

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

When Recorded Mail to:

City of Santa Ana, acting as Successor Agency
to the Community Redevelopment Agency
of the City of Santa Ana
20 Civic Center Plaza (M-37)
P.O. Box 1988
Santa Ana, California 92702
Attention: Executive Director

LOAN AGREEMENT

by and among the

CITY OF SANTA ANA AND

THE CITY OF SANTA ANA ACTING AS SUCCESSOR AGENCY TO THE
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF SANTA ANA

And

VISTA DEL RIO HOUSING PARTNERS LP,

Dated: March 14, 2012

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS AND INTERPRETATION.....	2
1.1 Defined Terms	2
1.2 Singular and Plural Terms	10
1.3 References and Other Terms.....	10
1.4 Exhibits Incorporated.....	10
2. [RESERVED].....	10
3. SCOPE OF WORK/ PROJECT BUDGET	10
4. [RESERVED].....	10
5. LOANS:.....	11
5.1 City/HOME Loan.....	11
5.2 Agency Loan.....	11
5.3 Other Terms and Conditions of the Loans.....	12
6. CONDITIONS TO DISBURSEMENT OF LOAN PROCEEDS	12
6.1 Conditions Precedent	12
6.2 Disbursement Procedures for Loans	13
6.3 First Disbursement.....	14
6.4 Termination for Failure of Condition.....	14
6.5 Any Disbursement	14
6.6 Final Disbursement	15
6.7 Waiver of Conditions.....	15
6.8 Disbursement Requests.....	15
6.9 Manner of Disbursement.....	16
6.10 Cost Overruns	16
6.11 Cost Savings.....	16
6.12 Retainage.....	17
6.13 Waiver of Disbursement Conditions.....	17
6.14 Modification of Disbursement Conditions and Procedures	17
6.15 Closing Costs and Fees	17
7. AFFORDABILITY REQUIREMENTS, USE AND MAINTENANCE OF THE PROPERTY	17
7.1 Use Covenants and Restrictions.....	17
7.2 Affordable Gross Starting Rents (Less Reasonable Utility Allowance).....	18
7.3 Rental Vouchers.....	19
7.4 Rent Increases	20
8. [RESERVED.].....	20
9. GENERAL PROVISIONS AND WARRANTIES	20
9.1 Formation, Qualification and Compliance.....	20
9.2 Execution and Performance of Loan Documents.	21
9.3 Financial and Other Information.....	21
9.4 No Material Adverse Change.....	22
9.5 Tax Liability.....	22

9.6	Governmental Requirements	22
9.7	Rights of Others	22
9.8	Litigation.....	22
9.9	Bankruptcy.....	22
9.10	Information Accurate.....	22
9.11	Conflicts of Interest.....	22
9.12	Nonliability of City Officials and Employees.....	23
9.13	No Assignment.....	23
9.14	Applicable Law	23
9.15	Third Parties.....	23
9.16	Control of Property	23
10.	CONDITIONS FOR CONSTRUCTION	23
10.1	Permits and Approvals.....	23
10.2	Commencement and Completion of Construction.....	23
10.3	Change Orders	23
10.4	Entry and Inspection	24
10.5	Compliance with Section 3 Clause	24
10.6	Construction Information.....	25
10.7	Protection Against Liens.....	25
11.	FEDERAL (HOME PROGRAM) AND STATE REDEVELOPMENT COVENANTS.....	26
11.1	[Intentionally Omitted]	26
11.2	Qualification as Affordable Housing.....	26
11.3	Tenant and Participant Protection.....	26
11.4	[Intentionally Omitted]	26
11.5	Handicapped Accessibility.....	26
11.6	Use of Debarred, Suspended, or Ineligible Participants	26
11.7	Maintenance of Drug-Free Workplace	26
11.8	Lead-Based Paint	26
11.9	Affirmative Marketing	26
11.10	Equal Opportunity and Fair Housing.....	26
11.11	Property Standards.....	27
11.12	[Intentionally Omitted]	27
11.13	Other Program Requirements	27
11.14	Request for Disbursements of Funds	27
11.15	Eligible Costs.....	27
11.16	Records and Reports	27
11.17	Reserved.....	27
11.18	Conflict of Interest	27
11.19	Monitoring	27
11.20	Recertification of Tenant Income.	27
11.21	Other HOME Program Requirements.....	28
11.22	Controlling Covenants	28
12.	MAINTENANCE, MANAGEMENT, OPERATION, PRESERVATION AND REPAIR OF PROPERTY	28
12.1	Maintenance.....	28
12.2	Compliance with Laws	28

12.3	Taxes and Impositions	29
12.4	[Intentionally omitted]	29
12.5	Project Operating Budget.....	29
12.6	Replacement Reserve Account	30
13.	NONDISCRIMINATION COVENANTS	30
13.1	Obligation to Refrain from Discrimination.....	30
13.2	Nondiscrimination in Employment.....	30
13.3	Statutory Nondiscrimination Covenants	30
13.4	In Affordable Housing Restrictions	31
14.	ENVIRONMENTAL MATTERS.....	32
14.1	Representation and Warranty.....	32
14.2	Compliance with Environmental Laws.....	32
14.3	Presence of Hazardous Materials.....	32
14.4	Notice of Environmental Matters.....	32
14.5	Environmental Indemnification by the Vista Del Rio	32
15.	OTHER AFFIRMATIVE COVENANTS.....	33
15.1	Existence	33
15.2	Protection of Lien	33
15.3	Notice of Certain Matters.....	33
15.4	Further Assurances.....	33
15.5	Annual Audited Financial Statements.....	34
15.6	Audits and Access to Records.....	34
15.7	Termite Inspection Report	34
16.	OTHER NEGATIVE COVENANTS	34
16.1	Default on Senior Loan	34
16.2	Transfers of Interest in Property or Agreement.	34
17.	[RESERVED].....	36
18.	INDEMNIFICATION	36
18.1	Nonliability of Successor Agency and City.....	36
18.2	Indemnity	37
18.3	Reimbursement of City and Successor Agency	38
19.	INSURANCE, CASUALTY AND CONDEMNATION.....	38
19.1	Policies Required	38
19.2	City Attorney and/or City Risk Manager May Modify.....	39
19.3	Claims and Proceedings.....	39
19.4	Delivery of Proceeds to City/Successor Agency	39
19.5	Application of Casualty Insurance Proceeds	39
19.6	Method of Disbursement and Undisbursed Funds.....	40
19.7	Failure to Satisfy Conditions	40
19.8	Restoration	40
19.9	Condemnation; Treatment of Compensation	40
19.10	Waiver of Subrogation	41
20.	DEFAULTS AND REMEDIES	41
20.1	Events of Default	41
20.2	Remedies Upon Default.....	42

20.3	Cumulative Remedies: No Waiver	43
21.	MISCELLANEOUS.....	44
21.1	Obligations Unconditional and Independent.....	44
21.2	Notices	44
21.3	Survival of Representations and Warranties.....	45
21.4	[Intentionally Omitted].	45
21.5	Binding Effect; Assignment of Obligations.....	45
21.6	Prior Agreements; Amendments; Consents	45
21.7	Governing Law	45
21.8	Severability of Provisions	45
21.9	Headings	45
21.10	Conflicts.....	45
21.11	Time of the Essence	46
21.12	Conflict of Interest	46
21.13	Warranty Against Payment of Consideration	46
21.14	Nonliability of City and Successor Agency Officials and Employees	46
21.15	Plans and Data.....	46
21.16	Authority to Enter Agreement	46
21.17	Subsequent Approvals	46
21.18	City, Successor Agency and Authority Approvals and Actions	46

EXHIBIT LIST

Exhibit A	-	Legal Description of Property
Exhibit B	-	Affordability Restrictions on Transfer of Property
Exhibit C	-	City/HOME Loan Deed of Trust
Exhibit D	-	City/HOME Loan Note
Exhibit E	-	Agency Loan Deed of Trust
Exhibit F	-	Agency Loan Note
Exhibit G	-	Scope of Work/Budget
Exhibit H	-	Marketing Plan

LOAN AGREEMENT

This **LOAN AGREEMENT** (the “Agreement”) dated, for identification purposes only, as of March ___, 2012, is made and entered into by and among the **CITY OF SANTA ANA**, acting as successor agency to the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF SANTA ANA**, a public body, corporate and politic (the “Successor Agency”), the **CITY OF SANTA ANA**, a charter city and municipal corporation (referred to herein separately as the “City”), and **VISTA DEL RIO HOUSING PARTNERS LP**, a California limited partnership (“Vista Del Rio”), with reference to the following:

RECITALS:

A. City has received an allocation of funds from the United States Department of Housing and Urban Development (“HUD”) under the HOME Program to be used in accordance with applicable HOME Regulations (as those terms are defined below);

B. Among the purposes of the HOME Program are (1) to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans; and (2) to provide participating jurisdictions, on a coordinated basis, with the various forms of federal housing assistance, including capital investment, mortgage insurance, rental assistance, and other federal assistance, needed (a) to promote the development of partnerships among the federal government, states and units of general local government, private industry, and nonprofit organizations able to utilize all available resources to provide more of such housing, and (b) to expand the capacity of nonprofit Community Housing Development Organizations to develop and manage decent, safe, sanitary and affordable housing;

C. The Successor Agency is authorized by the Community Redevelopment Law of the State of California (Health and Safety Code sections 33000 *et seq.*) (“CRL”) to expend funds to increase the supply of very low and low-income housing available at affordable housing costs;

D. In part to further this goal, the Successor Agency has created the Merged Project Area, within the City (the “Project Area”), and adopted a Redevelopment Plan for the redevelopment of the Project Area. In accordance with Section 33334.2, *et seq.*, of the CRL, Successor Agency sets aside a portion of the tax increment revenues it receives from the Merged Project Area in a separate low and moderate housing fund, which Successor Agency uses for the construction, preservation, and rehabilitation of affordable housing for low income households;

E. Vista Del Rio has entered into an agreement (the “Disposition and Development Agreement” as amended by the “First Amendment to Disposition and Development Agreement”, “Second Amendment to Disposition and Development Agreement, and “Third Amendment to Disposition and Development Agreement”; collectively, the “DDA”) with the Successor Agency to acquire and develop approximately 3.2 acres of real property, within the Project Area, located generally at 1600 West Memory Lane in the City of Santa Ana, California, and legally described in Exhibit A attached hereto (the “Property”). The loans referenced herein shall assist Vista Del Rio with the cost of construction of said Property that is improved with a multifamily residential housing development.

F. In furtherance of the HOME Program, the CRL, and the Redevelopment Plan, Vista Del Rio has applied to City and Successor Agency for loans with which to:

1. provide deeper affordability for a longer term, as well as acquire and develop the Property, and;
2. thereafter to maintain, operate and professionally manage the Property as decent, safe, sanitary and affordable rental housing.

G. City desires to make a loan to Vista Del Rio pursuant to the terms and conditions set forth herein in order to make possible the construction of the Property, thereby eliminating blight while expanding the supply of decent, safe, sanitary and affordable housing.

H. Successor Agency desires to make a loan to Vista Del Rio pursuant to the terms and conditions set forth herein in order to make possible the construction of the Property, thereby eliminating blight while expanding the supply of decent, safe, sanitary and affordable housing.

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

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

1. DEFINITIONS AND INTERPRETATION

1.1 **Defined Terms.** All capitalized terms used herein, including, without limitation, in the Recitals above and in all other Project Documents, unless otherwise expressly defined, are defined where first used in this Agreement and/or as set forth in this Article 1. In the event of a conflict between the definitions set forth in the DDA, as amended, and the definitions set forth in this Agreement, the definitions set forth in this Agreement shall control.

“Affordable Housing” means housing operated in accordance with the requirements of 24 CFR 92.252 and the rents governed by California Health and Safety Code Section 50052.5.

“Affordable Rent” means the monthly rents that are set forth in more detail in Section 7 of this Agreement.

