

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Larry WhiteAgenda Item No. 0-2Reviewed By: City Manager [Signature]City Attorney [Signature]Finance [Signature]

Other (Specify) _____

DATE: September 4, 2012**TO:** Housing Authority Commission**FROM:** William E. Wilkins, Housing Director**SUBJECT:** Authorization to Execute a Development Agreement with Urban Housing Communities for The Courts**RECOMMENDATION**

That the Housing Authority Board of Commissioners authorize the Housing Director to execute a Development Agreement, A-7528 with Urban Housing Communities for the public housing site, commonly known as The Courts, consisting of approximately 25 acres south of Camino Del Sol, east of Marquita Street, west of Rose Avenue and north of First Street.

DISCUSSION

On June 14, 2011, the Housing Authority Board of Commissioners authorized the Housing Director to negotiate a Development Agreement with Urban Housing Communities to redevelop the 260 Public Housing units currently referred to as "The Courts."

The attached Development Agreement includes provisions to develop 260 Public Housing units without the use of City funds. The agreement also includes provisions that allow the Housing Authority to self-develop 64 affordable family units in the project area.

Urban Housing Communities has a very strong financial portfolio, and the technical expertise to redevelop The Courts.

FINANCIAL IMPACT

There is no financial impact.

Attachment #1 - Development Agreement For The Courts Housing Project Oxnard, California

A-7528

DEVELOPMENT AGREEMENT
For
THE COURTS HOUSING PROJECT
Oxnard, California

TABLE OF CONTENTS

	<u>Page</u>
Article 1. ENGAGEMENT	1
Agreement Term	1
Revitalization Description	1
Recitals and Exhibits	1
Definitions and Capitalization	2
Good Faith Cooperation	2
Communications	2
No Agency	2
Time of the Essence	3
Quality of Work	3
Role of HUD	3
Developer Work on Behalf of Owner Entity	3
Article 2. DEVELOPER RESPONSIBILITIES for the REVITALIZATION	4
Revitalization Plan	4
Revitalization Activities and Services	5
Revitalization Budget and Schedule	5
Decision-Making Procedures	6
Reporting Procedures	7
Selection of Professionals, Subcontractors and Consultants	7
Federal Requirements	9
Performance and Completion Guaranty	10
Article 3. AUTHORITY RESPONSIBILITIES	10
General Responsibilities of the Authority	10
Access to Property	11
Development Impact Fees	11
Transfer of Property	11
Project-Based Vouchers	11
Relationship with HUD and Revitalization Support	12
Execution of Documents	12
Article 4. CONSTRUCTION RESPONSIBILITIES OF THE DEVELOPER	12
Design Process	12
Documents, Drawings and Materials	13
Survey	13
Intentionally Deleted	13
Demolition	13
Inspections by the Developer	13

Permits and Compliance with Laws	14
Procurement of Goods and Services By Developer	14
Construction.....	15
Revitalization Cost Savings	17
Article 5. INDEMNIFICATION	18
Generally.....	18
Survival.....	18
Article 6. ENVIRONMENTAL RESPONSIBILITIES.....	18
Environmental Responsibilities of the Authority and Developer	18
Environmental Responsibilities of the Authority	20
Definitions	20
Article 7. INSURANCE.....	21
Insurance Requirements.....	21
Insurance Endorsement.....	24
Insurance Policy Requirements	24
Claims.....	25
Authority Insurance	25
Owner Entities' Insurance	25
Article 8. REVITALIZATION FINANCING and RELATED DOCUMENTS	25
Generally.....	25
Owner Entity Formation	25
Ground Lease.....	26
Regulatory and Operating Agreement	26
(Reserved).....	26
Loan or Bond Documents	26
Partnership Documents	26
Declaration of Restrictive Covenants	26
Management Documents	26
Closing.....	26
Article 9. REVITALIZATION MILESTONES.....	27
Generally.....	27
Outside Factors	27
Article 10. FEE and PAYMENT	27
Development Fee	27
Retention of Rights	27
Property Management Fee.....	28
Treatment of HUD Funds	28
Cash Flow from Rental Operations	28

Article 11. TERMINATION and DEFAULT	29
Termination and Events of Default, Generally.....	29
Events of Default by Developer	29
Events of Default by Authority.....	30
Damages	30
Termination for Convenience	30
Force Majeure.....	31
Changed Circumstances.....	32
Arbitration of Disputes	33
Article 12. REMEDIES	33
Remedies, Generally.....	33
Alternate Authority Remedies.....	33
[RESERVED].....	34
Assignment	34
Article 13. DEVELOPER REPRESENTATIONS and WARRANTIES	35
Organization and Powers	35
Authorization and Binding Agreement.....	35
Litigation, Limited Denial of Participation, or Debarment	35
Conflicting Obligations	35
Article 14. AUTHORITY REPRESENTATIONS and WARRANTIES.....	36
Organization and Powers	36
Authorization, Binding Agreement	36
Litigation, Limited Denial of Participation, or Debarment	36
Financial Condition	36
Article 15. MISCELLANEOUS	36
Notices.....	36
Written Materials and Public Statements	37
Contracting Officer	37
Further Assurances	37
Subcontracts.....	37
Assignment	37
Counterparts.....	38
Interpretation and Governing Law.....	38
Severability	38
Parties Bound.....	38
Final Agreement	38
Modification of Agreement.....	38
Conflict of Interest.....	38
Waivers	38
Successors.....	39
Certain Approvals.....	39

References to this Agreement.....	39
Headings	39
Construction.....	39
Document Retention Period.....	39
Power to Execute	39
Reasonableness	39
Certification Regarding Lobbying.....	39

Exhibit A	Legal Description of Property
Exhibit B	Definitions
Exhibit C	General Description of Revitalization
Exhibit C-1	Development Services
Exhibit C-2	Financing Services
Exhibit C-3	Design Services and Guidelines
Exhibit C-4	Construction Services
Exhibit C-5	Approved Subcontractors
Exhibit D	Necessary Amendments to City's Specific Plan
Exhibit E	Potential Phasing Approaches
Exhibit F	Certification Regarding Lobbying

DEVELOPMENT AGREEMENT

For

THE COURTS HOUSING PROJECT Oxnard, California

This Development Agreement (this "**Agreement**") dated this ____ day of ____, 2012, is entered into by the OXNARD HOUSING AUTHORITY a public body, corporation and politic (the "**Authority**"), and The Courts, Oxnard, L.P., a California limited (partnership (the "**Developer**"). Collectively, the Authority and Developer are the "**Parties**" and each a "**Party**".

