissory Note, the Agency Deed of Trust and the other Loan Documents. The Agency may bring a separate action to enforce the provisions hereof against Guarantor without taking action against Developer or any other party or joining Developer or any other party as a party to such action. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not be deemed to be secured by any security instrument unless such security instrument expressly recites that it secures this Guaranty.

13. Attorneys' Fees; Enforcement. If any attorney is engaged by the Agency to enforce or defend any provision of this Guaranty, or any of the other Loan Documents relating to the construction of the Improvements, or as a consequence of any Default, breach or failure of condition under the Loan Documents relating to the construction of the Improvements, with or without the filing of any legal action or proceeding, Guarantor shall pay to the Agency, immediately upon demand all reasonable attorneys' fees and costs incurred by the Agency in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Agency Promissory Note as specified therein.

14. Rules of Construction. The word "Developer" as used herein shall include both the named Developer and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Developer under the Agency Promissory Note and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Guaranty is executed by more than one person, the term "Guarantor" shall include all such persons. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and vice versa. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

15. Credit Reports. Each legal entity and individual obligated on this Guaranty hereby authorizes the Agency to order and obtain, from a credit reporting agency of the Agency's choice, a third party credit report on such legal entity and individual.

16. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California, except to the extent preempted by federal laws. Guarantor and all persons and entities in any manner obligated to the Agency under this Guaranty consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

17. Miscellaneous. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, nominees, successors and assigns of Guarantor and the Agency. The liability of all persons and entities that are in any manner obligated hereunder shall be joint and several. If any provision of this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Guaranty and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty.

**ATTACHMENT NO. 3
COMPLETION GUARANTY**

18. Enforceability. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of the Agency's consideration for entering into this transaction, the Agency have specifically bargained for the waiver and relinquishment by Guarantor of all such defenses, and (d) Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to the Agency that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by the Agency, and that the Agency are induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

**ATTACHMENT NO. 3
COMPLETION GUARANTY**

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date appearing on the first page of this Guaranty.

“GUARANTOR”

RIDGECREST PACIFIC ASSOCIATES,
a California limited partnership

Dated: _____, 2011

By: _____
Mark D. Crisci, Manager

ATTACHMENT NO. 4
FORM OF RESIDUAL RECEIPTS REPORT

Ridgecrest Redevelopment Agency
(_____)

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 received (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 Related to Project Operations (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 in relation to the operations of the Project 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 Incurred by Project (8) \$ _____

Property/Possessory Interest Taxes (9) \$ _____

Insurance (10) \$ _____

ATTACHMENT NO. 4
FORM OF RESIDUAL RECEIPTS REPORT

Other Expenses Related to Operations of the Project (11) \$ _____
Please list these expenses: _____

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

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

¹ Do not include expense unrelated to the Project's operations, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures paid from withdrawals from the Capital Replacement Reserve.

Additional Cash Flow Payments

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

Scheduled Deposits to Capital and Operating Reserves (as approved by Agency) (15) \$ _____

Additional Payment Obligations (such as Partnership Related Fees, Deferred Developer Fee, repayments on loans by partners, or unpaid Tax Credit amounts, as approved by Agency to have priority over Residual Receipt Payment to Agency.) (16) \$ _____

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

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

Percentage of Residual Receipts to be (19) _____ %
Paid to Agency (as Rent pursuant to that certain Ground Lease by and between Agency and Borrower dated
_____)

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

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

**Computation of Residual Receipts
for the Year Ending _____**

The following certification should be executed by the Executive Director or Chief Financial Officer of the Borrower, or the Managing General Partner of the Borrower.

I certify that the information provided in this form is true, accurate, and correct in all respects.

Date

By: _____
(Print Name)

Its: _____
(Title)

ATTACHMENT NO. 5
FORM OF OPERATING BUDGET

	<i>2012 Actuals</i>	<i>2013 PUPM Budget</i>	<i>2013 Annual Budget</i>	<i>2013 Increase (Decrease)</i>
OPERATING INCOME				
Rental Income				
Rents				
Section 8 Subsidy Payments				
Total Rental Income:				
Total Rental Income				
Vacancy Loss (%)				
Subtotal				
Other Income				
Laundry				
Vending				
Application Fees				
NSF and Late Charges				
Damages and Cleaning Fees				
Forfeited Security Deposits				
Other Revenue				
Total Other Income:				
Financial Income				
Interest Earned on Security Deposits				
Interest Earned on Reserves				
Interest Earned on Impound Accounts				
Income from Investments - Misc.				
Total Financial Income:				
NET TOTAL INCOME:				
OPERATING EXPENSES				
Rental Expenses				
Advertising/Marketing				
Credit Checks				
Miscellaneous Renting Expenses				
Total Rental Expenses:				
Administrative Expenses				
Office Salaries/Payroll				
Managers Salary				
Managers unit				

ATTACHMENT NO. 5
FORM OF OPERATING BUDGET

	<i>2012 Actuals</i>	<i>2013 PUPM Budget</i>	<i>2013 Annual Budget</i>	<i>2013 Increase (Decrease)</i>
Payroll Processing Fee				
Office Expenses				
Copier/Copying				
Telephone				
Answering Service				
Cell Phones and Pagers				
Intercom				
Postage/Copies				
Computer Equipment				
Computer Charges				
Internet/Cable Connection				
Mileage/Travel				
Dues and Subscriptions				
Seminars/Training				
Bank Charges				
Management Fee (\$ PUPM)				
Partnership Management Fee				
Asset Management Fee				
Compliance Monitoring				
CPA/Bookkeeping				
Legal Expenses				
Audit Expenses				
Collection Loss				
Misc. Administrative Expenses				
<i>Total Administrative Expenses:</i>				
Utility Expenses				
Electricity				
Water				
Gas				
Sewer				
<i>Total Utility Expenses:</i>				
Operating and Maintenance Expenses				
Salaries - Janitor/Cleaning				
Salaries - Maintenance				
Salaries - Repairs				
Salaries - Overtime				
Salaries - Bonus				
Supplies - Janitorial/Cleaning				
Supplies - Grounds				
Supplies - Repairs				
Supplies - Plumbing				
Supplies - Electrical				

**ATTACHMENT NO. 5
FORM OF OPERATING BUDGET**

	<i>2012 Actuals</i>	<i>2013 PUPM Budget</i>	<i>2013 Annual Budget</i>	<i>2013 Increase (Decrease)</i>
Supplies - Security				
Supplies - Decorating/Paint				
Supplies - Uniforms				
Supplies - Misc.				
Contract - Social Service Coordinator				
Contract - Janitorial/Cleaning				
Contract - Extermination				
Contract - Grounds				
Contract - Repairs				
Contract - Plumbing				
Contract - Electrical				
Contract - Decorating/Paint				
Contract - Security/Alarm				
Contract - Consultants				
Misc. Operating Expenses				
Unit Turnover Costs				
Garbage Removal				
Elevator Repair/Contract				
Heating and Cooling Repair/Contract				
Swimming Pool Maintenance				
Vehicle Maintenance/Equipment				
Misc. Maintenance				
Lock and Key Expenses				
Window and Glass Expense				
Fire Extinguisher Service and Supplies				
Uniforms/Laundry				
Flooring Replacement				
Window Covering Replacement				
Appliance Replacement				
A/C - Heater Replacement				
Furniture/Fixtures Replacement				
Plumbing Replacement				
Tub Refinishing				
Garbage Disposal Replacement				
Cabinets Replacement				
Other Replacement				
<i>Total Operating & Maintenance Expenses:</i>				
Taxes and Insurance				
Real Estate Taxes				
Payroll Taxes				
Property and Liability Insurance				
Fidelity Bond Insurance				