“Affordability Restrictions on Transfer of Property” means that certain Affordability Restrictions on Transfer of Property, which contains the covenants and restrictions pertaining to the operation, maintenance, and management of the Project as Affordable Housing for a term of not fewer than 55 years, which covenants and restrictions shall run with the land, to be executed by the Successor Agency, the City, and Vista Del Rio and recorded against the Property in the Official Records of the County. The Affordability Restrictions on Transfer of Property and the legally required notice thereof are attached hereto as Exhibit B and incorporated herein.

“Agency Loan” means a loan in the original principal amount of up to FOUR HUNDRED SIXTY-NINE THOUSAND DOLLARS (\$469,000.00) to be made to Vista Del Rio by the Successor Agency solely from tax increment moneys set aside in Successor Agency’s low and moderate income housing fund.

“Agency Loan Deed of Trust” means the deed of trust to be recorded against the Property in the Official Records of the County, in substantially the form attached hereto as Exhibit E,

which shall be executed by Vista Del Rio pursuant to Section 5.2.2 in order to secure the Agency Loan Note.

“Agency Loan Note” means that certain promissory note in the original principal amount of up to FOUR HUNDRED SIXTY-NINE THOUSAND DOLLARS (\$469,000.00) in substantially the form attached hereto as Exhibit F, which shall be executed by Vista Del Rio in favor of Successor Agency to evidence the obligation of Vista Del Rio to repay the Agency Loan.

“Area Median Income” and “AMI” means the median income for the Orange County, California PMSA as most recently determined by HUD.

“Authority” means the Santa Ana Housing Authority, a public body, corporate and politic.

“Building Permit” means the grading and building permit(s) issued by City and required for the Construction.

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

“Calendar Year” means each consecutive twelve (12) month period from January 1 to December 30.

“City” means the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Successor Agency where the context dictates, to the effect that Successor Agency shall have all the rights granted to the City hereunder other than the right to receive repayment of the City/HOME Loan.

“City/HOME Loan” means a loan in the original principal amount of up to ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) to be made to Vista Del Rio by City from HOME Program funds pursuant to Article 5 of this Agreement.

“City/HOME Loan Deed of Trust” means the deed of trust to be recorded against the Property in the Official Records of the County, in substantially the form attached hereto as Exhibit C, which shall be executed by Vista Del Rio pursuant to Section 5.1.2 in order to secure the City/HOME Loan Note.

“City/HOME Loan Note” means that certain promissory note in the original principal amount of up to ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) in substantially the form attached hereto as Exhibit D, which shall be executed by Vista Del Rio in favor of City to evidence the obligation of Vista Del Rio to repay the City/HOME Loan.

“Close of Escrow” shall mean the date upon which the Deeds of Trust are recorded in the Official Records of the County.

“Closing Statement” means the final statement of Vista Del Rio’s Escrow account for the purchase of the Property pursuant to the DDA.

“Construction” means the demolition and construction activities required to construct the 41 residential unit, multi-family project specified in City Site Plan Review No. 2009-02.

“Construction Contract” means each and every contract between Vista Del Rio, the General Contractor, and/or any subcontractor for the construction of the Improvements, or any part thereof, including construction of any on-site or off-site improvements included in the Scope of Development, the land use entitlement approved by the City. The Construction Contract between Vista Del Rio 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. Each Construction Contract shall be reviewed and reasonably approved (or disapproved) by Executive Directors, with each contract to include: (i) a full recitation of Section 3 and the Section 3 Clause with an express acknowledgement and agreement by the General Contractor and each subcontractor, as applicable, to fully comply with the Section 3 Clause, (ii) an express acknowledgement and agreement by the General Contractor and each subcontractor, as applicable, that as a condition precedent to the final payment under its contract, the General Contractor or subcontractor, as applicable, shall provide written evidence, in form reasonably satisfactory to the Executive Directors and/or HUD, that it and all its subcontractor(s) have complied with the Section 3 Clause in completing the development of the Project, and (iii) reference to all other applicable federal regulations and laws based on the final federal funding sources, if any, to which such General Contractor or subcontractor, as applicable, must comply in undertaking the construction and development of the Project; provided it is understood by the parties that it is and shall remain primarily the Vista Del Rio’s obligation to obtain and submit all required Section 3 Clause documentation. The Construction Contract shall include any and all provisions required by the CRL, the Section 8 requirements and the HOME Regulations, as applicable.

“Construction Lender” means the maker of the Construction Loan.

“Construction Loan” means that certain construction loan from the Construction Lender to Vista Del Rio.

“County” means the County of Orange, California.

“Deeds of Trust” means the Agency Loan Deed of Trust and the City/HOME Loan Deed of Trust.

“DDA” means that Disposition and Development Agreement entered into by the Community Redevelopment Agency of the City of Santa Ana, as predecessor in interest to the City of Santa Ana, acting as Successor Agency, Authority and Vista Del Rio and dated as of July 20, 2009, as amended by the First Amendment to Disposition and Development Agreement dated as of March 15, 2010, that Second Amendment to Disposition and Development Agreement dated as of December 20, 2010, and that Third Amendment to Disposition and Development Agreement dated as of March 21, 2011.

“Environmental Laws” means any federal, state or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials including, but not limited to: (i) sections 25115, 25117, 25122.7, or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-

Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Section 311 of the Clean Water Act (33 U.S.C. section 1317), (vi) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. section 6901, *et seq.* (42 U.S.C. section 6903, (vii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601 *et seq.*, or (viii) any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

“**Escrow**” means Escrow No. 3727429.

“**Escrow Holder**” means First American Title Company in Santa Ana, California.

“**Event of Default**” has the meaning set forth in Section 20.1.

“**Executive Directors**” means, collectively, the City Manager of the City and/or the Executive Director of the Successor Agency, and/or the Executive Director of the Authority, and/or the authorized designee(s) of either of them.

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

“**General Contractor**” means the general contractor to be hired by Vista Del Rio to engage and supervise the subcontractors in the performance and completion of the construction of the Improvements 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 land use entitlement to be approved by City. The General Contractor shall be reasonably acceptable to and approved by the Executive Directors, in their 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, subject to all applicable federal, state and local laws, rules and regulations, including without limitation the HOME Regulations, Section 8 Requirements, Section 3, the CRL, and all other applicable Governmental Requirements.

“**General Partner(s)**” means the General Partners of Vista Del Rio.

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

“**Governmental Requirements**” means all applicable 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 with jurisdiction over property within the City including the Authority, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Successor Agency, Vista Del Rio or Property, including all applicable federal, state, and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, applicable prevailing wage requirements, the City zoning and development

standards, City permits and approvals, building, plumbing, mechanical and electrical codes, as they apply to work undertaken pursuant to this Agreement, and all other provisions of the City and its Municipal Code (as they apply to work undertaken pursuant to this Agreement), and the Unruh Civil Rights Act, Civil Code § 51 *et seq.*

“Grant Deed” means a grant deed for the conveyance of the Property to Vista Del Rio in a form reasonably acceptable to Vista Del Rio and the Executive Directors.

“HAP Contract” shall mean, collectively, the initial “Agreement to Enter into Housing Assistance Payments Contract” (such contract may be referred to as the “AHAP”) and the initial Housing Assistance Payments Contract to be entered into by and between Authority and Vista Del Rio expressly subject to all Section 8 Requirements and other applicable federal laws and regulations and pursuant to which Authority will agree to provide Project Based Section 8 assistance to a specified number of Units at the Project in accordance with the DDA, as amended. Pursuant and subject to HR3221, enacted July 30, 2008, the HAP Contract is expected to be for a term of effectiveness of fifteen (15) years, expressly subject to all Section 8 Requirements. Renewals, if any, of the HAP Contract by HUD (and Authority) beyond the first 15 years thereof are and shall remain subject to the sole and absolute discretion of the Executive Directors and the Section 8 Requirements, and all provisions of this Agreement, including Section 7.3, *et seq.* Notwithstanding anything to the contrary set forth herein or in any other Project Document, the Partnership Agreement, the Senior Loan Documents, or any other document or instrument entered into by Vista Del Rio, Authority and/or any third party(ies) relating to the Project or the Property, nothing set forth in any such instruments shall modify, amend, or alter be construed or deemed to modify, amend or alter any provision or term of the HAP Contract.

“Hazardous Materials” means any substance, material, or waste which is or becomes, regulated by any local governmental authority, 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,” “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. Section 1317), (ix) 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) or (x) 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.*

“HOME Compliance Period” means the later to occur of (a) twenty (20) years from the later to occur of (1) issuance of the Release of Construction Covenants or (2) the date on which City reports the Construction of the Project is complete to HUD; or (b) payment in full of all of principal and all accrued interest on the HOME Loan.

“HOME Program” shall mean the Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, specifically the HOME Investment Partnership Act, 42 U.S.C. §12701, *et seq.* and the implementing HOME Regulations at 24 CFR §92.1, *et seq.*, as such law now exists and as it may hereafter be amended, to the extent applicable to the Project.

“HOME Regulations” shall mean the implementing regulations of the HOME Program set forth at 24 CFR §92.1, *et seq.* as such regulations now exist and as they may hereafter be amended, to the extent applicable to the Project. Vista Del Rio covenants hereunder to comply with the CRL, the Section 8 requirements, and all applicable HOME Regulations in the performance of this Agreement and the other Project Documents, whichever are more restrictive. In implementation of these requirements, this Agreement, the Project, and all eligible contributions and expenditures hereunder shall conform to the following:

a. The housing developed hereunder does and shall qualify as affordable housing under 24 CFR §92.252 because each Unit shall be rented at an Affordable Rent to households whose annual income is in compliance with the HOME Regulations; and

b. This Agreement serves as the written agreement that imposes and enumerates (by meeting or exceeding) all of the affordability requirements from 24 CFR §92.252; the property standards requirements of 24 CFR §92.251; and income determinations made in accordance with 24 CFR §92.203.

“HOME Units” shall mean eleven (11) of the Units which shall be designated as HOME Units and shall be subject to all applicable HOME Regulations. All HOME Units shall be “Low HOME” units pursuant to the HOME Regulations. The HOME Units shall be “fixed” HOME Units, such that the specific Units designated as HOME Units shall not change. Vista Del Rio shall designate eleven (11) of the Units as HOME Units, subject to approval by the Executive Directors and in accordance with this paragraph, the HOME Program, and the HOME Regulations.

“HUD” means the United States Department of Housing and Urban Development and any successors or assigns thereof.

“Improvements” means all improvements and fixtures now and hereafter comprising any portion of the Property, including, without limitation, landscaping, trees and plant materials; and offsite improvements (including, without limitation, streets, curbs, storm drains, and adjacent street lighting).

“Indemnitees” means City, Successor Agency, and Authority and their past and present elected officials, officers, employees, attorneys, contractors, elective and appointive boards and commissions, representatives, agents, and volunteers..

“Limited Partner” means the Limited Partners of Vista Del Rio, and their successors and assigns.

“Loan Documents” means, collectively, this Agreement, the Notes, the Deeds of Trust, the Affordability Restrictions on Transfer of Property, and any other agreement, document, or instrument that the City or Successor Agency requires in connection with the execution of this Agreement or from time to time to effectuate the purposes of this Agreement.

“**Loans**” means the City/HOME Loan and the Agency Loan.

“**Notes**” means the City/HOME Loan Note and the Agency Loan Note.

“**Partnership Agreement**” means that certain First Amended and Restated Agreement of Limited Partnership of Vista Del Rio Housing Partners LP, to be executed at the Closing, as such agreement may be amended in the future with the approval of the Executive Directors.

“**Portable Voucher**” shall mean Section 8 tenant-based vouchers, certificates of family participation under 24 CFR part 882 (Rental Certificate Program), rental vouchers under 24 CFR part 887 (Rental Voucher Program), and comparable documents evidencing participation in a program pursuant to the HOME Investment Partnership Act, 42 U.S.C. §12701, *et seq.* and the implementing regulations located at 24 CFR part 92, as such now exist and as may hereafter be amended, or other tenant-based rental assistance programs.