RECITALS

WHEREAS, the Authority is the owner of certain real property located in the City of Oxnard, CA, legally and more specifically described at Exhibit A (the "**Property**"); and

WHEREAS, the Authority intends to revitalize The Courts Housing Project, a 260-unit development owned by the Authority (collectively, the "**Development**") located on the Property; and

WHEREAS, the Authority intends to implement its plan for Revitalization by demolishing the existing structures and replacing them with new structure(s) on The Courts portion of the Property (collectively, the "**Revitalization**"); and

WHEREAS, in June 2011, the Authority selected the Developer after a competitive Request for Qualification ("**RFQ**") process to assist the Authority in implementing the Revitalization effort; and

WHEREAS, the Authority intends for the Revitalization to be financed with private equity raised from sources including low-income housing tax credits and private debt.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto covenant and agree as follows:

Article 1. ENGAGEMENT

- 1.1 **Agreement Term.** This Agreement shall begin on the date the last party executes the agreement ("**Effective Date**").
- 1.2 **Revitalization Description.** The Revitalization shall consist of multiple phases as replacement for The Courts, which, in total, shall include no less than the number of public housing units being demolished (i.e. 1 for 1 replacement) and no more than the number of units permitted by the Specific Plan.
- 1.3 **Recitals and Exhibits.** The foregoing recitals are true and correct and incorporated herein by reference as the agreements of the parties. This Agreement incorporates all attached exhibits as the agreements of the parties.

- 1.4 **Definitions and Capitalization.** Exhibit B contains certain definitions of capitalized terms used herein. Other initially capitalized terms are defined where they first appear in the text of this Agreement.
- 1.5 **Good Faith Cooperation.** The Authority and the Developer shall cooperate with one another in good faith to consummate successfully the Revitalization. Such cooperation shall include commercially reasonable efforts to respond to one another as expeditiously as is reasonably possible with regard to requests for information or approvals required hereby.
- A. With regard to materials or documents that require approval of one or more parties, if such materials or documents are not approved as initially submitted, then the parties shall engage in such communication as is necessary under the circumstances to resolve the issues resulting in such disapproval.
- B. A spirit of good faith and a mutual desire to complete the Revitalization successfully shall govern the Parties' relationship under this Agreement including, for instance, when unforeseen events, changes in law, regulation, policy, procedure, general market conditions not controlled by the Parties, and other facts or conditions discovered after the execution of this Agreement require the Parties to modify the Agreement.
- 1.6 **Communications.** In connection with the Development process, the Authority and Developer will keep each other reasonably informed of all material events, information and communications relating to the Revitalization.
- A. The Authority shall take the lead in communications with HUD, and shall inform Developer of all material communications with HUD. In certain instances, the Developer may take the lead in communications with HUD, and will inform the Authority of all such material communications.
- B. Developer shall take the lead in all communications with the CTCAC and the California Debt Limit Allocation Committee ("CDLAC"), and shall inform the Authority of all material communications with CTCAC and CDLAC.
- C. To facilitate timely communication, the parties to this Agreement shall designate a representative with responsibility for the routine administration of each party's obligations under this Agreement. The parties initially appoint the following as representatives: Larry White (or his/her designee) for the Authority and Mark Irving (or his designee) for the Developer.
- 1.7 **No Agency.** Neither the Developer nor the Authority is an independent contractor nor an agent of the other Party; therefore, except as may be expressly set forth herein, neither the Developer nor the Authority shall have any authority to bind the other Party.
- A. The Parties shall perform the duties and undertake their respective responsibilities herein set forth in a competent and professional manner using good faith and commercially reasonable efforts.

- B. Developer shall provide the Revitalization Services (as defined below) for the Revitalization in accordance with this Agreement.
- C. The Authority shall provide the Authority Services (as defined below) for the Revitalization in accordance with this Agreement.

1.8 Time of the Essence. Subject to Section 11.6 (Force Majeure) and except as otherwise expressly set forth herein, the Parties to this Agreement agree that time is of the essence to conclude the Revitalization successfully, and the Developer and the Authority shall each adhere to the Revitalization Schedule, provided the Parties shall agree to reasonable extensions of the Revitalization Schedule as circumstances shall dictate.

1.9 Quality of Work. All the activities performed under this Agreement shall be provided in accordance with: (i) generally accepted standards for comparable affordable rental developments in California; (ii) standards, criteria, and other requirements imposed by the Authority's funding agreements with HUD (as applicable); and (iii) standards, criteria and other requirements imposed by applicable statutes, regulations, ordinances, and orders of all governmental authorities having jurisdiction over the Revitalization. The Developer shall furnish the skill and judgment necessary to perform the required services in compliance with an approved schedule for the Revitalization (the "**Revitalization Schedule**") and budget for the Revitalization ("**Revitalization Budget**"), both and in an expeditious and economical manner consistent with the interests of the Authority and HUD. Developer agrees to submit the Revitalization Schedule and Revitalization Budget to Authority within 120 days of this Agreement being executed by both Parties.

1.10 Role of HUD.

A. The parties hereto acknowledge that the Closing and the consummation of the transaction that constitute the Revitalization contemplated by this Agreement may be subject to approval by HUD. The Authority shall be responsible to make any required submissions to HUD, and the Authority and the Developer agree to cooperate in good faith to obtain all necessary approvals from HUD as expeditiously as possible and acknowledge that, to the extent applicable, obtaining approvals from HUD must be a condition precedent to certain obligations contained herein. The Authority will keep Developer informed as to the status of HUD's approval, will provide Developer with copies of all such approvals, and will deliver written notice to proceed after receipt of HUD's approvals and the Closing.

B. The Developer shall comply with all terms and conditions of this Agreement and all applicable HUD regulations and requirements.

1.11 Developer Work on Behalf of Owner Entity. The Parties acknowledge that much of the work to be performed by the Developer (or its affiliates) will be done in the name of the Owner Entity. Consequently, work to be done by the Developer (or its affiliates) herein may be done pursuant to additional agreements with the Owner Entity which will govern the relations of the various parties in accordance with their terms upon closing.

Article 2. DEVELOPER RESPONSIBILITIES FOR THE REVITALIZATION

2.1 Revitalization Plan.

- A. The plan for the Revitalization (the “**Revitalization Plan**”) shall include multiple phases, which shall be dictated in part by the availability of certain funding sources, including but not limited to tax credits, tax exempt bond funds and Section 8 vouchers. The Developer and the Authority will use good faith efforts to develop and agree upon a Revitalization Plan that accounts for the availability of the particular funding sources and project-based Section 8 vouchers (see Section 3.5). In connection with the foregoing, the parties agree that certain amendments to the City’s current “**Specific Plan**” for the Revitalization (the “**Specific Plan**”) will need to be obtained. Those amendments are outlined more specifically on Exhibit D hereto. Certain proposals for the Revitalization Plan are described on Exhibit E hereto, but that shall not preclude additional or alternative proposals.
- B. The Authority’s approval of any Revitalization Budget and Revitalization Schedule will confirm its commitment, in principle, of any resources ascribed to it in the Revitalization Budget and Revitalization Schedule (but not in excess of the financial commitments by the Authority, as described in this Agreement) and the Authority’s approval of the proposed actions by Developer described therein. The Authority’s approval would also permit Developer, lenders, investors and other third parties to proceed to finalize plans in reliance upon such approval. As the lenders, investors and other third parties providing funds commit to the Revitalization, Developer shall, as part of its monthly reporting requirement described in Section 2.5, submit to the Authority detailed revisions and refinements to the Revitalization Plan, the Revitalization Budget and the Revitalization Schedule.
- C. The Developer shall propose as part of the Revitalization Plan: (i) any restrictions which will apply to each unit; (ii) the approximate unit rental for each rental; (iii) the approximate cost of the Revitalization; and (iv) the expected types and sources of financing. Any such proposal shall be subject to the Authority’s review and approval, which approval is not to be unreasonably withheld, delayed or conditioned.
- D. It is understood that the financing programs are competitive and subject to an application and evaluation process. This development will compete against other developments in one or more funding rounds. So long as the development is consistent with the covenants of this Agreement, the Authority shall cooperate with the Developer to maximize the scoring thereby increasing the likelihood of a successful application.
- E. Developer acknowledges and agrees that Authority may undertake the development of additional affordable housing units on portions of the Property identified on Exhibit A as reserved for Authority sponsored development

("Authority Sponsored Development"). Developer and Authority agree to cooperate in the designation of the location of Authority Sponsored Development in connection with any amendment of the approved Specific Plan. Further, in general, while the specific area for the Authority Sponsored Development has not been defined, it is anticipated to be in the north central area of the property as depicted on Exhibit A.