**ATTACHMENT NO. 5
FORM OF OPERATING BUDGET**

	<i>2012 Actuals</i>	<i>2013 PUPM Budget</i>	<i>2013 Annual Budget</i>	<i>2013 Increase (Decrease)</i>
Worker's Compensation Insurance Health Insurance & Employee Benefits 401K Matching/EE Benefits Other Insurance Misc. Taxes, Licenses and Permits				
<i>Total Taxes and Insurance:</i>				
Financial Expenses/Debt Service Interest Principal Misc. Financial Expenses				
<i>Total Financial Expenses/Debt Service:</i>				
Reserves Operating Reserves Replacement Reserves Other Reserves				
<i>Total Reserves:</i>				
<i>TOTAL OPERATING EXPENSES</i>				
CASH FLOW				

ATTACHMENT NO. 5
FORM OF OPERATING BUDGET
 Page 4 of 4

ATTACHMENT NO. 6
SCOPE OF DEVELOPMENT

ATTACHMENT NO. 7

RELEASE OF CONSTRUCTION COVENANTS

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Attention: _____

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

RELEASE OF CONSTRUCTION COVENANTS

This **RELEASE OF CONSTRUCTION COVENANTS** (“Release”) is hereby made as of _____, 20__, by the **RIDGECREST REDEVELOPMENT AGENCY**, a public body, corporate and politic (“Agency”), in favor of **RIDGECREST PACIFIC ASSOCIATES**, a California limited partnership (“Developer”).

RECITALS

A. Agency and Developer have entered into an Owner Participation Agreement, dated as of _____, 2011 (the “Agreement”), which Agreement provides for the development of an affordable rental housing complex consisting of thirty- two (32) rental apartment units, in which all but one (1) of the Housing Units will be made available to Very Low and Low Income Households at an Affordable Rent and one (1) Housing Unit will be rented to an on-site manager who shall not be required to qualify as low income but who will pay an Affordable Rent calculated for a Low Income Household, on certain real property generally located at _____ in the City of Ridgecrest, California, which is legally described on Exhibit “A” attached hereto and made a part hereof by this reference (“Site”). As required in the Agreement, Agency shall furnish Developer with a Release of Construction Covenants upon completion of the development of the Project, which Release shall be in such form as to permit it to be recorded in the Official Records of Kern County, California with the following affordability restrictions:

ATTACHMENT NO. 7

RELEASE OF CONSTRUCTION COVENANTS

Unit Type & Number		2010 Rents Targeted % of Area Median Income
3	1 Bedroom	30%
9	1 Bedroom	50%
11	1 Bedroom	55%
3	1 Bedroom	60%
1	2 Bedrooms	30%
2	2 Bedrooms	50%
2	2 Bedrooms	55%
1	2 Bedrooms	Manager's Unit

B. Capitalized terms not defined herein shall have the meaning set forth in the OPA.

C. Agency has conclusively determined that the Development of the Project as required by the Agreement has been satisfactorily completed at the Site.

NOW, THEREFORE, Agency hereto certifies as follows:

1. As provided in the Agreement, Agency does hereby certify that the development of the Project has been fully and satisfactorily performed and completed in accordance with the Agreement.

2. After the recordation of this Release, any person or entity then owning or thereafter purchasing, or otherwise acquiring any interest in the Site will not (because of such ownership, purchase, or acquisition) incur any obligation or liability under the Agreement, except that such party shall be bound by any and all of the covenants, conditions, and restrictions which survive such recordation, including without limitation, and the Regulatory Agreement; provided, the recordation of this Release shall not alter in any way the order of priority of any liens or encumbrances against the Site, including without limitation the Primary Loan for the Project.

3. This Release is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4. The recitals above are incorporated in full as part of the substantive text of this Release.

[Signatures appear on following pages.]

**ATTACHMENT NO. 7
RELEASE OF CONSTRUCTION COVENANTS**

IN WITNESS WHEREOF, Agency has executed this Release of Construction Covenants as of the date first set forth above.

AGENCY:

RIDGECREST REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: _____, 2011

By: _____
Harvey M. Rose, Executive Director

ATTEST:

Rita Gable, Secretary

DEVELOPER:

RIDGECREST PACIFIC ASSOCIATES,
a California limited partnership

Dated: _____, 2011

By: _____
Mark D. Crisci, Manager

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Special Counsel

EXHIBIT A TO ATTACHMENT NO. 7

LEGAL DESCRIPTION

[Insert Legal Description]

ATTACHMENT NO. 8

REGULATORY AGREEMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Ridgecrest Redevelopment Agency
100 W. California Avenue
Ridgecrest, California 93555
Attention: Executive Director

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

REGULATORY AGREEMENT

This **REGULATORY AGREEMENT** (“Regulatory Agreement”) is entered into as of _____, 20___, by and among **RIDGECREST REDEVELOPMENT AGENCY**, a public body, corporate and politic (“Agency”), and **RIDGECREST PACIFIC ASSOCIATES**, a California limited partnership (“Developer”).

RECITALS

A. Agency is the owner of certain real property located at _____ within the City of Ridgecrest (“Site”), which is legally described in the Legal Description attached hereto as Exhibit A and incorporated herein by reference, and is the subject of this Regulatory Agreement (“Site”).

B. Developer and Agency entered into that certain Owner Participation Agreement (Affordable Senior Citizen Apartment Project) dated as of _____, 2011 (“OPA”) and that certain Implementation Agreement (Affordable Senior Citizen Apartment Project). Subject to the terms and conditions of the OPA, Developer has agreed to construct an affordable rental housing project consisting of thirty-two (32) units (“Project”), and operate the Project on the Site with all but one (1) of the Housing Units to be made available to Very Low and Low Income Households, and one (1) Housing Unit will be rented to an on-site manager whose income shall not be restricted, although the monthly housing payment for the on-site manager’s unit shall be restricted to an Affordable Rent as determined for a Low Income Household (collectively, “Housing Units”).

C. Pursuant to the OPA, Developer agreed to develop and operate the Project thereon.

D. The execution and recording of this Regulatory Agreement is a requirement of the OPA. Terms used herein have the meanings set forth in the OPA unless otherwise specifically defined herein.

**ATTACHMENT NO. 8
REGULATORY AGREEMENT**

NOW, THEREFORE, in exchange for the mutual covenants, restrictions, and agreements set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Development of the Project. Developer agrees to develop the Site subject to the terms and in accordance with the provisions of the OPA, the Scope of Development and the Schedule of Performance attached to the OPA and the Entitlement as approved by the City, the Ridgecrest Municipal Code, and all other applicable federal, state and local codes, regulations, and ordinances.

2. Housing Units.

(a) Number of Housing Units. Number of Housing Units. Developer covenants and agrees to make available, restrict occupancy to, and rent the Housing Units in the Project to Very Low and Low Income Households, in accordance with this Section 2 and the OPA for the Project as follows:

Unit Type & Number		% of Area Median Income
3	1 Bedroom	30%
9	1 Bedroom	50%
11	1 Bedroom	55%
3	1 Bedroom	60%
1	2 Bedrooms	30%
2	2 Bedrooms	50%
2	2 Bedrooms	55%
1	2 Bedrooms	Manager's Unit

(b) Affordable Rent. Affordable Rent shall be charged for all Housing Units throughout the Affordability Period. The maximum Affordable Rent chargeable for the Housing Units shall be annually determined by Agency (and as charged and implemented by Developer) in accordance with the following requirements:

(i) The Affordable Rent for the Housing Units to be rented to 30% AMI Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of thirty percent (30%) of AMI for Kern County for a family of a size appropriate to the unit.