“**Project**” means the acquisition, construction, operation, maintenance, and management of the Property as Affordable Housing in accordance with the Scope of Work, this Agreement and the other Project Documents.

“**Project Based Section 8**” shall mean housing choice vouchers held by the City and/or Authority pursuant to annual and/or multi-year contribution contract(s) with HUD, which may be used to assist specific housing units as authorized by and subject to Section 8(o)(13) of the U.S. Housing Act of 1937, 42 U.S.C. Section 1437f(o)(13), and the implementing regulations set forth at 24 CFR Part 983, and HR3221, enacted July 30, 2008. Pursuant to Section 311.7 of the DDA, Authority has agreed to provide eight (8) Project Based Section 8 vouchers as assistance for an equal number of Units, subject to: (1) all Section 8 Requirements, (2) the fulfillment or waiver of the Agency’s Conditions Precedent, including without limitation Vista Del Rio securing financing in accordance with Section 311 of the DDA, and (3) the provisions of Section 311.7 of the DDA. In all events, Authority’s obligation to provide Project Based Section 8 assistance to the Project is expressly conditioned upon the satisfactory completion of environmental review and the Authority’s receipt of a release of federal funds from HUD. Accordingly:

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of federal funds, and that such commitment of funds or may occur only upon satisfactory completion of environmental review and receipt by Authority and/or City, as applicable, of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any federal funds to the Project is conditioned on Authority’s and/or City’s, as applicable, determination to proceed with, modify or cancel the Project Based Section 8 funding based on the results of a subsequent environmental review.

The parties hereto are further prohibited from undertaking or committing any federal funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance; the parties understand that the violation of this provision may result in the denial of any federal funds under this Agreement.

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

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

“Project Documents” means this Agreement, the Disposition and Development Agreement, and the other Loan Documents, the Affordability Restrictions, the Agreement to enter into Housing Assistance Payments Contract and Housing Assistance Payments Contract to be entered into by the Authority and Vista Del Rio in connection with the Authority’s provision of Project Based Section 8 (defined in the DDA) assistance to Project, and all other documents, agreements and instruments to be executed by Vista Del Rio in furtherance of the Project.

“Property” means the approximately 2.74 acres of real property, within the Project Area, located generally at 1600 West Memory Lane in the City of Santa Ana, California. The Property is more fully described in the “Legal Description” of the Property attached hereto as Exhibit A and incorporated herein by reference.

“Release of Construction Covenants” means the Release of Construction Covenants described in Section 310 of the DDA, a form of which is attached to the DDA as Attachment No. 6.

“Section 504” means section 504 of the federal Rehabilitation Act of 1973, codified at 29 U.S.C. § 701 *et seq.*, and its implementing regulations located at 24 CFR Part 8.

“Section 8 Requirements” means Section 8(o)(13) of the U.S. Housing Act of 1937, 42 U.S.C. Section 1437f(o)(13), and the implementing regulations set forth at 24 CFR Part 983.

“Senior Lender” means JPMorgan Chase Bank, N.A. or any other holder of the Senior Loan Note(s).

“Senior Loan” shall mean the senior loan being made by the Senior Lender, concurrent to the Loans for payment of a portion of the Construction costs incurred by Vista Del Rio relating to the Project, as approved by the Executive Directors, and shall include any subsequent loan that refinances the initial Senior Loan.

“Senior Loan Deed of Trust” means the deed of trust securing the Senior Loan by encumbering the Property.

“Senior Loan Documents” means, collectively, the loan agreement governing the Senior Loan, the Senior Loan Note, the Senior Loan Deed of Trust, and any other agreement, document or instrument that the Senior Lender requires in connection with the Senior Loan, all of which shall be subject to the approval of the Executive Directors.

“Senior Loan Note” means the promissory note evidencing the Senior Loan from the Senior Lender.

“Successor Agency” means the City of Santa Ana, acting as Successor Agency to the Community Redevelopment Agency of the City of Santa Ana, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the CRL.

The principal office of the Successor Agency is located at 20 Civic Center Plaza, Santa Ana, California, 92702. Successor Agency shall also refer to the City where the context dictates, to the effect that City shall have all rights granted to the Successor Agency hereunder.

“**Term**” the terms and conditions contained herein shall remain in effect for fifty-five (55) years, from the date the Release of Construction Covenants is recorded against the Property in the Official Records of the County.

“**Units**” means the forty (40) for-rent, multi-family residential units (excepting the single manager's unit) in the Project.

“**Very Low Income**” means an adjusted income which does not exceed fifty percent (50%) of the Area Median Income for the Orange County, California PMSA, adjusted for household size, as annually published by HUD.

“**Vista Del Rio**” means Vista Del Rio Housing Partners LP, a California limited partnership, and its successors and assigns.

“**Vista Del Rio’s Representative**” shall mean the Chief Executive Officer of the General Partner of Vista Del Rio or his/her designee.

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

1.3 **References and Other Terms.** Any reference to this Agreement or any Loan Document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.”

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

2. **[RESERVED]**

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

A Scope of Work and Project Budget for the Property are attached hereto as Exhibit G. Any material change to the Scope of Work and/or Project Budget requested by Vista Del Rio shall be subject to the prior written approval of the Executive Directors. The design and Construction of the Project shall at all times comply with the DDA, the Scope of Development, the Scope of Work, the Project Budget, Section 504, the CRL, the HOME Regulations, the Section 8 Requirements, and all applicable Environmental Laws and Governmental Requirements.

4. **[RESERVED]**

5. **LOANS:**

5.1 **City/HOME Loan.**

5.1.1 **Amount and Purpose.** Subject to the terms and conditions of this Agreement, City agrees to make a loan of HOME Program funds to Vista Del Rio in the original principal amount of up to ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) (the "City/HOME Loan") for the Construction of the Project.

5.1.2 **City/HOME Note and Deed of Trust.** The City/HOME Loan shall be evidenced by the City/HOME Loan Note in substantially the form attached hereto as Exhibit C. The City/HOME Loan shall be secured by the City/HOME Loan Deed of Trust in substantially the form attached hereto as Exhibit B. The City/HOME Loan Deed of Trust shall be a deed of trust encumbering the Property, subordinate only to the Senior Loan(s) made to Vista Del Rio.

5.1.3 **City/HOME Loan Terms.** The terms and conditions of the City/HOME Loan are as set forth in the City/HOME Loan Note which is a residual receipts note. The City/HOME Loan Note shall be subordinate only to the Senior Loan, and shall continue in full force and effect for the entire HOME Compliance Period.

5.1.4 **Use of City/HOME Loan Proceeds.** Proceeds of the City/HOME Loan shall be used only for costs incurred by Vista Del Rio to construct the Improvements as set forth in the approved Project Budget.

5.1.5 **Construction Interest Savings.** Section 505.1 of the Disposition and Development Agreement is hereby deleted from the and shall not apply to repayment of the City/HOME Loan.

5.2 **Agency Loan.**

5.2.1 **Amount and Purpose.** Subject to the terms and conditions of this Agreement, Successor Agency agrees to make the Agency Loan to Vista Del Rio from tax increment money in the original principal amount of up to FOUR HUNDRED SIXTY-NINE THOUSAND DOLLARS (\$469,000.00) (the "Agency Loan") for the Construction of the Project. The Agency Loan does not include the \$100,000 reimbursement to be made by the Successor Agency to Vista Del Rio pursuant to Section 201 of the DDA for the extra costs incurred by Vista Del Rio for the construction of the entry-way to the Project in excess of City Municipal Code requirements.

5.2.2 **Agency Note and Deed of Trust.** The Agency Loan shall be evidenced by the Agency Loan Note in substantially the form attached hereto as Exhibit F. The Agency Loan shall be secured by the Agency Loan Deed of Trust in substantially the form attached hereto as Exhibit E. The Agency Loan Deed of Trust shall be a deed of trust encumbering the Property, subordinate to the Senior Loan(s) and the City/HOME Loan made to Vista Del Rio.

5.2.3 **Agency Loan Terms.** The terms and conditions of the Agency Loan are as set forth in the Agency Loan Note which is a residual receipts note. The Agency Loan Note shall be subordinate only to the Senior Loan and the City/HOME Loan, and shall continue in full force and effect until the Agency Loan is repaid in full.

5.2.4 **Use of Agency Loan Proceeds.** Proceeds of the Agency Loan shall be used only for costs incurred by Vista Del Rio to construct the Improvements as set forth in the approved Project Budget.

5.3 **Other Terms and Conditions of the Loans.**

5.3.1 The Agency Loan Note and City/HOME Loan Note shall become immediately due and payable, in the event of any of the following:

(a) failure to complete the Project within the time set forth in the Schedule of Performance subject to Force Majeure or other extensions as allowed in this Agreement;

(b) violation of any of the use covenants and restrictions contained in this Agreement, the Affordability Restrictions on Transfer of Property, or any other Project Document after the expiration of any applicable notice and cure periods; or

(c) an Event of Default by Vista Del Rio under this Agreement or any other Project Document which is not timely cured after expiration of any applicable notice and cure periods pursuant to the terms of this Agreement or the applicable Project Document.

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

6.1 **Conditions Precedent.** City's and Successor Agency's respective obligations to disburse any amount of the Loans and Authority's obligation to provide Project Based Section 8 assistance to the Project is subject to the satisfaction, or waiver by the Executive Directors, of the following conditions precedent:

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

(i) the DDA;

(ii) the Grant Deed;

(iii) the City/HOME Loan Note;

(iv) the City/HOME Loan Deed of Trust;

(v) the Agency Loan Note;

(vi) the Agency Loan Deed of Trust; and

(vii) The Affordability Restrictions on Transfer of Property.

(b) **Title Insurance.** Successor Agency and City shall each have received a 2006 ALTA Lender's loan policy of title insurance, or evidence of a commitment therefore satisfactory to City, issued by First American Title Insurance Company and in form and substance satisfactory to City, together with all endorsements and binders required, naming City and Successor Agency as the insured, in a policy amount of not less than the amount of the Loans, showing Vista Del Rio as the

fee owner of the Property and insuring the Deeds of Trust to be valid priority liens on the Property. The Notes and Deeds of Trust shall be subordinate to the Senior Loan Note and Senior Loan Deed of Trust. The Affordability Restrictions on Transfer of Property shall take priority over the Loan Documents pursuant to City/Successor Agency's request.

(c) Affordability Restrictions on Transfer of Property. Vista Del Rio shall have delivered to the Escrow Holder, in the form attached hereto as Exhibit B, the Affordability Restrictions on Transfer of Property pursuant to which, among other things, Vista Del Rio agrees that the Property shall be used only for decent, safe, sanitary and affordable rental housing pursuant to the affordability requirements of Code of Federal Regulations ("CFR") section 92.252 or 92.254 and California Health and Safety Code sections 50052.5 and 33334.3, as applicable, and all other applicable provisions of the HOME Program, the CRL, and the Section 8 Requirements.

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

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

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

(g) Representations and Warranties. The representations and warranties of Vista Del Rio contained in this Agreement and the other Loan Documents shall be correct as of the Close of Escrow as though made on and as of that date, and if requested by the Executive Directors, City and Successor Agency shall have received a certificate to that effect signed by Vista Del Rio's Representative.

(h) No Default. No Event of Default by Vista Del Rio 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 Vista Del Rio under this Agreement, and if requested by the Executive Director, City shall have received a certificate to that effect signed by Vista Del Rio's Representative.