2.2 Revitalization Activities and Services.

- A. **Generally.** Developer and its affiliates and subcontractors shall diligently and in good faith provide the following services, equipment, and materials for the Revitalization and shall also furnish, directly or through subcontractors, professional expertise, management, labor, materials, supplies, fixtures, equipment, tools and machinery, testing, supervision, facilities, and other services required to complete the Revitalization (collectively, the "**Revitalization Services**") in accordance with all applicable requirements of this Agreement and Loan Documents, as follows:
1. **Development Services.** All development services, including coordination with the Authority in all aspects of the Revitalization and formation of an Owner Entity, listed on Exhibit C-1 (the "**Development Services**"). The Owner Entity shall include as its managing general partner, Las Cortes, a non-profit affiliate of the Authority, which shall oversee the management of the Owner Entity.
 2. **Financial Services.** All financing activities and services listed on Exhibit C-2 (the "**Financing Services**").
 3. **Construction Services.** All construction services listed on Exhibit C-4 (the "**Construction Services**").
 4. **Social Services Planning and Implementation.** The Developer shall work with Las Cortes and the Authority in their efforts to maintain and enhance the existing Community and Social Services Plan (the "**CSSP**").
- B. **Additional Services.** If the Authority requests any additional services other than those specified in this Agreement and Developer agrees to provide such additional services, then the Parties shall execute a written contract modification amendment that specifies the additional services and any resulting change in the Revitalization, Revitalization Plan, Revitalization Budget, Revitalization Schedule or any other term or condition of this Agreement.
- C. **Alternative Proposals.** If any component of the Revitalization described in Exhibit C cannot reasonably be completed as contemplated herein, the Developer or Authority, as applicable, may present alternative proposals for consideration by the other Party.

2.3 Revitalization Budget and Schedule.

- A. Developer and the Authority will agree upon a schedule and budget for the Revitalization (the “**Revitalization Schedule**” and “**Revitalization Budget**”, respectively). Pursuant to Section 2.5, Developer shall submit proposed updates to the Revitalization Schedule and the Revitalization Budget as changes become necessary, subject to the Authority’s review and approval of changes in any Revitalization Budget line item that exceeds the amounts requiring the approval of any construction lender.
- B. The Developer will use best efforts to seek private funding, additional state or federal funding sources that have not yet been identified, provide loan documents for City Deferred Impact Fees, or some combination sufficient to close any existing or subsequent budget gap.
- C. The Developer and Authority shall participate in planning, progress and review meetings (or video conferences or telephone conferences, if acceptable to the Authority) at least once each month during the Revitalization Schedule, and additionally as deemed necessary by the Authority in its reasonable discretion, provided such additional meetings shall, upon the request of the Developer, be held by video conference or telephone conference. The Revitalization Budget and the Revitalization Schedule shall be updated periodically by Developer and, upon reasonable review and approval by the Authority, shall be fully incorporated as if set forth herein.

2.4 Decision-Making Procedures.

- A. For all actions requiring Authority approval, Developer shall submit the request for approval and supporting information with a notice that bears a bold face legend substantially as follows: “*Important*” *Your Response is Required in 15 Business Days.*”
- B. (1) The Authority shall respond in writing in fifteen (15) business, except for actions that require approval by the Authority Board in which case Developer shall submit its written request for approval and supporting information no later than twenty-one (21) business days before the next regular meeting of the Authority Board. The Authority shall provide a response to the Developer no later than five (5) business days after the Authority Board’s meeting.

(2) The Authority’s response must include the basis for any objection and suggested modifications to obtain approval. For some issues, this Agreement identifies the number of days that the Authority shall have to respond. For other issues, the amount of response time shall be stated in the notice, and shall be proportionate to the type and magnitude of the decision and the need to keep the Revitalization proceeding smoothly. For example, but not in limitation, the decision time for contract change orders from the Construction Manager shall be shorter than the time for review and approval of budgets.

- C. If Developer does not receive a response within the specified number of days, it may send the Authority a notice of non-response. Following the giving of this notice, the Authority shall have an additional five (5) business days in which to respond.
- D. If the Authority does not respond within the period described in Section 2.4C., the action shall be deemed disapproved by the Authority.
- E. The procedure described in this Section 2.4 does not apply to: (1) emergency circumstances, and (2) situations where the fiscal impact is minimal and a near-immediate decision is necessary.

2.5 Reporting Procedures.

- A. **Monthly Report.** No later than the 10th day of each month during which this Agreement is in effect, the Developer shall provide the Authority with written progress reports of the previous month ("**Monthly Report**") in such form as may reasonably be required by the Authority, HUD, or both on the status of all Revitalization activities, including work performed by Developer's Subcontractors, and completion of Revitalization Milestones. Such reports shall include:
 - 1. An update of the Revitalization Schedule.
 - 2. A Revitalization Budget that explains any changes from the prior month.
- B. **Authority Review Procedure.** The Authority shall have ten (10) days following its receipt from Developer of a Monthly Report to review it and provide comments to Developer. If the Authority makes no written objections to any updates, modifications or amendments to the Revitalization Schedule, Revitalization Budget, or both contained in a Monthly Report (collectively "**Developer Updates**") before the end of fifteen (15) day period, then the Revitalization Schedule and Revitalization Budget as updated to include the Developer Updates shall be deemed approved by the Authority. Any objections by the Authority to the Developer Updates shall describe in reasonable detail the basis for the objection and an alternative proposal for consideration by Developer.

2.6 Selection of Professionals, Subcontractors and Consultants.

- A. **Responsibility for Employees.**
 - 1. Developer and the Authority shall each provide a competent staff for the proper administration, coordination, and supervision of the Revitalization with respect to their respective obligations under this Agreement.

2. All officers, employees and subcontractors of Developer shall be compensated by Developer, and shall be under the control of Developer. The Authority shall not have any liability or obligation with respect to any employment arrangement between Developer and any of its officers, employees and subcontractors. All matters concerning the employment, supervision, compensation, promotion and discharge of such officers, employees and subcontractors shall be the responsibility of Developer.
3. All officers, employees and subcontractors of the Authority shall be compensated by the Authority, and shall be under the control of the Authority. Developer shall not have any liability or obligation with respect to any employment arrangement between the Authority and any of its officers, employees and subcontractors. All matters concerning the employment, supervision, compensation, promotion and discharge of such officers, employees and subcontractors shall be the responsibility of the Authority. Notwithstanding the foregoing, Developer shall be responsible for reimbursement of those third party costs, up to \$150,000, incurred by the Authority in furtherance of the completion of the Revitalization Plan at Closing. Should Closing not occur, Developer shall not be responsible for any reimbursement.