(ii) The Affordable Rent for the Housing Units to be rented to 40% AMI Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of forty percent (40%) of AMI for Kern County for a family of a size appropriate to the unit.

(iii) The Affordable Rent for the Housing Units to be rented to 50% AMI Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI for Kern County for a family of a size appropriate to the unit.

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(iv) The Affordable Rent for the Housing Units to be rented to 60% AMI Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of AMI for Kern County as determined and published annually by HCD for a family of a size appropriate to the unit.

The Affordable Rent for the Housing Units at the levels set forth above shall be calculated in accordance with Section 50053 of the California Health & Safety Code and comply with the regulations promulgated by the California Department of Housing and Community Development Sections 6910-6932 in Title 25 of the California Code of Regulations, governing the Agency's set aside housing fund, and with the eligibility requirements established by the applicable Tax Credit Rules such that the lowest and most restrictive requirements applicable to the Project shall control. In addition, Agency and Developer hereby agree that the applicable Tax Credit Rules shall be used for purposes of determining family size appropriate for all the Housing Units during the entire term of the Regulatory Agreement.

Developer shall, and shall cause its Property Manager to, operate the Project and cause occupancy of all Housing Units thereon in conformity with these covenants and this Regulatory Agreement.

For purposes of this Regulatory Agreement, "Affordable Rent" shall mean the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. No additional charge shall be assessed against tenant households of the Housing Units for any social or supportive services provided at the Site and/or as a part of Developer's compliance with the legal requirements imposed in connection with other governmental assistance, if any.

(c) Duration of Affordability Requirements; Affordability Period. The Project and all the Housing Units thereon shall be subject to the requirements of this Section 2, *et seq.* for the full term of not less than fifty-five (55) years from the date that the Release of Construction Covenants is recorded against the Site in the Official Records. The duration of these covenants and this requirement shall be known as the "Affordability Period."

(d) Selection of Tenants.

(i) Developer shall be responsible for the selection of tenants for the Housing Units in compliance with all lawful and reasonable criteria, and shall adopt a tenant selection system that shall be approved (or disapproved) by Agency Executive Director in his reasonable discretion, pursuant to which Developer shall establish and maintain a chronological waiting list system for selection of tenants in the order of priority set forth below, and which shall be set forth in the Marketing and Tenant Selection Plan and the Property Management Plan, which program and plan are required to be submitted by Developer and approved by Agency pursuant to Sections 3 and 7(b) hereof for the Project and as a Condition Precedent to the Closing. Throughout the Affordability Period, Developer shall establish and maintain for the Project such waiting list of

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REGULATORY AGREEMENT**

eligible, prospective tenants to facilitate re-tenanting Housing Units in compliance with the approved Marketing and Tenant Selection Plan, Property Management Plan, City Covenants and Ridgecrest Municipal Code. Subject to applicable Fair Housing Laws, Developer's waiting list of prospective, eligible tenants for Housing Units at the Project shall include and follow the following order of priority for selection of tenants, and Agency will follow such order of priority:

(A) Very Low and Low Income Households, as applicable, who have been displaced from their residences due to programs or projects implemented by the City of Ridgecrest or another governmental entity;

(B) Very Low and Low Income Households, as applicable, who have applied for and have received rental vouchers from Agency;

(C) Very Low and Low Income Households, as applicable, who are listed on Agency's waiting list for affordable housing and who live and/or work in Ridgecrest; and

(D) Very Low and Low Income Households, as applicable, who live and/or work in Ridgecrest.

(ii) Developer shall not refuse to lease a Housing Unit to a holder of a Portable Voucher who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

(iii) Developer hereby acknowledges and agrees that, upon completion of construction of the Project and leasing of the Housing Units to Very Low and Low Income Households pursuant to this Regulatory Agreement, Developer will have received governmental subsidies from Agency and from TCAC through the Tax Credits allocated to the Project (and/or other subsidies included in the final financing sources for the Project, as approved by Agency pursuant to the OPA) in exchange for Developer's agreement to limit the rents charged to tenants of the Project to an Affordable Rent and Developer further acknowledges and agrees that, except for the HAP Contract payments, which are part of the approved financing for the Project, acceptance of additional governmental rental subsidies resulting in total, cumulative rent payments to Developer in excess of an Affordable Rent for any of the Housing Units at the Project would constitute an unjustified windfall to Developer at the expense of Agency and the federal and state governments.

(iv) Notwithstanding anything to the contrary set forth in this Section 2(d), the Executive Director may, in his sole and absolute discretion, permit the rental agreement (or lease agreement, as applicable) for a Housing Unit to which a Portable Voucher or Project Based Section 8 voucher (other than pursuant to the HAP Contract) is applied to charge a monthly rent amount higher than the Affordable Rent for such Housing Unit (up to the applicable fair market rent). In such event, one hundred percent (100%) of the subsidy received by Developer under such Portable Voucher or Project Based Section 8 voucher shall be paid to Agency in repayment of the Agency Loan to the extent such subsidy constitutes Net Voucher Income hereunder.

(v) In the event of a conflict between this Regulatory Agreement and the approved Marketing and Tenant Selection Plan, the Marketing and Tenant Selection Plan shall control.

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(e) **Household Income Requirements.** On or before one hundred twenty (120) days following the end of Developer’s fiscal year, commencing the first year after issuance of the first certificate of occupancy for the Project, and annually thereafter, Developer shall prepare and submit to Agency, at Developer’s expense, a written summary of the income, household size, and rent payable by each of the tenants of the Housing Units and, upon the written request of the Agency, copies of each and all leases or rental agreements and the current rules and regulations for the Project. At Agency’s request, Developer shall also provide to Agency completed income computation and certification forms, all in a form reasonably acceptable to Agency, for each and all tenants. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each household leasing a Housing Unit demonstrating that such household is a 30% AMI Very Low Income Household, 40% AMI Very Low Income Household, 50% AMI Very Low Income Household, or 60% AMI Low Income Household, as applicable and according to the Area Median Income annually determined and published by TCAC for Kern County, and meets the eligibility and occupancy requirements established for the Housing Unit. Developer shall verify, or shall cause to be verified by the Property Manager, the income and household size certification of the tenant household.

(f) **Affordable Rent; Household Income Categories/Definitions.**

(i) **“30% AMI Very Low Income Households”** shall mean those households earning not greater than thirty percent (30%) of Kern County Area Median Income, adjusted for household size, which is set forth annually by regulation of HCD.

(ii) **“40% AMI Very Low Income Households”** shall mean those households earning not greater than forty percent (40%) of Kern County Area Median Income, adjusted for household size, which is set forth annually by regulation of HCD.

(iii) **“50% AMI Very Low Income Households”** shall mean those households earning not greater than fifty percent (50%) of Kern County Area Median Income, adjusted for household size, which is set forth annually by regulation of HCD.

(iv) **“60% AMI Low Income Households”** shall mean those households earning not greater than sixty percent (60%) of Kern County Area Median Income, adjusted for household size, which is set forth annually by regulation of HCD.