6.2 Disbursement Procedures for Loans. The Loan proceeds shall be disbursed to finance the construction of the Project. The Loan proceeds shall not be used for any purpose other than for development related costs incurred by Vista Del Rio, including developer's fee and soft costs related to development of the Project, all in accordance with the approved Project Budget, with such costs all subject to the prior review by the Executive Directors. All disbursements shall be made as payments and/or reimbursements to Vista Del Rio for costs actually and reasonably incurred by Vista Del Rio for the construction of the Improvements in accordance with the Project Budget, based on detailed invoices and/or bills received from the General Contractor, materials suppliers, consultants and subcontractors that have performed work on the Project, and in accordance with the Intercreditor Agreement by and among the Successor Agency, City, Vista Del Rio, and Senior Lender, to be executed at the Closing. No portion of the Loans shall be disbursed prior to the Close of Escrow. Subject to satisfaction of all Conditions Precedent set forth herein, including submittal of

detailed invoices and bills documenting costs incurred, as described above, proceeds of the Loans may be disbursed to Vista Del Rio to reimburse Vista Del Rio for Construction costs incurred prior to the Close of Escrow. Vista Del Rio, Successor Agency and City shall agree on a draw request schedule to ensure that the Successor Agency and City are provided with frequent updates regarding the status of the construction of the Improvements, the status of expenditures in accordance with the Project Budget, and the status of invoices submitted by and payments to the General Contractor, suppliers, consultants, and subcontractors performing work at the Project.

6.3 **First Disbursement.** City's and Successor Agency's obligation to make the first disbursement of the proceeds of the Loans is subject to satisfaction of the following conditions precedent:

(a) **General Contractor.** If the Executive Directors have not yet approved the General Contractor, the Executive Directors shall have approved the identity and qualifications of the General Contractor.

(b) **Construction Contract.** If the Executive Directors have not yet approved the Construction Contract, the Executive Directors shall have approved the Construction Contract.

6.4 **Termination for Failure of Condition.** If (a) any of the conditions set forth herein are not timely satisfied or waived by the Executive Directors and after the expiration of any applicable notice and cure periods, and (b) neither City nor Successor Agency are in default under this Agreement, City and Successor Agency may terminate this Agreement without any further liability on its part by giving written notice of termination to Vista Del Rio. Upon the giving of such notice, all principal, interest and other amounts owing under the Notes shall be immediately due and payable, regardless of any other specified due date.

6.5 **Any Disbursement.** City's and Successor Agency's obligation to make any disbursement of the proceeds of the Loans (including the first and final disbursements) is subject to the satisfaction of the following conditions precedent:

(a) **Satisfactory Progress.** The Executive Directors shall be satisfied, based on their own inspections or other reliable information, that the Construction is progressing satisfactorily in conformance with all applicable laws and other requirements (including HOME regulations).

(b) **Condition of Title.** Either (i) the Executive Directors reasonably believe that no event has occurred since the Close of Escrow that would give rise to a colorable claim against the Property (e.g., a mechanic's lien) superior to the claim of City and Successor Agency against the Property with respect to the subject disbursement, or (ii) City and Successor Agency must have received, at Vista Del Rio's expense but payable out of the Construction Proceeds, from the title insurer who issued City's and Successor Agency's LP-10 Title Policies, all endorsements thereto then reasonably required by the Executive Directors (including, without limitation, CLTA Form 122 – priority of advance endorsements).

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

(d) No Default. No Event of Default by Vista Del Rio shall remain uncured 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 Vista Del Rio.

6.6 Final Disbursement. City's and Successor Agency's obligation to disburse that portion of the proceeds of the Loans retained pursuant to Section 6.12 is subject to the satisfaction of the following additional conditions precedent:

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

(b) Certificate of Completion and Release of Construction Covenants. Any portion of the construction requiring inspection or certification by any Governmental Authority shall have been inspected and certified as complete. Vista Del Rio shall request that the Building Department issue a Certificate of Completion pursuant to the City's normal procedures and requirements, a copy of which shall be delivered to the Executive Directors, in order for final disbursement to occur. In addition, the Successor Agency shall have issued to Vista Del Rio the Release of Construction Covenants pursuant to Section 310 of the DDA.

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

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

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

6.7 Waiver of Conditions. The conditions set forth pertaining to City's or Successor Agency's obligation to make disbursements of the proceeds of the Loans are for City's and Successor Agency's benefit only and the Executive Directors may waive all or any part of such rights by written notice to Vista Del Rio.

6.8 Disbursement Requests. The proceeds of the Loans shall be disbursed on a line-item by line-item basis in accordance with the Project Budget and subject to the conditions in this section. In no event shall City or Successor Agency have any obligation to disburse any amount for any item in excess of the amount allocated to such item in the Project Budget. Disbursements shall be made only upon Vista Del Rio's written request in the form of a Disbursement Request showing all costs which Vista Del Rio intends to fund with such disbursement, itemized in such detail as City or Successor Agency may reasonably require, accompanied in each case by (a) invoices and lien releases satisfactory to City or Successor Agency, including in any event partial lien releases executed by each contractor and subcontractor who has received any payment for work performed, and (b) all other documents and information reasonably required by City and Successor Agency. Disbursement Requests shall be submitted no less than ten (10) Business Days prior to the date of the requested disbursement, and shall not be submitted more often than monthly.

Prior to each disbursement by City or Successor Agency of proceeds of the Loans, Vista Del Rio shall deliver to City and/or Successor Agency and to the Construction Lender a draw request ("Draw Request"), and all required supporting information as set forth in the Loan Documents or as

otherwise reasonably required by City, Successor Agency, or the Construction Lender in order to provide information for evaluating the requested disbursement pursuant to customary construction lending practices of institutional lenders in Southern California.

City, Successor Agency, and the Construction Lender shall notify the others and Vista Del Rio of approval or disapproval of each Draw Request within five (5) business days after receipt of the Draw Request, using the Bank's "Disbursement/Change Order Approval Notice". City, Successor Agency, and the Construction Lender shall have the right, but not the obligation, to discontinue processing Draw Requests unless and until receipt of notification from the other of approval or disapproval of each outstanding Draw Request.

6.9 **Manner of Disbursement.** City and Successor Agency may make any disbursement by check payable to Vista Del Rio; or on a voucher basis; or by check payable jointly to Vista Del Rio and any contractor, subcontractor or other claimant; or directly to any such claimant; or by any other means reasonably selected by City, or Successor Agency, as applicable.

6.10 **Cost Overruns.** In the event that, at any time and for any reason, (a) the actual cost reasonably estimated by City, Successor Agency, or Vista Del Rio to be required to complete all matters included in any line item by \$10,000.00 in the Project Budget exceeds the amount allocated to that line item in the Project Budget, (b) Construction costs for any matters not covered by a specific line item have been or will be incurred in excess of \$10,000.00, or (c) the undisbursed portion of the proceeds of the Loans is or may be insufficient to pay all Construction costs that may be payable under the Loan Documents or otherwise in connection with the Construction, Vista Del Rio shall, within ten (10) days after it receives written notice thereof from City or Successor Agency of any of the foregoing matters, do one or more of the following:

(a) provide satisfactory evidence to City and/or Successor Agency that Vista Del Rio has previously paid such excess or otherwise provided for such insufficiency (collectively, the "Excess Cost") with funds from a source other than the Loans;

(b) reallocate sufficient funds to pay the Excess Cost from funds allocated to "Contingency" in the Project Budget; provided, however, that the Executive Directors' reasonable consent to any such reallocation shall be required; or

(c) deposit an amount equal to the Excess Cost in a non-interest bearing account (the "Overrun Account") with the Construction Lender from which withdrawals may be made only with the consent of the Executive Directors but which will be exhausted prior to any further disbursement for any line item, so that any resulting surplus in any line item of the Project Budget will then be reallocated to the line item(s) in which the Excess Costs are expected to be incurred.

Neither Successor Agency nor City shall have any obligation to make further disbursements until Vista Del Rio has paid or otherwise provided for the overrun as required above. Amounts deposited by Vista Del Rio in the Overrun Account for any Excess Costs shall be disbursed by the Construction Lender prior to the disbursement of any remaining proceeds of the Loans.

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

6.12 **Retainage.** City and Successor Agency will withhold a Retainage of 10% from each Disbursement for each of the Construction cost line items of the Project Budget until all conditions to the final disbursement of Construction costs have been satisfied. City shall not retain funds for building materials purchased by Vista Del Rio for which Vista Del Rio supplies documentation to City proving payment in full or for soft costs.

6.12.1 **Holdback.** The retainage otherwise available for disbursement shall be subject to a holdback of one hundred twenty-five percent (125%) of the estimated cost (as determined by the Executive Directors) for “punch-list” items. Such holdback will be released when all punch-list items have been completed to the satisfaction of City and Successor Agency.

6.13 **Waiver of Disbursement Conditions.** Unless City otherwise agrees in writing, the making by City of any disbursement with knowledge that any condition to such disbursement is not fulfilled shall constitute a waiver of such condition only with respect to the particular disbursement made, and such condition shall be condition to all further disbursements until fulfilled.

6.14 **Modification of Disbursement Conditions and Procedures.** The Executive Directors shall have the authority to modify the disbursement conditions and procedures set forth herein in order to conform them to the payment provisions of the approved Construction Contract.

6.15 **Closing Costs and Fees.** Vista Del Rio shall pay (a) all escrow fees and charges, (b) all recording fees and charges on any document recorded pursuant to this Agreement, and (c) the premium for the City’s and Successor Agency’s policies of title insurance required hereunder.

7. **AFFORDABILITY REQUIREMENTS, USE AND MAINTENANCE OF THE PROPERTY**

7.1 **Use Covenants and Restrictions.**

A. Vista Del Rio agrees and covenants, which covenants shall run with the land and bind Vista Del Rio, its successors, its assign and every successor in interest to the Property that Vista Del Rio will make all Units on the Property available solely to Extremely Low Income and Very Low Income households at Affordable Rents. The HOME Regulations applicable to the eleven (11) HOME Units shall be enforced during the entire HOME Compliance Period. Upon expiration of the HOME Compliance Period, the City and Successor Agency will enforce affordability of said units with the same income and rent restrictions as the other units, pursuant to the requirements of Section 50052.5 of the Health and Safety Code and the CRL. Vista Del Rio further covenants and agrees that the Property shall be developed, operated, managed and maintained in accordance with Specific Development No. 83; Amendment Application 08-11, as approved by the City of Santa Ana Planning and Building Successor Agency and by the Santa Ana City Council pursuant to Ordinance No. NS-2790 of the City of Santa Ana, adopted August 3, 2009.

B. The Project shall consist of forty income restricted units (and one unrestricted manager’s unit). There shall be eleven (11) HOME Units. The eleven HOME Units will be fixed units and shall be distributed throughout the complex with comparable amenities to the other Units.

C. At initial lease up, all households selected to rent and occupy the HOME Units shall be Very Low Income households and all households selected to rent and occupy the remaining units shall be Extremely Low Income and Very Low Income households, in accordance

with the schedule set forth in Section 7.2 below. All rental increases shall be in conformance with federal and state law and approved by the Executive Directors.

D. The rent charged for the on-site property manager’s unit shall not be restricted.

E. Affordable Rents charged to tenants shall be governed by California Health and Safety Code Sections 50052.5, 50053(b)(1), and 50053(b)(2), and as provided in the HOME Regulations 24 CFR section 92.2, whichever is less.

7.2 **Affordable Gross Starting Rents (Less Reasonable Utility Allowance)**. Initial rents may be recalculated to allowable rental amounts at the time of initial lease-up following completion of Construction in accordance with any changes in allowable rent and income tables as published by HUD and the State of California, Department of Housing and Community Development.

A. **Successor Agency and HOME Units**

Successor Agency, City, and Vista Del Rio agree that the breakdown of unit affordability for the Units shall be as follows, under this Agreement:

The rents charged at the Project must comply with the lowest and most restrictive of the following standards:

1. The calculation methodology defined in (i) Section 50053(b)(1) for Extremely Low Income Households, or (ii) Section 50053(b)(2) for Very Low Income Households;
2. The rents published for Low Income Housing Tax Credit (Tax Credit) projects by the California Tax Credit Allocation Committee (TCAC); and
3. With respect to the HOME Units, the Low HOME rents published by HUD.