B. Non-Discrimination. The Developer, its employees, and Subcontractors shall fully comply with all applicable laws and regulations with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing and other employer-employee related matters, including, without limitation, all laws, rules and regulations with respect to non-discrimination based on race, sex or otherwise. Without limiting the generality of the foregoing, Developer, its employees, and Subcontractors agree in connection with the performance of work under this Agreement not to discriminate on the basis of race, sex, or other classification for which discrimination is prohibited by applicable law, against applicants for employment, promotion, demotion or transfer, or recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

C. Subcontractors.

1. The Subcontractors named in the Developer's submission to the Authority and listed on Exhibit C-5 have been retained by the Developer with the Authority's prior approval.
2. Developer shall use reasonable efforts to verify that all consultants, design professionals, construction professionals, and other professionals or contractors engaged by Developer (but not construction subcontractors) to provide services or supplies for the Revitalization ("Subcontractors"), as well as such first tier subcontractors of the Subcontractors, shall not be debarred by HUD or other federal Executive Agency, and shall supply the

skill, licensure, required insurance, and judgment necessary to perform the required services in compliance with the Revitalization Schedule and the Revitalization Budget and in accord with all requirements of their respective contracts.

3. The Authority shall have the power to require the Developer to terminate any Subcontractor upon evidence of a conflict of interest causing the Authority to violate its obligations under applicable regulations, its Annual Contributions Contract with HUD or 24 CFR Part 85 (if applicable), or if the Subcontractor fails to meet or does not comply with the terms and conditions described herein, subject to the notice and cure periods of this Agreement.
4. The Developer shall not contract with any Subcontractor where the Developer has notice or knowledge that the Subcontractor has been found in violation of Section 3 regulations at 24 CFR part 135.

2.7 Federal Requirements. Developer, its employees and Subcontractors, shall comply with all applicable federal, state and local laws, HUD regulations and the ACC, as well as all of the applicable requirements of the following, as the same may be amended from time to time:

- A. The Fair Housing Act (42 U.S.C. 3601-19) and regulations pursuant thereto (24 C.F.R. part 100); Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 C.F.R. part 107); the fair housing poster regulations (24 C.F.R. part 110) and advertising guidelines (24 C.F.R. part 109).
- B. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 C.F.R. part 1) relating to non-discrimination in housing.
- C. The prohibitions against discrimination based on age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 C.F.R. part 146).
- D. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 C.F.R. part 8); the Americans with Disabilities Act (Public Law 101-336) and its implementing regulation at 28 C.F.R. part 36; and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations issued pursuant thereto (24 C.F.R. part 40).
- E. The Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, relating to disabilities.
- F. Section 102 of the Department of Housing and Urban Development Reform Act of 1989, as implemented at 24 C.F.R. part 12, which contains provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD.

- G. Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135.
- H. Section 13 of the Department of Housing and Urban Development Act of 1974, as amended by section 112 of the HUD Reform Act of 1989, and as implemented at 24 C.F.R. part 86.
- I. 24 C.F.R. part 24, which applies to the employment, engagement of services, awarding of contracts, sub grants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.
- J. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 C.F.R. part 24.
- K. The ACC between the Authority and HUD, as, if and to the extent made applicable to the Revitalization by a specific Mixed Finance ACC Amendment.
- L. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations at 40 CFR Part 15.
- M. The State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §6321 *et seq.*
- N. Section 12 of the Act, 42 USC 1437j which applies to the payment of not less than the wages prevailing in the locality, as determined by or adopted by the Secretary of HUD, to an architects, technical engineers, draftsmen and technicians.
- O. OMB Circular numbers A-110 and A-87, as they relate to the acceptance and use of federal funds.

2.8 Performance and Completion Guaranty. Developer and its principals and affiliates (collectively the "Guarantors" and, individually, a "Guarantor") will provide all guaranties required by the investors and third-party lenders, including completion, and if applicable, operating deficit and tax credit recapture. The Developer will provide to the Authority a Guaranty of Completion (and no other guaranties) in connection with the Authority financing for the Revitalization.

Article 3. AUTHORITY RESPONSIBILITIES

3.1 General Responsibilities of the Authority. The Authority shall be responsible for such services as described in this Article III. The Authority shall promptly review any matter submitted to it and advise the Developer of its approval or non-approval. The Authority's approval of any matter required under this Agreement shall not be unreasonably withheld, conditioned or delayed.

3.2 Access to Property. Before transferring the Property at Closing, the Authority shall provide the Developer full and complete access to the Property including rights of way and easements for access thereto, needed to accomplish the Revitalization, subject to the environmental requirements outlined in Article 5, and pursuant to a site access agreement, if required by the Authority. If Closing cannot occur within 120 days of the tax credit award, the Authority agrees to enter into with Developer a reasonable license agreement, subject to any required HUD approvals, to access the Property for purposes of commencing construction as required by the CTCAC in connection with the tax credits for the Revitalization.

3.3 Development Impact Fees. Developer and Authority agree that Authority shall be entitled to a waiver of development impact fees and school mitigation fees for up to 32 of the units being developed by the Authority on the Authority Sponsored Development based upon the demolition of the existing 260 public housing units on the Property. The remaining 228 units shall be used to offset development impact fees and school mitigation fees for the benefit of the Revitalization. Developer and Authority acknowledge the potential need for future good faith negotiations between the Parties regarding this section.

3.4 Transfer of Property.

- A. The Authority shall enter into a Ground Lease with an Owner Entity, conditioned upon the Developer obtaining financing in accordance with this Agreement, in a manner reasonably acceptable to the Authority and the Developer and otherwise negotiated between the Authority and the Developer and approved by HUD, if applicable.
- B. At Closing, possession of the Property shall be transferred from the Authority to the Owner Entity pursuant to the terms and conditions of the Ground Lease.

3.5 Project-Based Vouchers.

- A. The Developer estimates, and the Authority acknowledges, that a minimum of 260 project-based Section 8 vouchers will be required in order to ensure the financial viability of the Revitalization.
- B. The Authority agrees to use its best efforts to set aside up to 260 tenant-based Section 8 vouchers that are turned over to the Authority ("**Turn-Over Vouchers**") on a coordinated schedule to ensure that such vouchers are available for the Revitalization as project-based, yet does not reduce the Authority's voucher funding levels. The Developer agrees to use best efforts to reduce the number of Project Based Vouchers needed for project feasibility, in an effort to assist Authority with the Authority Sponsored Development. The Authority shall commit the maximum allowable number of tenant-based Section 8 vouchers, less the 72 vouchers previously committed to another project and the Section 8 vouchers preliminarily committed to the Authority Sponsored Development, for the Revitalization.

- C. To the extent that there is not a sufficient number of Turn-Over Vouchers, the Authority agrees to use its best efforts (with the assistance of the Developer) to obtain HUD approval to convert relocation vouchers to project-based vouchers in order to secure project-based funding for a minimum of 260 units at the Revitalization.