(v) **“Very Low Income”** and/or **“Very Low Income Households”** shall mean and include: (a) very low income households as defined in the Tax Credit Rules and (b) 30% AMI Very Low Income Households, (c) 40% AMI Very Low Income Households, and (d) 50% AMI Very Low Income Households. Very Low Income Households include Extremely Low Income households, as defined in the Health & Safety Code.

(vi) **“Low Income,” “Lower Income,” “Low Income Households”** or **“Lower Income Households”** shall mean and include both: (i) lower income households as defined in the Tax Credit Rules and (ii) 60% AMI Low Income Households. Lower Income Households include Very Low Income Households and Extremely Low Income Households, as defined in the Health & Safety Code.

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(g) **Occupancy Limits.** The maximum occupancy of the Housing Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the two (2) bedroom Housing Units, the maximum occupancy shall not exceed five (5) persons. For the three (3) bedroom Housing Units, the maximum occupancy shall not exceed seven (7) persons. Notwithstanding the foregoing, Housing Units assisted with Project Based Section 8 vouchers shall be subject to the “Affordable Housing Occupancy Standard,” as follows: For the two (2) bedroom Housing Units assisted by Project Based Section 8 vouchers, the maximum occupancy shall not exceed four (4) persons, and the minimum occupancy shall not be less than two (2) persons. For the three (3) bedrooms Housing Units assisted by Project Based Section 8 vouchers, the maximum occupancy shall not exceed six (6) persons and the minimum occupancy shall not be less than three (3) persons.

3. Marketing Program. Prior to and as a Condition Precedent to the commencement of the Ground Lease, Developer shall have prepared and obtained Agency’s approval, which approval shall not be unreasonably withheld, of a marketing program for the leasing of the Housing Units at the Project (“Marketing Program”). During the Affordability Period, any material changes to an approved Marketing Program are subject to reasonable review and approval by the Executive Director. The rental of the Housing Units, as and when they are vacated by the existing tenants, shall be conducted in accordance with the approved Marketing Program and any affirmative marketing requirements which have been adopted by the Agency prior to the date hereof. The availability of Housing Units shall be marketed in accordance with the Marketing Program as the same may be amended from time to time with Agency’s prior written approval, which approval shall not unreasonably be withheld. Developer shall provide Agency with periodic reports with respect to the marketing for lease of the Housing Units. Agency agrees to exercise reasonable efforts to assist Developer in connection with the implementation of the Marketing Program; provided, however, Agency shall not be under any obligation to incur any out-of-pocket expenses in connection therewith.

4. Social Services. Developer acknowledges and agrees that, pursuant to the HUD regulations found at 24 C.F.R. §§ 983.56(b) and 983.261, a financing structure that includes Project Based Section 8 assistance to more than 25% of the Housing Units at the Project will implicate a requirement to provide an enhanced level of social services at the Project, and Developer further acknowledges and agrees that the type and extent of such social services shall be subject to the approval of both HUD and the Agency Executive Director. Developer shall use its best efforts to create a comprehensive social service program that is targeted to the needs of the residents.

5. Leases; Rental Agreements for Housing Units. Developer shall submit a standard lease form for use at the Project to Agency Executive Director for approval, which lease form shall comply with the requirements of this Agreement, including all applicable provisions of the Act. Agency shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement, including all applicable provisions of the Act. Developer shall enter into a written lease, in the form approved by Agency, with each tenant/tenant household of the Project. During the Affordability Period, any material changes to the lease form are subject to the reasonable review and approval of the Executive Director.

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6. Maintenance.

(a) **General Maintenance.** Developer shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the terms of the Redevelopment Plan and all applicable provisions of the Ridgecrest Municipal Code. Developer shall maintain in accordance with the Maintenance Standards (as hereinafter defined) the improvements and landscaping on the Site. Such Maintenance Standards shall apply to all buildings, signage, common amenities, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and the Project. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Regulatory Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, "Maintenance Standards"):

(i) The Site shall be maintained in conformance and in compliance with the approved final as-built plans, and reasonable maintenance standards which comply with the industry standard for comparable first quality affordable housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin. The Site shall be maintained in good condition and in accordance with the industry custom and practice generally applicable to comparable first quality affordable housing projects in the County.

(ii) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(iii) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Agency agrees to notify Developer in writing if the condition of the Site does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Developer shall have forty-eight (48) hours to rectify the problem. In the event Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards, Agency shall have, in addition to any other rights and remedies hereunder, the right to maintain the

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Site, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by Agency.

(b) Program Maintenance. In addition to the routine maintenance and repair required pursuant to Section 6(a), Developer shall perform the following minimum programmed maintenance of the Improvements to the Site:

- (i) Interior painting and window covering replacement at least every five (5) years;
- (ii) Exterior painting at least every ten (10) years;
- (iii) Repair and resurfacing of parking areas and walkways at least every five (5) years; and
- (iv) Replacement of all deteriorated or worn landscaping and play equipment at least every five (5) years.

Upon the request of Developer, the Executive Director, at his sole and absolute discretion, may grant a waiver or deferral of any program maintenance requirement. Developer shall keep such records of maintenance and repair as are necessary to prove performance of the program maintenance requirements.

7. Management of the Project.

(a) Property Manager. Developer shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable high quality, well-managed affordable rental housing projects in the County. Developer may contract with a property management company or property manager, to operate and maintain the Project in accordance with the terms of this Section 409 (“Property Manager”); provided, however, the selection and hiring of the Property Manager (and each successor or assignee), including any Affiliate, is and shall be subject to prior written approval of Agency’s Executive Director (or designee) in his/her sole and reasonable discretion. _____ is hereby approved to act as the Property Manager, subject to Executive Director review of the scope of services, itemized fees, and fee contract for property management between Developer and _____. The Property Manager shall manage the Project in accordance with the definitions of Affordable Rent contained in Section 2(b) hereof, the tenant selection requirements contained in Section 2(d), and the definitions relating to income contained in Section 2(e). Any fee paid to the Property Manager for social services provided to the tenants shall be exclusive of the fee paid to the Property Manager relating to the management of the Project. Except for _____, Developer shall conduct due diligence and background evaluation of any potential third party property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have significant and relevant prior experience with affordable housing projects and properties comparable to the Project and the references and credit record of such property manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed property manager to the Executive Director

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for review and approval. A complete and true copy of the results of such background evaluation shall be provided to the Executive Director. Approval of a Property Manager by Agency's Executive Director shall not be unreasonably delayed but shall be in his/her sole reasonable discretion, and Agency Executive Director shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing property management of the Project by one qualified Property Manager. The replacement of _____ by Developer and/or the selection by Developer of any new or different Property Manager during the Affordability Period shall also be subject to the foregoing requirements.

(b) Property Management Plan. Prior to and as a Condition Precedent to Closing, Developer shall prepare and submit to the Executive Director for review and approval, which approval shall not be unreasonably withheld, a management plan for the Project which includes a detailed plan and strategy for long term marketing, operation, maintenance, repair and security of the Project, inclusive of social services for the residents of the Housing Units, and the method of selection of tenants, rules and regulations for tenants, and other rental policies for the Project ("Property Management Plan"). Executive Director approval of the Property Management Plan shall not be unreasonably withheld or delayed. Subsequent to approval of the Property Management Plan by the Executive Director the ongoing management and operation of the Project shall be in compliance with the approved Property Management Plan. During the Affordability Period, Developer and its Property Manager may from time to time submit to the Executive Director proposed amendments to the Property Management Plan, the implementation of which shall also be subject to the prior written approval of the Executive Director, which approval shall not be unreasonably withheld.