Successor Agency, City, and Vista Del Rio agree that effective 2011 the initial maximum gross monthly Affordable Rents and the breakdown of unit affordability for the Extremely Low Income Units shall be as follows:

	<i># of Units (Successor Agency)</i>	<i># of HOME units</i>	<i>Max. Gross Monthly Rents*</i>
Studio Extremely Low Units	4	2	\$485
One Bedroom Extremely Low Units	8	2	\$519
Two Bedroom Extremely Low Units	2	2	\$623

Successor Agency, City, and Vista Del Rio agree that the Year 2011 initial maximum gross monthly Affordable Rents and the breakdown of unit affordability for the Very Low Income Units shall be as follows:

	<i># of Units (Successor Agency)</i>	<i># of HOME units</i>	<i>Max. Gross Monthly Rents*</i>
Studio Very Low Units	7	2	\$813
One Bedroom Very Low Units	8	2	\$871
Two Bedroom Very Low Units	0	1	\$1,046

*Utilities Allowances must be deducted from the Maximum Gross Monthly Affordable Rent. The applicable utilities allowances are determined periodically by the Authority.

Maximum Gross Monthly Rents shall be recalculated following issuance of a Release of Construction Covenants but prior to the time of initial lease-up in accordance with any changes in allowable rent and income tables as published by HUD and the State of California, and shall be as approved by the Executive Directors in writing in accordance with this Section. Such Maximum Gross Monthly Rents charged to the first tenants of the 40 Assisted Units shall constitute the Initial Rental Schedule.

7.3 Rental Vouchers.

(a) In the event Vista Del Rio rents a Unit to a household holding a Portable Voucher, the rental agreement (or lease agreement, as applicable) between Vista Del Rio, as landlord, and the tenant shall expressly provide that the monthly rent charged shall be the Affordable Rent required hereunder for the Unit (not Section 8 Rent, as defined below) and that the rent collected directly from such tenant holding a portable rental voucher shall be not more than 30% of the tenant's actual gross income pursuant to the applicable voucher program regulations; i.e., the rent charged to such tenant under the rental agreement shall be the Affordable Rent chargeable hereunder and not fair market rent for the area or rent determined by a rent-reasonableness review performed in accordance with all applicable statutes and regulations applicable to Project Based Section 8 assistance ("Section 8 Rent"), including without limitation Section 8(o)(13) of the U.S. Housing Act of 1937, 42 U.S.C. Section 1437f(o)(13), and the implementing regulations set forth at 24 CFR Part 983 (collectively, "Section 8 Program Regulations"), as would otherwise be permitted under the applicable Portable Voucher program. Thus, the subsidy payment to Vista Del Rio under any Portable Voucher shall not exceed the difference between thirty percent (30%) of the tenant's actual gross income and Affordable Rent chargeable for the applicable Unit hereunder (and under the Affordability Restrictions).

(b) The parties acknowledge that Vista Del Rio and Authority intend to enter into the HAP Contract and that the Senior Lender is anticipated to underwrite a Senior Loan based in part on the Project Based Section 8 subsidy to the Project under the HAP Contract, including payments thereunder equal to the difference between 30% of each tenant household's actual gross income and Section 8 Rent. In the event that, during the Term hereof, a new Housing Assistance Payments Contract is proposed to be entered into (or is entered into) with respect to any Units at the Project not already receiving Project Based Section 8 assistance under the HAP Contract (or those Units, after expiration of the HAP Contract), Vista Del Rio shall cause the rental agreement (or lease agreement, as applicable) for each Unit receiving Project Based Section 8 assistance pursuant to such new Housing Assistance Payments Contract (but not the HAP Contract) to provide that the monthly rent charged under such rental agreement (or lease agreement, as applicable) shall not exceed the Affordable Rent required hereunder for the Unit (not Section 8 Rent). Thus, the subsidy payment to

Vista Del Rio under any project-based rental voucher (other than with respect to the subsidy pursuant to the HAP Contract) shall not exceed the difference between thirty percent (30%) of the tenant's actual gross income and Affordable Rent chargeable for the applicable Unit hereunder (and under the Regulatory Agreement).

(c) Vista Del Rio hereby acknowledges and agrees that, upon completion of construction of the Project and leasing of the Units to Extremely Low Income and Very Low Income households pursuant to this Agreement, the DDA and the Affordability Restrictions, Vista Del Rio will have received governmental subsidies from Authority, City, Successor Agency and TCAC (through the Tax Credits allocated to the Project) in exchange for Vista Del Rio's agreement to limit the rents charged to tenants of the Project to an Affordable Rent and Vista Del Rio further acknowledges and agrees that, except for the HAP Contract payments with respect to 8 Assisted Units, which are part of the approved financing for the Project, acceptance of additional governmental rental subsidies (without the consent of the Executive Director) resulting in total, cumulative rent payments to Vista Del Rio in excess of an Affordable Rent for any of the Units at the Project would constitute an unjustified windfall to Vista Del Rio at the expense of Authority and the federal and state governments. Further, with respect to the HOME Units, the HOME Regulations prohibit application of any Project Based Section 8 assistance, Portable Voucher, or other rental subsidy that, cumulatively with the rent to be paid by the tenant household, exceeds an Affordable Rent calculated pursuant to the HOME Regulations.

7.4 **Rent Increases.** On an annual basis, the Executive Directors shall provide Vista Del Rio with the maximum allowable schedule of Affordable Rents for the Property in accordance with changes in allowable rent and income tables published by HUD and the State of California, provided however that the rent for the HOME units shall in no event be higher than the rent for the equivalent Successor Agency assisted Unit. In no event shall Vista Del Rio charge any tenant more than the Affordable Rents prescribed for the Units pursuant to this Agreement and as directed by the Executive Directors.

8. **[RESERVED.]**

9. **GENERAL PROVISIONS AND WARRANTIES**

As a material inducement to City and Successor Agency to enter into this Agreement, Vista Del Rio represents and warrants as follows:

9.1 **Formation, Qualification and Compliance.** Vista Del Rio (a) is a limited partnership, validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Loan Documents. Vista Del Rio is in compliance with all Governmental Requirements applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with, any Governmental Authority that are necessary for the transaction of its business.

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

9.2.1 Vista Del Rio has all requisite authority to execute and perform its obligations under the Loan Documents.

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

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

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

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

(d) violate any provision of any law presently in effect; or

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

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

9.2.4 Other than for building permits relating to the Project, no approval, license, exemption or other authorization from, or filing, registration or qualification with, any Governmental Authority is required which has not been previously obtained in connection with:

(a) the execution of Vista Del Rio of, and the performance by Vista Del Rio of its obligations under, the Loan Documents; and

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

9.3 **Financial and Other Information.** To the best of Vista Del Rio's knowledge, all financial information furnished to City and Successor Agency with respect to Vista Del Rio in connection with the Loans (a) is complete and correct in all material respects as of the date of preparation thereof, (b) accurately presents the financial condition of Vista Del Rio, and (c) to the extent applicable, has been prepared in accordance with generally accepted accounting principles consistently applied or in accordance with such other principles or methods as are reasonably acceptable to City. To the best of Vista Del Rio's knowledge, all other documents and information furnished to City and Successor Agency with respect to Vista Del Rio, in connection with the Loans, are correct and complete insofar as completeness is necessary to give the City accurate knowledge of

the subject matter. To the best of Vista Del Rio's knowledge Vista Del Rio has no material liability or contingent liability not disclosed to City and Successor Agency in writing and there is no material lien, claim, charge or other right of others of any kinds (including liens or retained security titles of conditional vendors) on any property of Vista Del Rio not disclosed in such financial statements or otherwise disclosed to City and Successor Agency in writing.

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

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

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

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

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

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

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

9.11 **Conflicts of Interest.** No member, official or employee of the City or Successor Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such

member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she has a direct or indirect financial interest. The Vista Del Rio warrants that it neither has paid nor given, nor will pay or give, any third party any money or other consideration for obtaining this Agreement.

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

9.13 **No Assignment.** Vista Del Rio expressly acknowledges and agrees that the City and Successor Agency have only agreed to assist Vista Del Rio as a means by which to induce the construction and development of the Property/Project. Accordingly, Vista Del Rio further expressly acknowledges and agrees that this Agreement is a personal right of Vista Del Rio that is neither negotiable, transferable, nor assignable except as set forth in Section 16.2.

9.14 **Applicable Law.** This Agreement shall be interpreted, governed and enforced under federal and state laws.

9.15 **Third Parties.** The Authority is an intended third party beneficiary of this Agreement, with full rights (but no obligation) to enforce all terms, provisions and covenants contained herein. This Agreement is made for the sole benefit of Vista Del Rio, the City, the Successor Agency, the Authority, and their successors and assigns, and no other person or persons shall have any rights or remedies under or by reason of this Agreement or any right to the exercise of any right or power of the City or Successor Agency hereunder or arising from any default by Vista Del Rio, nor shall the City, Successor Agency or Authority owe any duty whatsoever to any claimant for labor performed or materials furnished in connection with the Construction of the Property.

9.16 **Control of Property.** The parties acknowledge that neither the Successor Agency nor City has at anytime participated in any manner in the management or operation of the Property, and will not so participate at any time hereafter.

10. **CONDITIONS FOR CONSTRUCTION**

10.1 **Permits and Approvals.** Vista Del Rio shall diligently obtain all Permits, including all grading and building permits, licenses, approvals, exemptions and other authorizations of Governmental Agencies required in connection with the construction and development of the Property/Project.

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

10.3 **Change Orders.** The Construction Contract shall not be modified except pursuant to change orders. All change orders:

(a) shall be in writing, numbered in sequence, signed by Vista Del Rio and submitted to City prior to the proposed effectiveness thereof and accompanied by any working drawings and a written narrative of the proposed change.

(b) shall be subject to the Executive Directors' and the Construction Lender's prior written approval.

10.4 **Entry and Inspection.** At all times prior to completion of the construction, upon reasonable notice, City or Successor Agency and their respective agents shall have (a) the right of free access to the Property and all sites away from the Property where materials for the construction are stored, (b) the right to inspect all labor performed and materials furnished for the construction, and (c) the right to inspect and copy all documents pertaining to the construction.

10.5 **Compliance with Section 3 Clause.** Section 3 of the Housing and Urban Development act of 1968, 12 U.S.C. 1701 u, as amended by Section 915 of the Housing and Community Development Act of 1992 requires that economic opportunities generated by HUD financial assistance for housing and community development programs be targeted toward low- and very low- income persons. Whenever HUD assistance generates opportunities for employment or contracting, state and local grantees, as well as other recipients of HUD housing assistance funds must, to the greatest extent feasible, provide these opportunities to low- and very low- income persons and to businesses owned by or employing low- and very low- income persons. Section 3 applies to projects for which HUD's share of project costs exceeds \$200,000 and contracts and subcontracts awarded on projects for which HUD's share or project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

For purposes of this Section 3 Clause and compliance thereto, whenever the word "contractor" is used it shall mean and include, as applicable, the Vista Del Rio, and its contractor and subcontractor(s), if any. The particular text to be utilized in any and all contracts of any contractor doing work covered by Section 3 shall be in substantially the form of the following, as reasonably determined by the Successor Agency, or as directed by HUD or its representative, and shall be executed by the applicable contractor under penalty of perjury:

"(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons [inclusive of Very Low Income Persons, Very Low Income Households, and Very Low Income Tenants served by the Project], particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of

the contractor's commitments under this Section 3 clause, and will post copies of notices in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of person(s) taking applications for each of the position; and the anticipated date the work shall begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts."

After the foregoing Section 3 Clause, there shall be a signature block for the contractor, as applicable, the following text shall be included immediately above the signature block: "The contractor/provider by his/her signature affixed hereto declares under penalty of perjury that contractor has read the requirements of the Section 3 Clause and accepts all its requirements contained therein for all of his/her operations related to this contract."

To the extent applicable, Vista Del Rio shall comply and/or cause compliance with Section 3 Clause requirements for the Project. For example, when and if Vista Del Rio or its contractor(s)/subcontractor(s) hire(s) full time employees, rather than volunteer labor or materials, Section 3 is applicable and all disclosure and reporting requirements apply.