3.6 Project Based Vouchers.

- A. The Authority shall enter into an Agreement to enter into a Housing Assistance Payments Contract and a Housing Assistance Payment Contract with the Owner for project based, tenant-based and any required relocation housing vouchers for the Section 8 units.
- B. The Authority shall be responsible, along with Las Cortes, Inc., for maintaining the current service programs being offered to the community.

3.7 Relationship with HUD and Revitalization Support.

- A. The Authority shall be in contract with HUD and, in that capacity, will have primary and direct responsibility for contact and communication with HUD on any and all matters relating to the Revitalization.
- B. The Authority shall provide assistance for the Revitalization with local agencies, HUD, lenders, and other applicable parties and will agree to reasonable requirements imposed on the Revitalization by any lenders and equity investors investing in the Revitalization. The Authority shall provide, to the extent appropriate, assistance requested by the Developer in obtaining licenses, approvals, clearances, or other cooperation from local, state, and federal agencies, the Mayor's Office, the City Council, and other public governing bodies; however, the Developer shall have the primary responsibility for obtaining such approvals except as otherwise provided herein.

- 3.8 Execution of Documents.** The Authority shall maintain sole authority for the execution of documents required of the Authority pursuant to 24CFR §941, Subpart F. Whenever statute or regulation or the successful implementation of this Agreement requires the Authority to take actions or execute documents to accomplish the Revitalization, the Authority will do so promptly, so as not to impede the orderly progress of the work, provided however that actions that require approval by the Authority Board shall have until after the next regularly scheduled meeting of the Authority Board to take such actions or execute such documents.

Article 4. CONSTRUCTION RESPONSIBILITIES OF THE DEVELOPER

4.1 Design Process.

- A. The Principal Architect shall design the Revitalization in accordance with this Agreement, the Design and Planning Services at Exhibit C-3, and the Revitalization Schedule.

- B. The Developer shall further require, by contractual obligation, the appropriate licensure and insurance for professional liability by the Principal Architect and any Subcontractor that provides services for mechanical, electrical plumbing, engineering, architectural services, civil and structural engineering, and landscape architecture, regardless of whether the Subcontractor is retained directly by the Developer or indirectly through a Principal Architect.
- C. The Developer shall develop plans and specifications for the Revitalization Plan that includes, at minimum: (i) the number, type and bedroom distribution of the units to be constructed in the Revitalization; (ii) incorporate green building practices; (iii) provide quality public space; and (iv) a general schematic site plan. The Developer shall submit the proposed plan to Authority for review. The Developer shall reasonably consider proposed corrections, as requested by the Authority. If required, the Revitalization Plan, as reflected in the Rental Term Sheet, will be submitted to HUD for approval. The Developer shall be responsible for all design and planning services listed on Exhibit C-3 (the "Design Services").
- D. The Developer shall cause the Revitalization to be designed in material compliance with all applicable Federal, state, county and local laws, codes, ordinances, rules and regulations.

4.2 Documents, Drawings and Materials. The Developer shall submit all required drawings to the City as necessary in order to obtain the requisite approvals and permits for the Project.

4.3 Survey. The Developer shall have a survey of the Property prepared and certified in connection with the Revitalization.

4.4 Intentionally Deleted.

4.5 Demolition. The Developer shall be responsible for demolition of all buildings on the Property, except for any buildings constructed in connection with the Authority Sponsored Development. The Developer shall keep Authority informed of its progress, any conditions it encounters that impact the agreed-upon Revitalization Milestones, Revitalization Plan, or both, and any need for additional activities or expenses that were not planned or budgeted. The Developer shall not be responsible for any costs associated with the Authority Sponsored Development.

4.6 Inspections by the Developer. The Authority shall cause the Principal Architect to guard against defects and deficiencies in design and construction.

- A. The Developer shall be entitled to order the Construction Manager to stop work, or any portion thereof, and direct special inspection or testing of such work, which in the Developer's reasonable judgment may not be in accordance with the provisions of the Construction Documents, whether or not such work is fabricated, installed or completed.

- B. The Developer shall cause the Principal Architect, or other qualified licensed architect, to conduct monthly inspections of the work of the Construction Manager and shall verify, using AIA G-702 or other form approved by the Developer, that the work is being performed in accordance with the Construction Documents. The Principal Architect, or other qualified licensed architect, shall inspect all work not less than monthly during the entire duration of construction activities.

4.7 Permits and Compliance with Laws.

- A. **Obtain Permits and Other Approvals.** The Developer shall diligently and in good faith pursue such actions as may be necessary or appropriate to obtain all construction permits, licenses, easements and approvals necessary from any governmental agency to obtain, establish, or construct the Revitalization, including on-site and off-site utilities necessary for the Revitalization, and roads, transportation, and other facilities or physical improvements contemplated by the construction documents ("**Construction Documents**"). The Developer shall use commercially reasonable efforts to, on an ongoing and timely basis, advise the Authority as to the status of the processing of all applications necessary to obtain all governmental approvals the Developer is required to obtain in accordance with this Agreement. The Developer shall advise the Authority of any hearings regarding matters described in this Section 4.1 with sufficient advance notice to enable the Authority to elect to attend such hearings. The Developer shall use commercially reasonable efforts to, on an ongoing and timely basis, advise the Authority as to the status of the processing of the building permit or permits. Construction shall not proceed before issuance of applicable permits.
- B. **Compliance with Laws and Permits.** The Developer shall cause the Revitalization to be designed and constructed in material compliance with all applicable Federal, state, county and local laws, codes, ordinances, rules and regulations.

4.8 Procurement of Goods and Services By Developer.

- A. The Developer and the Authority acknowledge that 24 CFR Part 85, as amended in subpart F of 24 CFR Part 941, which applies to the Authority, does not apply to Developer.
- B. **Prohibited Arrangements.**
 - 1. The Developer shall not enter into any contract, lease, purchase order or other agreement ("**Arrangement**") in connection with the Revitalization with any party controlling, controlled by or under common control of the Developer (an "**Affiliate**"), unless such Arrangement has been approved in writing by the Authority, which consent shall not be unreasonably withheld or conditioned, after full disclosure in writing by the Developer

to the Authority of such affiliation or relationship and all details relating to the proposed Arrangement.

2. The terms of any such Arrangement must conform to the applicable requirements of the Authority, HUD, the ACC (if applicable) and this Agreement.
- C. Wage Rates. To the full extent required by all applicable State and Federal laws, rules and regulations, if any, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.*, the Davis-Bacon Act, and the regulations adopted pursuant to each of them, as the same may be applicable to the Project (“**Prevailing Wage Laws**”).

4.9 Construction.

- A. The Developer shall be responsible for the construction and completion of the Revitalization in accordance with this Agreement and the Construction Documents.
- B. Payment and Performance Bonds. The Developer covenants that it shall obtain 100 percent (100%) performance bonds, material payment bonds, and labor payment bonds from the Construction Manager.
- C. Monitoring Performance of Contractors. The Developer shall monitor the performance of all persons and entities that provide materials, equipment or services to the Revitalization and the Developer shall take such actions as are reasonably necessary or required by the Authority to maintain adherence to quality standards, safety standards, production schedules, shipping dates, and job-site requirements contemplated herein. The Authority, however, shall take such actions as are reasonably necessary or required if the Developer fails to do so.
1. Onsite Management. The Developer, at a minimum, shall have a competent Project Manager responsible for construction activities on the Property on-call at all times and on-site, as needed on a regular basis, through completion of the Revitalization. The Developer shall first obtain Authority approval if the Project Manager will not be a full-time equivalent employee of the Construction Manager, and the Authority shall not unreasonably deny, condition or withhold its approval.
 2. Onsite Staffing. The Developer shall require that the Construction Manager maintain adequate and proper staffing throughout the construction phase of the Revitalization.
- D. Monitoring Project Scheduling. The Developer shall take all steps reasonably necessary to enable the Revitalization to progress in accordance with the deadlines established in the Revitalization Schedule, this Agreement and the Construction Documents, subject to the extension of such deadlines as provided herein.