(c) Gross Mismanagement. During the Affordability Period, and in the event of "Gross Mismanagement" (as defined below) of the Project, Executive Director and/or Agency shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of written notice from Executive Director. If Developer or Property Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to the Executive Director), but has failed to complete such cure by the 30th day (or such longer period if the cure cannot reasonably be accomplished in thirty (30) days as reasonably determined by the non-defaulting party), then Developer and its Property Manager shall have an additional 10 days to complete the cure of Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) days from the date of the initial written notice of such condition(s). If such condition(s) do persist beyond such period, Executive Director shall have the sole and absolute right to immediately and without further notice to Developer (or to Property Manager or any other person/entity) to remove the Property Manager and Developer shall contract with a replacement Property Manager reasonably acceptable to Agency (in accordance with Section 409.1) within thirty (30) days following Agency's removal of the defaulting Property Manager. If Developer takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager.

For purposes of this Agreement, the term "Gross Mismanagement" shall mean management of the Project in a manner which violates the terms and/or intention of this Agreement

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to operate a first quality affordable housing complex, and shall include, but is not limited to, any one or more of the following:

(i) Habitually leasing to tenants who exceed the prescribed income levels;

(ii) Habitually allowing tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;

(iii) Under-funding required reserve accounts if Annual Project Revenues are sufficient to maintain such reserve accounts;

(iv) Failing to timely maintain the Project in accordance with the Property Management Plan and Maintenance Standards;

(v) Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;

(vi) Failing to fully cooperate with the Ridgecrest Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;

(vii) Failing to fully cooperate with the Ridgecrest Fire Department or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe and accessible environment within the Project; and

(viii) Failing to fully cooperate with the Ridgecrest Planning & Building Department, including the Code Enforcement Division, or other local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a decent, safe and sanitary environment within the Project.

(ix) Spending funds from the Capital Replacement Reserve account for items that are not defined as eligible costs, including eligible capital and/or replacement costs, under the standards imposed by GAAP (and/or, as applicable, generally accepted auditing principles).

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Developer is obligated and shall use its commercially reasonable efforts to correct any defects in property management or operations at the earliest feasible time and shall, if necessary, replace the Property Manager as provided above. Developer shall include advisement and provisions of the foregoing requirements and requirements of this Agreement within any contract between Developer and its Property Manager for the Project.

(d) Code Enforcement. Developer acknowledges and agrees that Agency and City, and their employees and authorized agents, shall have the right to conduct code compliance and/or code enforcement inspections of the Project and the individual Housing Units for the Project, both exterior and interior, at reasonable times and upon reasonable notice (not less than 48 hours prior notice, except in an emergency) to Developer and/or an individual tenant. If such notice is provided by Agency or City representative(s) to Developer, then Developer (or its Property Manager)

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shall immediately and directly advise any affected tenant of such upcoming inspection and cause access to the area(s) and/or Housing Units at the Project to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the lease/rental agreements for each Housing Unit in the Project in order for each and every tenant and tenant household to be aware of this inspection right and such inspection(s) shall not unreasonably interfere with use and enjoyment of the site.

8. Capital Reserve Requirements. Commencing upon the closing for the permanent Primary Loan for the Project, Developer shall annually set aside an amount of not less than _____ Dollars (\$_____) per Housing Unit (3 Housing Units times \$_____ equals \$_____) or such increased amount required by TCAC or the Partnership Agreement or the Lender under the Primary Loan for the Project) from the gross rents received from the Project, into a separate interest bearing trust account defined as the Capital Replacement Reserve. Funds in the Capital Replacement Reserve shall be used only for capital repairs, improvements and replacements to the Project, including fixtures and equipment, which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Developer's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein for the Project. Not less than once per year, Developer, at its expense, shall submit to Agency Executive Director an accounting for the Capital Replacement Reserve for the Project. Capital improvements and repairs to, and replacements at the Project shall include only those items with a long useful life, including without limitation the following: carpet and drapery replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting.

9. Operating Budget and Operating Reserve. Within twelve (12) months after commencement of construction of the Project, but in no event later than ninety (90) days prior to the completion of construction of the Project, and not less than annually thereafter on or before November 1 of each year following the issuance of the first certificate of occupancy issued by the City's building official for the Project, Developer shall submit to Agency on not less than an annual basis an Operating Budget for the Project, which budget shall be subject to the written approval of Executive Director or his/her designee, which approval shall not be unreasonably withheld.

Developer shall, or shall cause the Property Manager to, set aside, in an "Operating Reserve" for the Project in a separate interest bearing trust account, a target amount equal to three (3) months of (i) Debt Service on the Primary Loan and (ii) Operating Expenses for the Project ("Target Amount"), which shall be funded by Tax Credit equity; provided, a larger Operating Reserve may be maintained if required by the approved Lender or Tax Credit Investor for the Project. The Operating Reserve shall thereafter be replenished from Annual Project Revenue (net of Operating Expenses and Debt Service) to maintain the Operating Reserve balance at the Target Amount. The Target Amount shall be retained in the Operating Reserve to cover shortfalls between Annual Project Revenue and actual Operating Expenses, but shall in no event be used to pay for capital items or capital costs properly payable from the Capital Replacement Reserve. Developer shall, not less than once per

ATTACHMENT NO. 8
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every twelve (12) months, submit to the Executive Director evidence reasonably satisfactory to Agency of compliance herewith.

10. Duty to Prevent Hazardous Material Contamination. During the development and operation of the Project, Developer shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. Developer shall notify Agency, and provide to Agency a copy or copies, of any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to Agency, as soon as possible after each incident, any unusual, potentially important incidents in the event of a release of any Hazardous Materials into the environment.

For purposes of this Section, “Governmental Requirements” shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Agency, Developer or the Site.

For purposes of this Section, “Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County, including the Kern County Health Care Agency, the Regional Water Quality Control Board, the State of California (including the Department of Toxic Substances Control), other state, regional or local governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903) or (x) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol, aspirin, tobacco and saccharine.

11. Compliance With Laws. Developer shall carry out the design, development and operation of the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical

**ATTACHMENT NO. 8
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codes, and all other provisions of the Ridgecrest Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

12. Non-Discrimination Covenants. Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land. Developer shall refrain from restricting the rental or lease of the Site on any of the bases listed above. All leases or contracts relating to the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds. “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

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(c) In contracts: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Regulatory Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

The covenants established in this Section 14 shall, without regard to technical classification and designation, be binding for the benefit and in favor of Agency and its successors and assigns, and shall remain in effect in perpetuity.

13. Monitoring and Recordkeeping. Throughout the Affordability Period, Developer shall comply with all applicable recordkeeping and monitoring requirements of the Act and the HAL and shall annually complete and submit to Agency a Certification of Continuing Program Compliance in a form provided by Agency. Representatives of Agency (and City) shall be entitled to enter the Site upon at least forty-eight (48) hours notice, to monitor compliance with this Regulatory Agreement, to inspect the records of the Site, and to conduct an independent audit or inspection of such records. Developer agrees to cooperate with Agency in making all of its records for the Project and making the Site and all Housing Units thereon available for inspection or audit. Records shall be made available for review and inspection and/or audit in Kern County, California. Developer agrees to maintain all records relating to the Project in a businesslike manner, and to maintain such records for the term of this Regulatory Agreement.