10.6 **Construction Information.** From time to time during the course of the construction, but in no event more often than monthly, within ten (10) Business Days following Successor Agency or City's written demand therefore, Vista Del Rio shall furnish requested reports of project costs, progress schedules and contractors' costs breakdowns for the construction, itemized as to trade description and item, showing the name of the contractor(s) and/or subcontractor(s), and including such indirect costs as real estate taxes, legal and accounting fees, insurance, architects' and engineers' fees, loan fees, interest during construction and contractors' overhead.

10.7 **Protection Against Liens.** Vista Del Rio shall diligently file a valid Notice of Completion upon completion of the construction, diligently file a notice of cessation in the event of a cessation of labor on the construction for a period of thirty (30) days or more, and take all actions reasonably required to prevent the assertion of claims of lien against the Property. In the event that any claim of lien is asserted against the property or any stop notice or claim is asserted against the

Successor Agency or the City by any person furnishing labor or materials to the Property, Vista Del Rio shall immediately give written notice of the same to City and Successor Agency and shall, promptly and in any event within ten (10) Business Days after written demand therefor, (a) pay and discharge the same, (b) effect the release thereof by delivering to City and Successor Agency a surety bond complying with the requirement of applicable laws for such release, or (c) take such other action as City or Successor Agency may require to release City and/or Successor Agency from any obligation or liability with respect to such stop notice or claim.

11. **FEDERAL (HOME PROGRAM) AND STATE REDEVELOPMENT COVENANTS**

11.1 **[Intentionally Omitted]**

11.2 **Qualification as Affordable Housing.** As more particularly provided in the Affordability Restrictions on Transfer of Property, Vista Del Rio shall use, manage and operate the Property in accordance with the requirements of 24 CFR 92.252 and California Health and Safety Code section 50052.5 so as to qualify the housing on the Property as Affordable Housing with affordable rents.

11.3 **Tenant and Participant Protection.** Vista Del Rio shall comply with the requirements of 24 CFR 92.253.

11.4 **[Intentionally Omitted]**

11.5 **Handicapped Accessibility.** Vista Del Rio shall comply with (a) Section 504 of the Construction Act of 1973, and implementing regulations at 24 CFR 8C governing accessibility of projects assisted under the HOME Program; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR 35-36 in order to provide handicapped accessibility with respect to all Units at the Project.

11.6 **Use of Debarred, Suspended, or Ineligible Participants.** Vista Del Rio shall comply with the provisions of 24 CFR 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status.

11.7 **Maintenance of Drug-Free Workplace.** Vista Del Rio shall certify that Vista Del Rio will provide a drug-free workplace in accordance with 24 CFR 84.13.

11.8 **Lead-Based Paint.** Vista Del Rio shall comply with the requirements, as applicable of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR 35.

11.9 **Affirmative Marketing.** Vista Del Rio shall implement and perform such affirmative marketing procedures and requirements for the Property (24 CFR 92.351) in compliance with the City's adopted Program (a copy of which is attached hereto and incorporated herein as Exhibit H).

11.10 **Equal Opportunity and Fair Housing.** Vista Del Rio shall carry out the Construction and perform its obligations under this Agreement in compliance with all of the state and federal laws and regulations regarding equal opportunity and fair housing described in 24 CFR 92.350. Vista Del Rio must also follow the requirements of Health and Safety Code section 33435.

11.11 **Property Standards.** Vista Del Rio shall cause the Property to meet the housing quality standards set forth in 24 CFR 882.109, as well as all applicable local, state and federal codes and ordinances, including zoning ordinances. Vista Del Rio shall also cause the Property to meet the current edition of the Model Energy Code published by the Council of American Building Officials.

11.12 **[Intentionally Omitted]**

11.13 **Other Program Requirements.** Vista Del Rio shall carry out each activity in compliance with all federal laws and regulations described in subpart H of 24 CFR 92, except that Vista Del Rio does not assume City's responsibilities for environmental review in 24 CFR 92.352 or the intergovernmental review process in 24 CFR 92.359.

11.14 **Request for Disbursements of Funds.** Notwithstanding anything contained in this Agreement to the contrary, Vista Del Rio may not request disbursements of funds under this Agreement until the funds are needed for payment of eligible costs and all applicable Conditions Precedent are satisfied. The amount of each request shall be limited to the amount needed to reimburse Vista Del Rio for Vista Del Rio's actual expenditures, as described in Article 6, *et seq.*

11.15 **Eligible Costs.** Vista Del Rio shall use HOME Program funds only to pay costs defined as "eligible costs" pursuant to 24 CFR 92.206.

11.16 **Records and Reports.** Vista Del Rio shall maintain and from time to time submit to City or Successor Agency such records, reports and information as the Executive Directors may reasonably require in order to permit City and Successor Agency to meet the record keeping and reporting requirements required of it pursuant to 24 CFR 92.508.

11.17 **Reserved.**

11.18 **Conflict of Interest.** Vista Del Rio shall comply with and be bound by the conflict of interest provisions set forth at 24 CFR 570.611, as well as state regulations pertaining to conflict of interest.

11.19 **Monitoring.** Vista Del Rio shall allow the City to conduct annual inspections of the HOME Units on the Property as required by the Program after the date of construction completion, with reasonable notice. Vista Del Rio shall cure any defects or deficiencies found by the City while conducting such inspections within thirty (30) days of written notice thereof, or such longer period as is reasonable within the sole discretion of the City. Health and Safety Code section 33418 requires that the Successor Agency monitor, on an ongoing basis, any affordable housing.

11.20 **Recertification of Tenant Income.**

(a) Vista Del Rio shall take all necessary steps to review the income of all tenants prior to renting to them, as well as reviewing current tenants on an annual basis, in accordance with HOME regulations and guidelines. Every fifth (5th) year, Vista Del Rio shall require new original income documents to be submitted by tenants. Tenants in HOME Units whose incomes no longer comply with federal income guidelines shall have their rents adjusted in accordance with federal HOME guidelines (24 CFR 92.252-92.253) and the regulations governing projects receiving federal Low Income Housing Tax Credits.

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

11.21 **Other HOME Program Requirements.** Vista Del Rio shall comply with all other applicable requirements of the HOME Program, the Section 8 Requirements, and the CRL.

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

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

12.1 **Maintenance.** Vista Del Rio shall, at its sole cost and expense, maintain or cause to be maintained the interior and exterior of the Project and all Units thereof and the Property in a decent, safe and sanitary manner, in accordance with the HUD Housing Quality Standards (HQS) and the maintenance standards required by Section 92.251 of the HOME Regulations, and in accordance with the standard of maintenance of first class apartments within Orange County, California. None of the Units in the Project shall at any time be utilized on a transient basis, nor shall the Property or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium or rest home, or be converted to condominium ownership. If at any time Vista Del Rio fails to maintain the Project or the Property in accordance with this Agreement and such condition is not corrected within five (5) Business Days after written notice from City or Successor Agency with respect to graffiti, debris, and waste material, or thirty (30) days after written notice from City or Successor Agency with respect to general maintenance, landscaping and building improvements, then City and Successor Agency, in addition to whatever remedy they may have at law or at equity, shall have the right to enter upon the applicable portion of the Project or the Property and perform all acts and work necessary to protect, maintain, and preserve the Project and the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and Successor Agency and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Vista Del Rio to City or Successor Agency, as applicable, upon demand. The liens created under this Section shall be subject and subordinate to the lien of the mortgage or deed of trust encumbering the Property (or any part of the Property) for the Construction Loan and the Senior Loan approved pursuant to the terms of this Agreement. The City and/or Successor Agency shall inspect the Property annually after the date of issuance of the Release of Construction Covenants as described in Section 310 of the DDA and Vista Del Rio shall cooperate with the City and Successor Agency to make the Property and all Units thereon available for such inspection.

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

12.2 **Compliance with Laws.** Vista Del Rio shall comply with all laws and requirements of Governmental Authority (including, without limitation, all requirements relating to the obtaining

of Governmental Authority approvals), all Governmental Authority approvals, all rights of third parties, and all Governmental Requirements, that are applicable or relate to Vista Del Rio, the Property, or Vista Del Rio's business thereon.

12.3 **Taxes and Impositions.** Vista Del Rio shall pay, prior to delinquency, all of the following (collectively, the "Impositions"): (a) all general and special real property taxes and assessments imposed on the Property; (b) all other taxes and assessments and charges of every kind that are assessed upon the Property (or upon the owner and/or operator of the Property) and that create or may create a lien upon the Property (or upon any personal property or fixtures used in connection with the Property), including, without limitation, non-governmental levies and assessments pursuant to applicable covenants, conditions or restrictions; and (c) all license fees, taxes and assessments imposed on City or Successor Agency (other than City's income or franchise taxes) which are measured by or based upon (in whole or in part) the amount of the obligations secured by the Property. If permitted by law, Vista Del Rio may pay any Imposition in installments (together with any accrued interest).

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

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

12.3.3 **Books and Records.** Vista Del Rio shall maintain complete books of account and other records reflecting its operations (in connection with any other businesses as well as with respect to the Property), in accordance with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to City, in accordance with 24 CFR 92.508.

12.4 **[Intentionally omitted]**

12.5 **Project Operating Budget.** Prior to the Closing, and annually thereafter not later than 60 days prior to the beginning of the next Calendar Year, Vista Del Rio shall submit a projected operating budget and cash flow ("Operating Budget") to the Executive Directors. The Operating Budget and cash flow shall be in a form that is reasonably acceptable to the Executive Directors. Vista Del Rio must promptly deposit all revenue received with respect to the Project directly into a segregated, interest-bearing depository account established exclusively for the Project ("Project Operating Account"). Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the Operating Budget approved annually by the Executive Directors, as it may be revised from time to time with City and Successor Agency approval. Vista Del Rio may make withdrawals from the Project Operating Account solely for the payment of Project expenses and Project fees included in the approved Operating Budget. Withdrawals from the Project Operating Account for other purposes may be made only with the prior written approval of the Executive Directors. Further, Vista Del Rio shall obtain the prior written

approval of the Executive Directors for any expenditure from the Project Operating Account that exceeds by ten percent (10%) or more the amount set forth for the applicable line item in the Operating Budget and/or for any expenditure that would, cumulatively with all prior expenditures in the applicable year, exceed the total approved annual Operating Budget for the Project by ten percent (10%) or more.

12.6 **Replacement Reserve Account.** Vista Del Rio must establish or cause to be established a segregated interest-bearing replacement reserve depository account (“Replacement Reserve Account”) concurrently with the conversion of the construction Senior Loan to a permanent Senior Loan. Vista Del Rio must make monthly deposits from project income into the Replacement Reserve in accordance with Vista Del Rio’s Budget, as amended from time to time. Vista Del Rio may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Project that are reasonably required to preserve the Project. Vista Del Rio may not withdraw funds from the Replacement Reserve Account for any other purpose without the prior written approval of the City and Successor Agency.

13. NONDISCRIMINATION COVENANTS

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

13.2 **Nondiscrimination in Employment.** Vista Del Rio certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

13.3 **Statutory Nondiscrimination Covenants.** Except to the extent preferences are permitted or required by this Agreement, Vista Del Rio 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 Property, 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 Property. Vista Del Rio shall refrain from restricting the rental, sale or lease of the Property or any portion thereof on the basis of any of the characteristics listed above. Vista Del Rio shall also comply with the equal opportunity and fair housing requirements set forth in Section 92.350 of the HOME Regulations. The foregoing covenants shall run with the land. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

13.3.1 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.”

13.3.2 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.”

13.3.3 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.”

13.4 **In Affordable Housing Restrictions.** The foregoing covenants shall (a) be included in the Affordability Restrictions on Transfer of Property, (b) run with the land, and (c) remain effective for the Term hereof.

14. ENVIRONMENTAL MATTERS

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

14.2 **Compliance with Environmental Laws.** Vista Del Rio shall (a) comply with all Environmental Laws and environmental permits applicable to the Construction and/or operation of the Property, (b) immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, (c) keep the Property free and clear of any environmental claims or liens imposed pursuant to any Environmental Law, (d) obtain and renew all environmental permits required for ownership or use of the Property, and (e) comply with any and all Governmental Requirements relating to Hazardous Materials with respect to the Construction and/or operation of the Project.