E. Monitoring Construction Budget.

1. During the course of construction of the Revitalization, the Developer shall monitor the approved Construction Budget. The Authority shall be notified of all change orders under the Construction Documents, and shall have approval rights, not to be unreasonably withheld, conditioned or delayed for any change orders requiring the approvals of any construction lenders.

F. Materials, Storage of Purchased Items, and Security. All equipment, material, and articles furnished under this Agreement shall be in accordance with the Construction Documents, unless otherwise specified herein or specifically approved by the Authority.

1. Developer shall or shall cause the Construction Manager to inspect all equipment, materials, and articles obtained under this Agreement.
2. Developer shall cause the Construction Manager to monitor the delivery of, and, if necessary, arrange storage, protection and security for all materials, systems and equipment that are to be used in the construction of, or incorporated into, the Revitalization.
3. The Developer shall require the Construction Manager to provide reasonable security under the circumstances for the Property, including, without limitation, prevention of trespassing and dumping, and to provide and maintain secure fencing, as necessary, around the Revitalization and its components.

G. Construction Progress Reports. Developer shall record the progress of the Revitalization's construction and submit in the monthly status report required by Section 2.5, to the Authority, information on the status of the activities of the Construction Manager, the percentage of work the Construction Manager has completed, and the purpose, status, and dollar value of all proposed change orders, approved change orders, or both.

1. In addition, Developer shall consult with the Authority on a periodic basis, schedule to be determined jointly as circumstances may warrant to keep the Authority fully informed at all times of the status of construction.
2. If Developer becomes aware of any material fault or defect in the Revitalization efforts or material nonconformance with the Construction Documents, then Developer shall give prompt notice thereof to the Authority.

H. Document Records. Subject to Section 12.20, Developer shall retain the Construction Documents for the Revitalization. Developer shall also retain all construction records, including all plans, contracts, shop drawings, samples, purchase orders, applicable handbooks, technical standards and specifications,

and manuals related to the Revitalization. Developer shall make all such materials available for inspection by the Authority upon reasonable advance written notice.

- I. Right of Entry by the Authority. The Authority reserves for itself, its authorized agents, HUD (if required), and its authorized agents the right to enter and inspect the Property and any work in progress thereon during regular business hours, with reasonable notice to Developer, for the purpose of protecting or furthering the Authority's interests under this Agreement. The Authority, however, shall have no obligation to make any such inspection.
 - 1. Entry and the conduct of such inspections shall not interfere unreasonably with Developer's construction of the Revitalization. HUD (if required) and the Authority, and their agents and representatives shall abide by all reasonable safety and security measures imposed by Developer.
 - 2. Such inspections are for the Authority's information only and the Developer shall not be relieved of its obligation to complete the Revitalization in accordance with this Agreement. The Authority's inspection of the work shall neither be deemed acceptance of any or all of the work, equipment, or materials, nor does inspection waive any right the Authority has under this Agreement, subsequent loan documents or both.
- J. Substantial Completion Inspection. Upon Substantial Completion of the Revitalization, the Developer, the Authority and the Principal Architect shall inspect the work to determine and record the condition of the units (i.e., develop a "punch list"). The Authority shall notify the Developer of such inspection not less than five (5) days prior, and shall allow the Developer's representatives to accompany it on any such inspection. The Developer shall require the Construction Manager to replace or correct work that does not conform to the Contract Documents in any material respect.
- K. Cost Certification. Upon Substantial Completion and the subsequent inspection of the Revitalization, the Developer shall complete a cost certification that complies with the standards of the CTCAC and HUD, if required.

4.10 Revitalization Cost Savings.

- A. Allocating Cost Savings. Subject to Section 3.8B., the Parties agree that any cost savings achieved by the Developer or its Subcontractors in the diligent and good faith execution of any and all components of the Revitalization except design, engineering, demolition and remediation including, but not limited to the construction, lease-up marketing and financing ("**Revitalization Cost Savings**") shall first be applied to pay back any loans or advances made by Developer or its

affiliates, then to any other shortfalls of the revitalization budget, then shall be utilized for any betterments approved by the Authority in future phases of the Revitalization, as needed.

Article 5. INDEMNIFICATION

5.1 Generally.

- A. **Developer Indemnity.** Developer shall indemnify, defend and hold harmless the Authority and its respective commissioners, directors, officers, agents and employees hereunder from any loss, cost, damage, claim, demand, suit, liability, judgment and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of or relating to any injury, disease, or death of persons, or damage to or loss of property resulting in whole or in part from any material breach of this Agreement or intentional bad acts by Developer or its member entities, agents, employees, and Subcontractors arising or occurring after the Effective Date.
- B. **Authority Indemnity.** The Authority shall indemnify, defend and hold harmless the Developer and its members, officers, and their affiliates from any loss, cost, damage, claim, demand, suit, liability, judgment and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of or relating to any injury, disease, death of persons, or damage to or loss of property resulting in whole or in part from any material breach of this Agreement or intentional bad acts by the Authority, its respective commissioners, directors, officers, agents and employees arising or occurring after the Effective Date.

- 5.2 **Survival.** Developer's and the Authority's respective obligations under this Article 5 shall survive termination of this Agreement.

Article 6. ENVIRONMENTAL RESPONSIBILITIES

6.1 Environmental Responsibilities of the Authority and Developer.

- A. **Covenant Regarding Prohibited Substances.**
1. Neither any Developer Party nor the Authority and its commissioners, directors, officers, agents and employees shall, in regard to this Agreement, bring onto the Property any prohibited substance (collectively, (a)-(c) are the "Prohibited Substances"):
 - a. Asbestos or asbestos-containing material or polychlorinated biphenyl material, or
 - b. Hazardous substances or hazardous waste as defined under any federal, state or local law, that may require remediation

under applicable law (other than quantities or such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Revitalization), or

- c. Soil containing volatile organic compounds other than "clean fill" that contains volatile organic compounds in amounts not prohibited by federal, state, or local law or regulation.

2. The Authority and Developer shall each be liable for the consequences of, and responsible for proper removal and lawful disposal, at its sole expense, of any Prohibited Substances brought onto the site resulting from a default under this Section.

B. Pre-Existing Conditions. Except as otherwise provided in this Article 6, no Developer Party shall be liable for and the Authority shall, to the extent permitted under State and federal law, indemnify, defend and hold harmless Developer and its members, officers, and its and their affiliates from any loss, cost, damage, claim, demand, suit, liability, judgment and expense (including reasonable attorney fees actually incurred and other costs of litigation) arising out of any environmental conditions that existed or arose on the Property before the Entry Date.