14. Defaults and Remedies. Defaults of this Regulatory Agreement and remedies therefor shall be governed by the provisions of Section 600, *et seq.*, of the OPA.

15. Waiver of Terms and Conditions. Any party may, in its sole discretion, waive in writing any of the terms and conditions of this Regulatory Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

18. Non-Liability of Agency Officials and Employees. No member, official, employee or agent of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Regulatory Agreement.

19. Time. Time is of the essence in this Regulatory Agreement.

20. Notices. Any approval, disapproval, demand, document or other notice (“Notice”) which any party may desire to give to another party under this Regulatory Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile transmission, or (iv) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other

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address as that party may later designate by Notice. Service shall be deemed conclusively made at the time of service if personally served; upon confirmation of receipt if sent by facsimile transmission; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

Developer: Ridgecrest Pacific Associates
c/o Valley Initiative for Affordable Housing
1141 “N” Street
Merced, California 95340
Attention: _____
Email:_____

With copies to: Roope LLC
430 East State Street, Suite 100
Eagle, Idaho 83616
Attention: Caleb Roope
Email:_____

Agency: Ridgecrest Redevelopment Agency
100 W. California Avenue
Ridgecrest, California 93555
Attention: Executive Director
Email:_____

With copies to: c/o Red Stone Equity Partners, LLC
200 Public Square, Suite 1550
Cleveland, Ohio 44114
Attention: Managing Director & General Counsel
Fax No.: (216) 820-4751

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: David R. McEwen

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

21. Successors and Assigns. This Regulatory Agreement shall run with the land, and all of the terms, covenants and conditions of this Regulatory Agreement shall be binding upon Developer and Agency and the permitted successors and assigns of Developer and Agency. Whenever the term “Developer” or “Agency” is used in this Regulatory Agreement, such term shall include any other successors and assigns as herein provided.

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22. Except City, No Third Parties Benefited. Except as to the City of Ridgecrest, who the parties agree is an intended third party beneficiary of this Regulatory Agreement, this Regulatory Agreement is made and entered into for the sole protection and benefit of Agency and its successors and assigns and Developer and its successors and assigns, and no other person or persons shall have any right of action hereon.

23. Partial Invalidity. If any provision of this Regulatory Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

24. Governing Law. This Regulatory Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

25. Amendment. This Regulatory Agreement may not be changed orally, but only by agreement in writing signed by Developer and Agency.

[Signatures for Regulatory Agreement continue on following pages.]

**ATTACHMENT NO. 8
REGULATORY AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Regulatory Agreement as of the date and year first set forth below.

DEVELOPER:

RIDGECREST PACIFIC ASSOCIATES,
a California limited partnership

Dated: _____, 2011

By: _____
Mark D. Crisci, Manager

AGENCY:

RIDGECREST REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: _____, 2011

By: _____
Harvey M. Rose, Executive Director

ATTEST:

Rita Gable, Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Special Counsel

EXHIBIT A TO ATTACHMENT NO. 8

LEGAL DESCRIPTION

[Insert Legal Description]

EXHIBIT A TO ATTACHMENT NO. 8

LEGAL DESCRIPTION

Page 1 of 1

ATTACHMENT NO. 9

NOTICE OF AFFORDABILITY RESTRICTIONS

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Ridgecrest Redevelopment Agency
100 W. California Avenue
Ridgecrest, California 93555
Attention: Executive Director

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

**NOTICE OF AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY**

This Notice of Affordability Restrictions on Transfer of Property (or “Notice of Affordability Restrictions”) is executed and recorded pursuant to Section 33334.3(f)(3)(B) of the California Health and Safety Code as amended by AB 987, Chapter 690, Statutes of 2007 (herein, “Chapter 690”), and affects that certain real property generally located at _____ in the City of Ridgecrest, California (“City”) as legally described in Exhibit “A” hereto (“Site”). The Ridgecrest Redevelopment Agency (“Agency”), and Ridgecrest Pacific Associates, a California limited partnership, (“Developer”) have previously entered into an Owner Participation Agreement (Affordable Senior Citizen Apartment Project) dated as of _____, 2011 (“OPA”) and that certain Implementation Agreement (Affordable Senior Citizen Apartment Project) dated as of [_____, 20___] (“Implementation Agreement,” and, together the “OPA”).

1. The OPA provides for affordability restrictions and restrictions on the transfer of the Site, as more particularly set forth in the OPA. A copy of the OPA is on file with Agency as a public record and is deemed incorporated herein. Reference is made to the OPA with regard to the complete text of the provisions of

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NOTICE OF AFFORDABILITY RESTRICTIONS

such agreement and all defined terms therein, which provides for affordability restrictions and restrictions on the transfer of the Site.

2. The OPA provides for Agency to convey a leasehold interest in the Site to Developer and for Developer to (a) construct 92 rental dwelling units at the Site and (b) rent a specified number of such dwelling units to households of limited income, paying an affordable rent; such restrictions are set forth at greater length in a document entitled the Regulatory Agreement, substantially in the form of Attachment No. 8 to the Owner Participation Agreement (“Regulatory Agreement”), which has been entered into by and among Agency and Developer, and which is expected to be recorded substantially concurrently herewith among the Official Records of Kern County, California. The Regulatory Agreement and the OPA are deemed to be incorporated herein by reference.

3. Section 2 of the Regulatory Agreement provides as follows:

“2. Housing Units.

“(a)

Unit Type & Number		% of Area Median Income
3	1 Bedroom	30%
9	1 Bedroom	50%
11	1 Bedroom	55%
3	1 Bedroom	60%
1	2 Bedrooms	30%
2	2 Bedrooms	50%
2	2 Bedrooms	55%
1	2 Bedrooms	Manager’s Unit

“(b) Affordable Rent. Affordable Rent shall be charged for all Housing Units throughout the Affordability Period. The maximum Affordable Rent chargeable for the Housing Units shall be annually determined by Agency (and as charged and implemented by Developer) in accordance with the following requirements:

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NOTICE OF AFFORDABILITY RESTRICTIONS**

“(i) The Affordable Rent for the Housing Units to be rented to 30% AMI Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of thirty percent (30%) of AMI for Kern County for a family of a size appropriate to the unit.

“(ii) The Affordable Rent for the Housing Units to be rented to 40% AMI Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of forty percent (40%) of AMI for Kern County for a family of a size appropriate to the unit.

“(iii) The Affordable Rent for the Housing Units to be rented to 50% AMI Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI for Kern County for a family of a size appropriate to the unit.

“(iv) The Affordable Rent for the Housing Units to be rented to 60% AMI Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of AMI for Kern County as determined and published annually by HCD for a family of a size appropriate to the unit.

“The Affordable Rent for the Housing Units at the levels set forth above shall be calculated in accordance with Section 50053 of the California Health & Safety Code and comply with the regulations promulgated by the California Department of Housing and Community Development Sections 6910-6932 in Title 25 of the California Code of Regulations, governing the Agency’s set aside housing fund, and with the eligibility requirements established by the applicable Tax Credit Rules such that the lowest and most restrictive requirements applicable to the Project shall control. In addition, Agency and Developer hereby agree that the applicable Tax Credit Rules shall be used for purposes of determining family size appropriate for all the Housing

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Units during the entire term of the Regulatory Agreement.

“Developer shall, and shall cause its Property Manager to, operate the Project and cause occupancy of all Housing Units thereon in conformity with these covenants and this Agreement.