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

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

14.5 **Environmental Indemnification by the Vista Del Rio.** Vista Del Rio hereby agrees, at Vista Del Rio's sole expense, to defend (using counsel satisfactory to Successor Agency and City), indemnify, assume all responsibility for, and save and hold the Indemnitees harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorney's fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials in violation of Environmental Laws during the period of the Vista Del Rio's ownership of the Property, on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property by Vista Del Rio during the period of the Vista Del Rio's ownership of the applicable Property, or (ii) the violation, or alleged violation of any Environmental Laws relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property during the period of the Vista Del Rio's ownership of the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit, or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment.

15. OTHER AFFIRMATIVE COVENANTS

While any obligation of Vista Del Rio under the Notes or Deeds of Trust remain outstanding, the following provisions shall apply, except to the extent that Executive Directors otherwise consent in writing:

15.1 **Existence.** Vista Del Rio's managing general partner shall maintain its existence in good standing under the laws of the State of California and Vista Del Rio shall provide documentation of such status annually to the City.

15.2 **Protection of Lien.** Vista Del Rio shall maintain the lien of the Deeds of Trust as a valid second and third priority deed of trust on the Property and take all actions, and execute and deliver to City and Successor Agency all documents, reasonably required by the Executive Directors from time to time in connection therewith.

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

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

(b) any dispute between Vista Del Rio and a Governmental Authority relating to the Property/Project, the adverse determination of which might materially affect the Property/Project;

(c) any change in Vista Del Rio's principal place of business;

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

(e) any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default;

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

(g) the creation or imposition of any mechanics' or materialmans' lien or other lien against the Property which might materially affect the Property; and/or

(h) any material adverse change in the financial condition of Vista del Rio.

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

15.5 **Annual Audited Financial Statements.** Vista Del Rio shall deliver to City, within one hundred twenty (120) days after the end of each Calendar Year, (a) an audited financial statement prepared by a certified public accountant for Vista Del Rio as of the end of such Calendar Year and a certified public accountant reviewed statement of profit and loss for Vista Del Rio and for Vista Del Rio's operations in connection with the Property/Project for such Calendar Year, together with all supporting schedules, (b) a certificate of such certified public accountant that such documents were reviewed by such certified public accountant in accordance with generally accepted accounting principles and otherwise comply with generally accepted accounting principles review requirements, and (c) a certificate of Vista Del Rio's chief financial officer that such documents: (i) were prepared in accordance with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to City, (ii) fairly represent Vista Del Rio's financial condition, (iii) show all material liabilities, direct and contingent, and, (iv) fairly represent the results of Vista Del Rio's operations. Vista Del Rio shall also provide the City with any other annual audit reports issued by or for the benefit of other monitoring agencies.

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

15.7 **Termite Inspection Report.** Vista Del Rio shall deliver a termite report pertaining to the Property/Project to the City every fifth (5th) year beginning January 2013.

16. OTHER NEGATIVE COVENANTS

While any obligation of Vista Del Rio under the Notes or Deeds of Trust remains outstanding, the following provisions shall apply, except to the extent that Executive Directors otherwise consent in writing:

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

16.2 **Transfers of Interest in Property or Agreement.**

16.2.1 **Prohibition.** The qualifications and identity of Vista Del Rio are of particular concern to the Successor Agency and City. It is because of those qualifications and identity that Successor Agency and City have entered into this Agreement and the other Project Documents with Vista Del Rio. Therefore, for the period commencing upon the date of this Agreement and until the expiration of the Term hereof, no voluntary or involuntary successor in interest of Vista Del Rio shall acquire any rights or power under this Agreement, nor shall Vista Del Rio make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Property or the Improvements thereon (collectively, "Transfer")

without prior written approval of the Successor Agency and City, except as expressly set forth herein. Any proposed total or partial Transfer without Successor Agency and City approval shall constitute a Default pursuant to Article 20, *et seq.*, hereof.

16.2.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Successor Agency and City approval of a Transfer shall not be required in connection with any of the following:

(a) Any Transfer to an entity or entities in which Vista Del Rio directly or indirectly retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

(b) The conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements.

(c) Any requested assignment for financing purposes (subject to such financing being considered and approved by the Successor Agency pursuant to Section 311 of the DDA), including the grant of a deed of trust to secure the funds necessary for construction and permanent financing of the Improvements.

(d) Removal of the investor limited partner of Vista Del Rio upon the expiration of the fifteen (15) year tax credit compliance period applicable to the Project.

(e) A Transfer of a General Partner's interest in Vista Del Rio when made in connection with the exercise by the Limited Partner of its rights upon a default by a General Partner under the Partnership Agreement or upon a General Partner's withdrawal in violation of the Partnership Agreement, so long as the removal and substitution of the defaulting General Partner is made within thirty (30) days of such default or, if such removal and substitution cannot reasonably be completed within thirty (30) days, so long as the Limited Partner commences to take action to remove and substitute the General Partner with a reasonable period and thereafter diligently proceeds to complete such substitution.

(f) Any Transfer of the Property to the Managing General Partner or the Goodwill Special Limited Partner pursuant to the right of first refusal or to the Managing General Partner or the Goodwill Special Limited Partner pursuant to the purchase option, as provided for in the Partnership Agreement.

(g) Any sale, transfer or other disposition of an interest in the Limited Partner.

(h) Any sale, transfer or other disposition of the Limited Partner's interest in Vista Del Rio as allowed by the Partnership Agreement.

In the event of a Transfer by Vista Del Rio described above not requiring the City's or Successor Agency's prior approval, Vista Del Rio nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written notice to Successor Agency/City of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement all of Vista Del Rio's obligations set forth in this Agreement. Upon the satisfaction of said obligations and the Transfer, the assignor shall be released from all obligations to

the Successor Agency and City hereunder (except obligations to indemnify the Successor Agency and City pursuant to Section 14.5 and Article 18, *et seq.*, of this Agreement).

16.2.3 Successor Agency/City Consideration of Requested Transfer. Successor Agency and City agree that they will not unreasonably withhold, condition or delay approval of a request for approval of a Transfer made pursuant to this Section 16.2, provided Vista Del Rio delivers written notice to the Successor Agency/City requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Successor Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 16.2 and as reasonably determined by the Successor Agency/City. The Successor Agency/City shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the construction of facilities similar to the Improvements, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 16.2 applies, which the Successor Agency/City determines does not possess equal or better qualifications than the transferring developer. An assignment and assumption agreement in a form satisfactory to the Successor Agency/City's legal counsel shall also be required for all proposed assignments. Within fifteen (15) days after the receipt of Vista Del Rio's written notice requesting Successor Agency approval of an assignment or transfer pursuant to this Section 16.2, the Successor Agency/City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Successor Agency/City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Vista Del Rio shall promptly furnish to the Successor Agency/City such further information as may be reasonably requested and the Successor Agency and City shall approve or disapprove the requested Transfer within fifteen (15) days after receipt of all such requested information.

16.2.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Vista Del Rio and its permitted successors and assigns. Whenever the term "Vista Del Rio" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

16.2.5 Assignment by City or Successor Agency. City and Successor Agency may assign or transfer any of their rights or obligations under this Agreement without the approval of the Vista Del Rio.

17. [RESERVED]

18. INDEMNIFICATION

18.1 Nonliability of Successor Agency and City. Vista Del Rio acknowledges and agrees that:

(a) The relationship between Vista Del Rio, Successor Agency, and City is and shall remain solely that of borrower and lender, neither City nor Successor Agency undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or to inform Vista Del Rio of any matter in connection with the construction, including matters relating to: (i) the performance of the construction work, (ii) architects, contractors, subcontractors and

materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of the construction; and Vista Del Rio shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Vista Del Rio by City or Successor Agency in connection with such matters is solely for the protection of City and Successor Agency and that neither Vista Del Rio nor any third party is entitled to rely on it;

(b) Notwithstanding any other provision of any Loan Document: (i) the Successor Agency and City are not a partner, joint venture, alter-ego, manager, controlling person or other business associate or participant of any kind with Vista Del Rio and City does not intend to ever assume any such status; (ii) City's and Successor Agency's activities in connection with the Loans shall not be "outside the scope of the activities of a lender of money" within the meaning of California Civil Code Section 3434, as modified or recodified from time to time, and neither City nor Successor Agency intends to ever assume any responsibility to any person for the quality or safety of the Property or Project; and (iii) neither City nor Successor Agency shall be deemed responsible for or a participant in any acts, omissions or decisions of Vista Del Rio;

(c) Neither City nor Successor Agency shall be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property or Project, whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Vista Del Rio or any of Vista Del Rio's agents, employees, independent contractors, licensees or invitees; or (iii) any accident on the Property or Project or any fire or other casualty or hazard thereon; and

(d) By accepting or approving anything required to be performed or given to City or Successor Agency under the Loan Documents, including any certificate, financial statement, survey, appraisal or insurance policy, neither City nor Successor Agency shall be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by City or Successor Agency to anyone.

18.2 **Indemnity.** Vista Del Rio shall defend (by counsel satisfactory to City), indemnify and save and hold harmless the Indemnitees from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising from or relating to (i) this Agreement; (ii) the making of the Loans; (iii) a claim, demand or cause of action that any person has or asserts against Vista Del Rio; (iv) any act or omission of Vista Del Rio, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Property or Project; or (v) the ownership, occupancy or use of the Property or Project. Notwithstanding the foregoing, Vista Del Rio shall not be obligated to indemnify City or Successor Agency with respect to the consequences of any act of gross negligence or willful misconduct of City or Successor Agency or any breach by the City or Successor Agency of any Loan Document. Vista Del Rio's obligations under this Section shall survive the cancellation of the Notes, release and reconveyance of the Deeds of Trust, issuance of the Release of Construction Covenants, and termination of this Agreement.

18.2.1 Notwithstanding the foregoing, neither Vista Del Rio, nor any of its partners, shall be personally liable for any indemnification obligation hereunder which would result as the repayment of principal and/or interest under the Loans.

18.3 **Reimbursement of City and Successor Agency.** In the event of Default, Vista Del Rio shall reimburse City and/or Successor Agency immediately upon written demand for all costs reasonably incurred by City and/or Successor Agency (including the reasonable fees and expenses of attorneys, expert witnesses, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the Loan Documents and all related matters including all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City and Successor Agency are indemnified under the Loan Documents. Such reimbursement obligations shall bear interest from the date occurring twenty (20) days after City or Successor Agency gives written demand to Vista Del Rio and shall be secured by the Deeds of Trust. Such reimbursement obligations shall survive the cancellation of the Notes, release and reconveyance of the Deeds of Trust, issuance of a Release of Construction Covenants, and termination of this Agreement.

19. **INSURANCE, CASUALTY AND CONDEMNATION**

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

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

(b) prior to commencement until following completion of the construction, fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located; which said insurance shall expressly include damage or loss by flood or storm;

(c) upon commencement of the construction and at all times prior to completion of the construction, builder's risk/all risk insurance covering 100% of the replacement cost of all Improvements (including offsite materials) during the course of construction in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by all risk coverage policies in the area where the Property is located; which said insurance shall expressly include damage or loss by flood or storm;

(d) general liability insurance in amounts reasonably required by City from time to time, and in no event less than \$5,000,000 for "single" occurrence;

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

(f) property damage insurance in amounts reasonable required by City from time to time, and in no event less than \$1,000,000.

(g) any other insurance reasonably required by Successor Agency/City.

All such insurance shall provide that it may not be canceled or materially modified without thirty (30) days prior written notice to City and Successor Agency. The policies required under subparagraphs (b) and (c) shall include a "lender's loss payable endorsement" (Form 438BFU) in form and substance satisfactory to City, showing the Successor Agency and the City as loss payees. The Successor Agency and the City shall be named as additional insured(s) in the policies required under subparagraphs (d), (e) and (f). Certificates of insurance for the above policies (and/or original policies, if required by City) shall be delivered within ten (10) days after demand therefore, and prior to start of any construction work. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Vista Del Rio shall deliver to City evidence of renewal or replacement of such policy reasonably satisfactory to City Attorney and/or City Risk Manager.