C. Environmental Conditions.

1. The Authority is responsible to submit all required documents to HUD and any other governmental entity, as required by applicable law and regulation, for environmental review on the Property, except that the Developer shall be responsible for any environmental review related to its funding applications and commitments. The Authority is responsible for any Environmental Testing required for such review(s).
2. The Developer covenants and agrees to indemnify, defend and hold the Authority free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses (including reasonable attorneys' fees) which may at any time be imposed upon, reasonably incurred by or asserted or awarded against the Authority in connection with or arising from:
 - a. The existence of any Prohibited or Hazardous Substance first discovered or placed on, in, or under all or any portion of the portions of the Property on or after the Entry Date by any Developer Party, except for violations of which the Authority had actual knowledge and failed to disclose to Developer.

- b. Any violation of Environmental Laws by any Developer Party at or relating to any portion of the Property that arises out of their respective acts or omissions, or conditions existing on or after the Entry Date by a Developer Party, except for violations of which the Authority had actual knowledge and failed to disclose to Developer.
3. Notwithstanding anything to the contrary contained herein, Developer's obligations in Section 6.1(D)(ii) above with respect to the existence prior to the Entry Date of Prohibited Substances and Hazardous Substances shall not be effective unless and until Developer obtains an environmental insurance policy that covers the Developer from costs arising from unknown environmental contaminants (the "**Environmental Insurance Policy**"), and then after Developer obtains the Environmental Insurance Policy such obligations shall only be effective to the extent of the limits of the Environmental Insurance Policy. If Developer cannot, after using commercially reasonable efforts, obtain the Environmental Insurance Policy prior to Closing, then the parties will in good faith re-negotiate the risks that would have been covered by the Environmental Insurance Policy to allocate appropriately between the parties, given the circumstances, responsibility for such risks.

6.2 Environmental Responsibilities of the Authority. The Authority covenants and agrees with the Developer that the Authority will be responsible for any and all costs, damages and other liabilities in connection with or arising from:

- A. The existence of any Prohibited Substances or Hazardous Substances first placed on, in, or under all or any portion of the Property prior to the Entry Date, other than by any Developer Party, and other than as set forth in Section 6.1.D herein; or
- B. Any violation of Environmental Laws at or relating to a portion of the Property which arises out of conditions existing prior to the Entry Date covering such portion of the Property other than violations by or arising out of or resulting from the actions or omissions by any Developer Party, and other than as set forth in Section 5.1.D herein.

6.3 Definitions.

- A. "**Environmental Laws**" means any and all Federal, State or Commonwealth, county and local laws, regulations, statutes codes, rules, resolutions, directives, orders, executive orders, consent orders, guidance from regulatory agencies, policy statements, judicial decrees, ordinances, or any judicial or administrative interpretation of, any of the foregoing, pertaining to the protection of land, water,

air, or the environment whether now or in the future enacted, promulgated or issued.

- B. **"Hazardous Substances"** includes any substances, chemicals, materials or elements that are defined as "hazardous" or "toxic," otherwise regulated by any Environmental Laws. The term "Hazardous Substances" shall also include, without limitation, any substance, chemical, material, or element (i) defined as a "hazardous substance" under the *Comprehensive Environmental Response, Compensation and Liability Act of 1980* (42USC§§ 9601, et seq.), as amended by the *Superfund Amendment and Reauthorization Act of 1986*, and as further amended from time to time and regulations promulgated thereunder; (ii) defined as a "regulated substance" within the meaning of Subtitle I of the *Resource Conservation and Recovery Act* (42 USC §6991-6991(i)), as amended from time to time and regulations promulgated there under; (iii) designated as a "hazardous substance" pursuant to Section 311 of the *Clean Water Act* (33 USC §1321), or listed pursuant to Section 307 of the *Clean Water Act* (33 USC § 1317); (iv) defined as "hazardous," "toxic," or otherwise regulated under any Environmental Laws adopted by the state in which the Property is located, or its agencies or political subdivisions; (v) which is petroleum, petroleum products or derivatives or constituents thereof; (vi) which is asbestos or asbestos-containing materials; (vii) the presence of which requires notification, investigation or remediation under all Environmental Laws or common laws; (viii) the presence of which on the Property poses or threatens to pose a hazard to the health or safety of persons on or about the Property; (ix) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (x) which is lead-based paint or lead-based paint-containing materials; (xi) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (xii) which is radon or radon-containing or producing materials; or (xiii) which by any laws of any governmental authority requires special handling in its collection, storage, treatment or disposal.

Article 7. INSURANCE

- 7.1 **Insurance Requirements.** The Developer shall carry and pay for or cause its Subcontractors to carry and pay for (and shall ensure that its Subcontractors' subcontractors are insured under appropriate insurance policies), as applicable:

A. **Developer**

1. **Commercial General Liability Insurance,** or equivalent, with limits of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Excess and Umbrella liability coverage with limits of not less than five million dollars (\$5,000,000) aggregate and per occurrence. The Authority is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and

2. **Comprehensive Auto Liability Insurance (Primary and Umbrella)** that covers bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
3. **Worker's Compensation and Occupational Disease Insurance** in accordance with the laws of the State.

B. Construction Manager

1. **Commercial General Liability Insurance (Primary and Umbrella)** or equivalent with limits of not less than two million dollars (\$2,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. The Authority is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and
2. **Comprehensive Auto Liability Insurance (Primary and Umbrella)** covering bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
3. **Builder's Risk.** All of the Construction Manager's material subcontractors should provide proof they have a Builders Risk/Installation Floater in place with limits not less than the cost of their portion of the job/contract. **Riggers Liability: Limit of Liability \$2,000,000 Aggregate/\$1,000,000 per occurrence** if the subcontractor's operation includes rigging.
4. **Worker's Compensation and Occupational Disease Insurance** in accordance with the laws of the State.

C. Professional Services

1. **Professional Liability Insurance** that covers acts, errors, or omissions limited to the greater of one-third (1/3) the value of the professional services contract, or one million dollars (\$1,000,000.00) annual aggregate, unless the Authority, in its sole discretion, agrees to a lower amount; and
2. **Commercial General Liability Insurance (Primary and Umbrella)** or equivalent with limits of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. The Authority is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and

3. Comprehensive Auto Liability Insurance (Primary and Umbrella) covering bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
4. Worker's Compensation and Occupational Disease Insurance in accordance with the laws of the State.

D. Owner

1. Commercial General Liability Insurance, or equivalent, with limits of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Excess and Umbrella liability coverage with limits of not less than five million dollars (\$5,000,000) aggregate and per occurrence. The Authority is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and
2. Comprehensive Auto Liability Insurance (Primary and Umbrella) that covers bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
3. Property Insurance (post-construction) in accordance with the laws of the State and public housing requirements.

E. Management Agent

1. Commercial General Liability Insurance, or equivalent, with limits of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Excess and Umbrella liability coverage with limits of not less than five million dollars (\$5,000,000) aggregate and per occurrence. The Authority is to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement; and *Comprehensive Auto Liability Insurance (Primary and Umbrella)* that covers bodily injury and property damage with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence combined single limit, for all owned, hired, and non-owned vehicles in connection with the services to be performed; and
2. Blanket Crime Insurance that covers all persons handling funds under this Agreement, against loss by dishonesty, robbery, burglary, theft, destruction, or disappearance, computer fraud, and credit card forgery, and

other related crime risks. The policy limit shall cover losses for the maximum funds collected, received and on promises, or all at any given time.