“For purposes of this Agreement, ‘Affordable Rent’ shall mean the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. No additional charge shall be assessed against tenant households of the Housing Units for any social or supportive services provided at the Site and/or as a part of Developer’s compliance with the legal requirements imposed in connection with other governmental assistance, if any.

“(c) **Duration of Affordability Requirements; Affordability Period.** The Project and all the Housing Units thereon shall be subject to the requirements of this Section 400, *et seq.* for the full term of fifty-five (55) years from the date that the Release of Construction Covenants for the Project is recorded against the Site in the Official Records. The duration of these covenants and this requirement shall be known as the “Affordability Period.””

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NOTICE OF AFFORDABILITY RESTRICTIONS**

“(d) Selection of Tenants.

“(i) Developer shall be responsible for the selection of tenants for the Housing Units in compliance with all lawful and reasonable criteria, and shall adopt a tenant selection system that shall be approved (or disapproved) by Agency Executive Director in his/her reasonable discretion, pursuant to which Developer shall establish and maintain a chronological waiting list system for selection of tenants in the order of priority set forth below, and which shall be set forth in the Marketing and Tenant Selection Plan and the Property Management Plan, which program and plan are required to be submitted by Developer and approved by Agency pursuant to Sections 407 and 409.2 hereof for the Project and as a Condition Precedent to the Closing. Throughout the Affordability Period, Developer shall establish and maintain for the Project such waiting list of eligible, prospective tenants to facilitate re-tenanting Housing Units in compliance with the approved Marketing and Tenant Selection Plan, Property Management Plan, and Ridgecrest Municipal Code. Subject to applicable Fair Housing Laws, Developer’s waiting list of prospective, eligible tenants for Housing Units at the Project shall include and follow the following order of priority for selection of tenants, and Agency will follow such order of priority:

“(A) Very Low and Low Income Households, as applicable, who have been displaced from their residences due to programs or projects implemented by the City of Ridgecrest or another governmental entity;

“(B) Very Low and Low Income Households, as applicable, who are listed on Agency’s waiting list for affordable housing and who live and/or work in Ridgecrest; and

“(C) Very Low and Low Income Households, as applicable, who live and/or work in Ridgecrest.

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NOTICE OF AFFORDABILITY RESTRICTIONS**

(ii) Developer shall not refuse to lease a Housing Unit to a holder of a Section 8 tenant-based voucher who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

“(iii) Developer hereby acknowledges and agrees that, upon completion of construction of the Project and leasing of the Housing Units to Very Low and Low Income Households pursuant to this Agreement, Developer will have received governmental subsidies from Agency and from TCAC through the Tax Credits allocated to the Project (and/or other subsidies included in the final financing sources for the Project, as approved by Agency pursuant to **Section 310**) in exchange for Developer’s agreement to limit the rents charged to tenants of the Project to an Affordable Rent and Developer further acknowledges and agrees that acceptance of additional governmental rental subsidies resulting in total, cumulative rent payments to Developer in excess of an Affordable Rent for any of the Housing Units at the Project would constitute an unjustified windfall to Developer at the expense of Agency and the federal and state governments. Therefore, in the event tenants of the Project hold Section 8 tenant-based rental vouchers or other similar certificates, Developer shall continue to charge an Affordable Rent in the lease agreement for the applicable unit, not the market rent determined by the local housing authority and/or HUD.

“(e) **Household Income Requirements.** On or before one hundred twenty (120) days following the end of Developer’s fiscal year, commencing the first year after issuance of the first certificate of occupancy for the Project, and annually thereafter, Developer shall prepare and submit to Agency, at Developer’s expense, a written summary of the income, household size, and rent payable by each of the tenants of the Housing Units and, upon the written request of the Agency, copies of each and all leases or rental agreements and the current rules and regulations for the Project. At Agency’s request,

**ATTACHMENT NO. 9
NOTICE OF AFFORDABILITY RESTRICTIONS**

Developer shall also provide to Agency completed income computation and certification forms, all in a form reasonably acceptable to Agency, for each and all tenants. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each household leasing a Housing Unit demonstrating that such household is a 30% AMI Very Low Income Household, 40% AMI Very Low Income Household, 50% AMI Very Low Income Household, or 60% AMI Low Income Household, as applicable and according to the Area Median Income annually determined and published by HCD for Kern County, and meets the eligibility and occupancy requirements established for the Housing Unit. Developer shall verify, or shall cause to be verified by the Property Manager, the income and household size certification of the tenant household.

(f) Income Categories.

(i) “30% AMI Very Low Income Households” shall mean those households earning not greater than thirty percent (30%) of Kern County Area Median Income, adjusted for household size, which is set forth annually by regulation of HCD.

(ii) “40% AMI Very Low Income Households” shall mean those households earning not greater than forty percent (40%) of Kern County Area Median Income, adjusted for household size, which is set forth annually by regulation of HCD.

(iii) “50% AMI Very Low Income Households” shall mean those households earning not greater than fifty percent (50%) of Kern County Area Median Income, adjusted for household size, which is set forth annually by regulation of HCD.

(iv) “60% AMI Low Income Households” shall mean those households earning not greater than sixty percent (60%) of Kern County Area Median Income, adjusted for

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NOTICE OF AFFORDABILITY RESTRICTIONS**

household size, which is set forth annually by regulation of HCD.

(v) “Very Low Income” and/or “Very Low Income Households” shall mean and include: (i) very low income households as defined in the regulations promulgated annually by HCD and (ii) 30% AMI Very Low Income Households, (iii) 40% AMI Very Low Income Households, and (iv) 50% AMI Very Low Income Households. Very Low Income Households include Extremely Low Income households, as defined in Health and Safety Code.

(vi) “Low Income,” “Lower Income,” “Low Income Households” or “Lower Income Households” shall mean and include both: (i) lower income households as defined in regulations promulgated annually by HCD and (ii) 60% AMI Low Income Households. Lower Income Households include Very Low Income Households and Extremely Low Income Households, as defined in the Health and Safety Code.

“(g) **Occupancy Limits.** The maximum occupancy of the Housing Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the two (2) bedroom Housing Units, the maximum occupancy shall not exceed five (5) persons. For the three (3) bedroom Housing Units, the maximum occupancy shall not exceed seven (7) persons.”

4. The restrictions contained in the Regulatory Agreement expire fifty-five (55) years following the date the Release of Construction Covenants is recorded against the Site in the Official Records of Kern County, California. The Regulatory Agreement is being submitted for recordation contemporaneously with this Notice of Affordability Restrictions.

5. The commonly known address for the Site is _____ in the City of Ridgecrest.

**ATTACHMENT NO. 9
NOTICE OF AFFORDABILITY RESTRICTIONS**

6. The assessor's parcel number for the Site is 037-282-15; such number is subject to change.

7. The legal description for the Site is attached hereto as Exhibit A and is incorporated herein by reference.

8. The Regulatory Agreement, which includes the affordability restrictions referenced above, is expected to be submitted for recordation in the Office of the Kern County Recorder contemporaneously with this Notice of Affordability Restrictions.

9. This Notice of Affordability Restrictions is intended merely to satisfy the requirements of Chapter 690 of the Act. The OPA and the Regulatory Agreement both remain in full force and effect and are not amended or altered in any manner whatsoever by this Notice of Affordability Restrictions.

10. Capitalized terms shall have the meaning established under the OPA (including all Attachments and Exhibits thereto) excepting only to the extent as otherwise expressly provided under this Notice of Affordability Restrictions.