19.2 **City Attorney and/or City Risk Manager May Modify.** The City Attorney and/or City Risk Manager may modify the type and amounts of insurance (including reasonable increases in policy limits) required pursuant to this Section.

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

19.4 **Delivery of Proceeds to City/Successor Agency.** In the event that, notwithstanding the "lender's loss payable endorsement" requirement set forth above, the proceeds of any casualty insurance policy described herein are paid to Vista Del Rio, Vista Del Rio shall, subject to any superior rights of the Senior Lender, deliver such proceeds to the Successor Agency and City immediately upon receipt.

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

(a) Vista Del Rio shall demonstrate to the Executive Directors' reasonable satisfaction that the Proceeds (together with amounts deposited by Vista Del Rio pursuant to subparagraph (b)) will be adequate to repair the Improvements and to restore the fair market value of the Property, within a time period reasonably determined by the Executive Directors, to at least the value it had immediately prior to sustaining the damage. Such demonstration shall include delivery to City and Successor Agency of (i) plans and specifications reasonably satisfactory to City and

Successor Agency, and (ii) a construction contract in form and content, and with a contractor, reasonably satisfactory to City and Successor Agency.

(b) To the extent that the Proceeds are insufficient to accomplish the restoration required above, Vista Del Rio shall deliver to City and Successor Agency funds (the "Shortfall Funds") in the amount of such shortfall, which funds shall be assigned to City and Successor Agency as security for Vista Del Rio's obligation hereunder and held and disbursed in the same manner as the Proceeds.

(c) Vista Del Rio shall execute such documents as the Executive Directors require to evidence and secure Vista Del Rio's obligation to use all amounts disbursed for the diligent restoration of the Property.

(d) No Event of Default shall remain uncured.

19.6 **Method of Disbursement and Undisbursed Funds.** Any Proceeds and Shortfall Funds to be disbursed to Vista Del Rio shall be held by Successor Agency/ City and disbursed in accordance with the then customary disbursement procedures and related provisions. Any amounts remaining undisbursed following completion of such restoration shall be returned to Vista Del Rio up to the amount of any Shortfall Funds deposited by Vista Del Rio, and any other amounts remaining shall either be paid to Vista Del Rio or applied by City and Successor Agency against any obligations to City or Successor Agency that are secured by a lien on the Property, as they elect in their sole and absolute discretion.

19.7 **Failure to Satisfy Conditions.** In the event that Vista Del Rio fails to fulfill the Restoration Conditions within ninety (90) days (unless extended pursuant to Section 19.5) following the date on which the damage occurs, the Proceeds shall be applied by City and Successor Agency against any obligations to City or Successor Agency that are secured by a lien on the Property, and the selection of which such obligations to apply the Proceeds against shall be made by City and Successor Agency in their sole and absolute discretion.

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

19.9 **Condemnation; Treatment of Compensation.** Subject to any superior rights of Senior Lender, Vista Del Rio hereby assigns to the Successor Agency and City, as security for all obligations to Successor Agency or City secured by a lien on the Property, all amounts payable to Vista Del Rio in connection with any Condemnation, and any proceeds of any related settlement (collectively, "Compensation"). Subject to any superior rights of Senior Lender, Vista Del Rio shall deliver such remaining Compensation to City and Successor Agency immediately upon receipt. If the taking results in a loss of the Property to an extent that, in the reasonable opinion of the Executive Directors, renders or is likely to render the Property not economically viable or if, in the Executive Directors' reasonable judgment Vista Del Rio's security is otherwise impaired, City and Successor Agency may apply the Compensation received due to judgment or settlement in connection with any condemnation or other taking to reduce the unpaid obligations secured in such order as City may determine, and without any adjustment in the amount or due dates of payments due under the Note. If so applied, any award in excess of the unpaid balance of the Note and other sums due to City and Successor Agency shall be paid to Vista Del Rio or Vista Del Rio's assignee. Neither City nor

Successor Agency shall have any obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

19.9.1 Notwithstanding the foregoing, as long as the value of City's and Successor Agency's liens are not impaired, any condemnation proceeds may be used by Vista Del Rio for repair and/or restoration of the project.

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

20. **DEFAULTS AND REMEDIES**

20.1 **Events of Default.** Failure by either party to perform any action or covenant required by this Agreement or any other Project Document within the time periods provided herein (or therein) following notice and failure to cure as described hereafter, constitutes a "Default" or "Event of Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence. Without limiting the generality of the foregoing, the occurrence of any of the following, whatever the reason therefor, shall constitute an Event of Default by Vista Del Rio under this Agreement:

(a) Vista Del Rio fails to make any payment of principal or interest under the Notes when due, and such failure is not cured within fifteen (15) Business Days after Vista Del Rio's receipt of written notice that such payment was not received when due;

(b) Vista Del Rio fails to perform any other obligation for the payment of money under any Loan Document, and such failure is not cured within fifteen (15) Business Days after Vista Del Rio's receipt of written notice that such obligation was not performed when due;

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

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

(e) Vista Del Rio is in default of the Disposition and Development Agreement.

(f) The Property is materially damaged or destroyed by fire or other casualty unless Vista Del Rio fulfills the Restoration Conditions set forth in the insurance provisions of this Agreement within ninety (90) days (unless extended pursuant to Section 19.5) and thereafter diligently restores the Property in accordance with this Agreement;

(g) Work on the construction ceases for thirty (30) consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God or any other deity, strikes or other causes beyond Vista Del Rio's reasonable control), provided that the same do not, in the aggregate and in the City's reasonable judgment, threaten to delay the completion of the construction beyond the required completion date set forth in this Agreement and the Schedule of Performance;

(h) Vista Del Rio is enjoined or otherwise prohibited by any Governmental Authority from constructing and/or occupying the improvements and such injunction or prohibition continues unstayed for sixty (60) days or more for any reason;

(i) [intentionally omitted];

(j) Vista Del Rio is dissolved, liquidated or terminated, or all or substantially all of the assets of Vista Del Rio are sold or otherwise transferred without the Executive Directors' prior written consent;

(k) Vista Del Rio is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Vista Del Rio applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Vista Del Rio and the appointment continues undischarged or unstayed for ninety (90) days; or Vista Del Rio institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, Construction or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Vista Del Rio and continues undismissed or unstayed for ninety (90) days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Vista Del Rio and is not released, vacated or fully bonded within ninety (90) days after its issue or levy; or

(l) (i) any of the Senior Loan documents is revoked or terminated, in whole or in part and for any reason (except due to repayment of such loans), without the Executive Directors' prior written consent, or (ii) Vista Del Rio defaults or otherwise fails to perform any of its duties or obligations under or in connection with any of the Senior Loan documents, subject to all applicable notice and cure periods, or (iii) any of the Senior Loan documents is amended, supplemented or otherwise modified without City's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by the Limited Partner shall be deemed to be a cure by Vista Del Rio and shall be accepted or rejected on the same basis as if made or tendered by Vista Del Rio.

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

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

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

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

(d) Suspend or terminate the award of HOME Program funds, if Vista Del Rio fails to comply with any term or condition of such award.

(e) Suspend or terminate the award of the tax increment funds or Agency Loan proceeds if Vista Del Rio fails to comply with any term of that award.

(f) Authority may suspend or terminate the award of any Project Based Section 8 assistance if Vista Del Rio fails to comply with any term or condition of that award.

20.3 Cumulative Remedies: No Waiver. City's and Successor Agency's rights and remedies under the Loan Documents are cumulative and in addition to all rights and remedies provided by law. The exercise by City or Successor Agency of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice the Successor Agency or City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City or Successor Agency to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Loan Document shall be construed as a waiver of any subsequent breach of the same provision. City's or Successor Agency's consent to or approval of any act by Vista Del Rio requiring further consent or approval shall not be deemed to waive or render unnecessary City's or Successor Agency's consent to or approval of any subsequent act. The Successor Agency or the City's acceptance of the late performance of any obligation shall not constitute a waiver by City or Successor Agency of the right to require prompt performance of all further obligations; City's or Successor Agency's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of either party's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's or Successor Agency's acceptance of any partial performance shall not constitute a waiver by City or Successor Agency of any rights.

Notwithstanding anything to the contrary contained in the Loan Documents, the City and the Successor Agency hereby agree that any cure of any default made or tendered by the Limited Partner shall be deemed to be a cure by Vista Del Rio and shall be accepted or rejected on the same basis as if made or tendered by Vista Del Rio. Copies of all notices which are sent to Vista Del Rio under the

terms of the Loan Documents shall also be sent to the Limited Partner at an address to be provided in writing to the City and the Successor Agency by the Limited Partner.

21. MISCELLANEOUS

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

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

If to Vista Del Rio: Vista Del Rio Housing Partners LP
c/o A Community of Friends
3701 Wilshire Blvd., Suite 700
Los Angeles, California 90010
Attention: Dora Leong Gallo

With copies to: Foundation for Affordable Housing V, Inc.
30950 Rancho Viejo Road, Suite 100
San Juan Capistrano, California 92675
Attention: Deborrah Willard
Telephone: (949) 443-9101
Email: deb@ffah.org

Enterprise Community Investment, Inc.
10227 Wincopin Circle, Suite 800
Columbia, Maryland 21044
Attention: General Counsel

If to City/Successor Agency: City of Santa Ana
City Manager (CDA/RDA)
20 Civic Center Plaza (M-37)
P. O. Box 1988
Santa Ana, California 92702

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

Addresses for notice may be changed as required by written notice to all other parties. All notices personally served shall be effective when actually received. All notices mailed shall be effective three (3) days after deposit in the U.S. Mail, postage prepaid. The foregoing notwithstanding, the

non-receipt of any notice as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such notice.

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

21.4 **[Intentionally Omitted].**

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

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

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

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

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

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

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

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

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

21.14 **Nonliability of City and Successor Agency Officials and Employees.** No member, official or employee of City or Successor Agency shall be personally liable to Vista Del Rio, or any successor in interest, in the event of any default or breach by City or Successor Agency or for any amount which may become due to Vista Del Rio or successor, or on any obligation under the terms of this Agreement.

21.15 **Plans and Data.** Should Vista Del Rio not proceed with the work and construction of the Property, and upon termination of this Agreement for any reason, Vista Del Rio shall deliver to City any and all plans and data concerning the Property/Project, and City or any person or entity designated by City shall have the right to use such plans and data without compensation to Vista Del Rio. Such right of City shall be subject to any right of the preparer of the plans to their use.

21.16 **Authority to Enter Agreement.** Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify the Successor Agency and City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

21.17 **Subsequent Approvals.** Except where otherwise indicated, all subsequent approvals identified in this Agreement, other than approvals by the City Council of the City of Santa Ana, shall not be unreasonably withheld, delayed or conditioned.

21.18 **City, Successor Agency and Authority Approvals and Actions.** The City, Successor Agency and Authority shall maintain authority of this Agreement and the authority to implement this Agreement through the Executive Directors. The Executive Directors shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into amendments of this Agreement on behalf of the City, Successor Agency and Authority so long as such actions do not materially or substantially change the uses or development permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City, Successor Agency or Authority as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantial interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council, Successor Agency Board and Authority Board.

{Signatures appear on following pages}

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

SUCCESSOR AGENCY:

**CITY OF SANTA ANA, ACTING AS
SUCCESSOR AGENCY TO THE COMMUNITY
REDEVELOPMENT AGENCY OF THE CITY
OF SANTA ANA**

By: Francisco Gutierrez
Francisco Gutierrez
Executive Director of Finance and
Management Services

ATTEST:

Maria D. Huizar
Maria D. Huizar, Successor Agency Secretary

APPROVED AS TO FORM

By: Lisa E. Storck
Lisa E. Storck
Assistant Counsel