11. Persons having questions regarding this Notice of Affordability Restrictions, the OPA or the Attachments and Exhibits thereto (including the Regulatory Agreement) should contact Agency at its offices (100 W. California Avenue, Ridgecrest, California 93555, or such other address as may be designated by Agency from time to time).

[Signatures appear on following page.]

**ATTACHMENT NO. 9
NOTICE OF AFFORDABILITY RESTRICTIONS**

DEVELOPER:

**RIDGECREST PACIFIC
ASSOCIATES,**
a California limited partnership

Dated: _____, 2011

By: _____
Mark D. Crisci, Manager

AGENCY:

**RIDGECREST REDEVELOPMENT
AGENCY,** a public body, corporate and
politic

Dated: _____, 2011

By: _____
Harvey M. Rose, Executive Director

ATTEST:

Rita Gable, Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Special Counsel

EXHIBIT A TO ATTACHMENT NO. 9

LEGAL DESCRIPTION

[Insert Legal Description]

EXHIBIT A TO ATTACHMENT NO. 9

LEGAL DESCRIPTION

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ATTACHMENT NO. 10
SCHEDULE OF PERFORMANCE

ATTACHMENT NO. 11

REQUEST FOR NOTICE OF DEFAULT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Ridgecrest Redevelopment Agency
100 W. California Avenue
Ridgecrest, California 93555
Attn: Executive Director

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

REQUEST FOR NOTICE UNDER CIVIL CODE SECTION 2924B

In accordance with California Civil Code Section 2924b request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deeds of Trusts recorded as Instrument Nos. _____ and _____ on _____, 20__ in the Official Records of Kern County, California, and describing land therein as set forth in the legal description attached hereto as Exhibit A and incorporated herein, executed by **RIDGECREST PACIFIC ASSOCIATES**, a California limited partnership, as Trustor/Borrower, in which _____, a _____ is/are named as Beneficiary(ies), and _____, a _____, is named as Trustee, be mailed to: **RIDGECREST REDEVELOPMENT AGENCY**, a California public body, corporate and politic, 100 W. California Avenue, Ridgecrest, California 93555, Attn: Executive Director.

[Request continues on following page]

ATTACHMENT NO. 12
REQUEST FOR NOTICE OF DEFAULT

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

DEVELOPER:

RIDGECREST PACIFIC ASSOCIATES,
a California limited partnership

Dated: _____, 2011

By: _____
Mark D. Crisci, Manager

AGENCY:

RIDGECREST REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: _____, 2011

By: _____
Harvey M. Rose, Executive Director

ATTEST:

Rita Gable, Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Special Counsel

EXHIBIT A TO ATTACHMENT NO. 11

LEGAL DESCRIPTION

[Insert Legal Description]

ATTACHMENT NO. 12

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Ridgecrest Redevelopment Agency
100 W. California Avenue
Ridgecrest, California 93555
Attention: Executive Director

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

MEMORANDUM OF OWNER PARTICIPATION AGREEMENT

This **MEMORANDUM OF OWNER PARTICIPATION AGREEMENT (Affordable Senior Citizen Apartment Project)** (“Memorandum”) is hereby entered into as of _____, 20__ by and among **RIDGECREST REDEVELOPMENT AGENCY**, a public body, corporate and politic (“Agency”), and **RIDGECREST PACIFIC ASSOCIATES**, a California limited partnership (“Developer”).

RECITALS

A. Agency and Developer have entered into that certain Owner Participation Agreement, dated as of _____, 2011, (the “OPA”). Pursuant to the OPA, Agency agreed to convey a ground leasehold interest in that certain parcel of real property, which is legally described in Exhibit A attached hereto and incorporated herein by reference (“Site”) and make a loan to Developer (or its authorized designee) and Developer has agreed to lease the Site and borrow funds from Agency therefor and to construct, develop and operate an affordable rental project thereon. Copies of the OPA are available for public inspection at Agency’s office at 100 W. California Avenue, Ridgecrest, California. The Affordability Period (defined in the OPA) for the Project commences the date the Memorandum of Ground Lease for the Project is recorded in the Official Records of Kern County, California, and expires on the fifty-five (55th) anniversary of the recordation of the Release of Construction Covenants for the Project against the Site according to Section 305 of the OPA.

B. The OPA provides that a short form memorandum of the OPA shall be executed and recorded in the Official Records of Kern County, California.

ATTACHMENT NO. 12
MEMORANDUM OF AGREEMENT

NOW, THEREFORE, the parties hereto certify as follows:

Pursuant to the OPA, the parties have certain rights and obligations relating to the development and operation of the Project on the Site for a term of over fifty-seven (57) years. This Memorandum is not a complete summary of the OPA, and shall not be used to interpret the provisions of the OPA.

AGENCY:

RIDGECREST REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: _____, 2011

By: _____
Harvey M. Rose, Executive Director

ATTEST:

Rita Gable, Secretary

DEVELOPER:

RIDGECREST PACIFIC ASSOCIATES,
a California limited partnership

Dated: _____, 2011

By: _____
Mark D. Crisci, Manager

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Special Counsel

EXHIBIT A TO ATTACHMENT NO. 12

LEGAL DESCRIPTION

That real property located in the State of California, County of Kern, City of Ridgecrest, and described as follows:

[To be inserted]

Assessor's Parcel Nos.: 037-282-15

ATTACHMENT NO. 13
AGENCY PROMISSORY NOTE

[To be inserted]

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CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM

SUBJECT: A Letter of Opposition to Kern Council of Governments (Kern Cog) regarding a Highway 14 Proposal.
PRESENTED BY: Dennis Speer, Public Work Director
SUMMARY: This is a letter of opposition to a Kern Cog proposal to defer funding and delay project programming for Highway 14.
FISCAL IMPACT: None Reviewed by Finance Director
ACTION REQUESTED: Authorize the Mayor to Sign the Letter of Opposition to Kern Council of Governments (Kern Cog).
CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION: Action as requested:

Submitted by: Dennis Speer

Action Date: November 16, 2011

(Rev. 6/12/09)

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CITY OF RIDGECREST

Telephone 760 499-5004
100 West California Avenue, Ridgecrest, California 93555-4054

November 17, 2011

Ronald E. Brummett, Executive Director
Kern Council of Governments
1401 19th Street Suite 300
Bakersfield, California 93301

RE: 2012 Regional Transportation Improvement Program
November 17, 2011 TPPC Agenda – Item “VI”

Dear Mr. Brummett:

As a member agency, the City of Ridgecrest, has been made aware of the course of events regarding impacts to the advancement of widening projects on State Routes 14 and 46 currently under consideration as part of the 2012 Regional Transportation Improvement Program (2012 RTIP) process. We understand that the Kern Council of Governments (Kern COG) will request a final action at the November 17, 2011 Board of Directors meeting to decide on two proposed alternatives for the distribution of about \$19 million to new phases or projects considered ready to advance. We are also aware that Kern COG staff will submit the regions 2012 RTIP

The City of Ridgecrest has reviewed the November 17, 2011 Transportation Planning Policy Committee Agenda Item “VI” staff report and considers Alternative B the best choice and recommends approval of this alternative. Alternative B best supports adopted Kern COG Policy to 1) advance projects when they are ready to move forward and 2) give priority to projects that leverage outside revenue sources.

Thank you for your timely consideration of our recommendation.

Sincerely,

Ronald Carter,
Mayor City of Ridgecrest

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