3. Worker's Compensation and Occupational Disease Insurance in accordance with the laws of the State.

7.2 Insurance Endorsement. With respect to Section 7.1 above, these policies shall be endorsed to name the Authority, its Commissioners, officers, employees, agents and named volunteers and the City of Oxnard, its City Council, officers, employees, agents and volunteers as additional insured's and as loss payees.

7.3 Insurance Policy Requirements. To the extent eligible, Developer agrees to implement a General Liability Wrap-Up Insurance Program for the insurance required under this Article 7. All insurance shall be carried with companies selected by the Developer, Construction Manager or Subcontractor that are authorized to do business in the State and rated B++ or higher by A.M. Best with a financial size category rating by A.M. Best of VII or higher, provided that if such insurance company is rated by A.M. Best lower than A, or if it has a financial size category rating by A.M. Best of lower than X, then such insurance company must carry reinsurance with a reinsurance company rated A or higher by A.M. Best with a financial size category rating by A.M. Best of XII or higher. With respect to policies described in Section 7.1:

- A. The appropriate policies under Section 7.1A. must be in place before the execution of this Agreement and in-force insurance is a condition precedent to all applicable contracts executed pursuant to this Agreement;
- B. The Developer shall provide the Authority with a Certificate of Insurance as evidence of the limits and coverages described above, which shall be acknowledged and accepted by the Authority by issuing a notice of acceptance; and which shall affirmatively state that:
 1. When appropriate, the coverage is written on an occurrence form;
 2. Where required by this Agreement, the Authority is named as an additional insured and loss payee here and on the insurance held by all material Subcontractors; and
 3. On all property insurance policies, subrogation is waived.
- C. In the event that the Developer's insurance is scheduled to expire during the execution of this Agreement, the Developer shall provide the Authority with copies of renewal certificates 30 days prior to the expiration date of the expiring coverage;
- D. The insurance contracts shall require the insurance company to provide the Authority with thirty days (30 days) prior written notice of a substantial change, cancellation or non-renewal in coverage during the policy term;

- E. The policies must be placed with such companies, on such conditions, and with such beneficial interest appearing thereon as shall be reasonably acceptable to the Authority; and
- F. The Developer shall require all material subcontractors to carry the appropriate insurance, or the Developer may provide the coverage for any or all Subcontractors, and if so, the Developer's insurance should so stipulate.

- 7.4 **Claims.** In the event of a claim that takes place because of this Agreement, the Developer shall notify the Authority within thirty (30) days following discovery of the claim by the Developer. In addition, the Developer shall investigate and furnish the Authority with reports of all accidents, claims and known potential claims for damage or injury and shall cooperate with its insurers and those of the Authority.
- 7.5 **Authority Insurance.** The Developer understands and agrees that any insurance or self-insurance program maintained by the Authority shall apply in excess of, and not contribute with insurance provided by the Developer and its Subcontractors under this Agreement.
- 7.6 **Owner Entities' Insurance.** The Developer shall require the Owner Entity to acquire insurance as provided in this Article 7, as appropriate.

Article 8. REVITALIZATION FINANCING AND RELATED DOCUMENTS

- 8.1 **Generally.** The Owner Entity will enter into the project financing documents ("Project Financing Documents") defined hereto.
- A. **Acquisition after Tax Credit Compliance Period.** The Project Financing Documents will provide the Authority with the right to acquire the Revitalization at the end of the Low-Income Housing Tax Credit Compliance Period for a sum equal to the outstanding debt plus owners exit taxes or such lesser amount as permitted by Section 42(i)(7) of the Internal Revenue Code of 1986 (as amended) (the "Refusal Right"). The Authority shall also have the option to purchase the Revitalization at the end of the Low-Income Housing Tax Credit Compliance Period for fair market value. The provisions of this Section 8.1(A) are subject to the approval of the Owner Entity's tax credit investor. The Developer will use reasonable efforts to cause such tax credit investor to approve these provisions.
- 8.2 **Owner Entity Formation.** The Developer shall form the Owner Entity ("Owner Entity") to own the Revitalization. The Owner Entity shall be a separate, single-purpose entity whose general partner, managing member or equivalent will be either a member (or members) or a partner or partners of the Developer, its Affiliates, members, officers, managers or other direct or indirect owners of the members or partners of the Developer, or some combination thereof and the Authority or its non-profit Affiliate- - 50% for the Developer (or its affiliates) and 50% for Authority and Las Cortes. Any income, Cash Flow or residual receipts to the general partner shall be shared on a 50%/50% basis.

- 8.3 **Ground Lease.** The Authority shall enter into a ground lease for a term of at least 65 years, and at a minimum, for the period of time reasonably required by Developer's tax credit investor and required in order to maximize the tax credit and other funding for the Project ("**Ground Lease**") with Owner Entity for the Property subject, if applicable, to a Declaration of Restrictive Covenants in favor of HUD, with such terms as set forth in Section 3.9(A) herein.
- 8.4 **Regulatory and Operating Agreement.** Subject to Section 3.6, if applicable, the Authority and the Owner Entity owning Public Housing Units shall enter into a regulatory and operating agreement (the "**R&O Agreement**"), that complies with HUD regulations. Such R&O Agreement will incorporate the terms identified in Section 3.6. In addition, the R&O Agreement shall detail various reserve funds. The Owner Entity may establish a reserve funded from sources permissible under public housing regulations to fund operating subsidy payments if the Authority does not make such payments.
- 8.5 **(Reserved).**
- 8.6 **Loan or Bond Documents.** To secure debt financing, the Owner Entities may enter into certain loans or bond transactions, subject to the approval of the Authority and, if required, HUD, which may be secured by mortgages and other security interests on the leasehold interest of the Owner Entity (the "**Loan Documents**").
- 8.7 **Partnership Documents.** The Owner Entity shall be organized as a limited partnership or limited liability company under the laws of the State. All documents evidencing the formation of the Owner Entity, its rights and obligations with regard to the general and limited partners or members, as the case may be, including but not limited to the payment of developer fees, guarantees, and pledges (collectively, the "**Partnership Documents**") shall be subject to the reasonable approval of the Authority.
- 8.8 **Declaration of Restrictive Covenants.** If applicable, the Authority shall cause the Owner Entity to record a Declaration of Restrictive Covenants wherein the Owner Entity shall be obligated to cause the Public Housing Units contained therein to be operated as public housing in accordance with all statutes, rules, and regulations pertaining to public housing, for the period required by law. All loans, security interests, and the Ground Lease entered into shall be subject to the Declaration of Restrictive Covenants (if applicable).
- 8.9 **Management Documents.** The Developer shall prepare all applicable management documents needed for the Closing of the Revitalization including, but not limited to (as applicable), a management agreement, management plan, tenant selection policy, grievance procedures, and leases for Public Housing Units. Such documents (as applicable) shall comply with applicable public housing laws and regulations, and shall be approved by the Developer, the Authority and, to the extent required, HUD.
- 8.10 **Closing.** The Owner Entity, the Developer, investor(s), other lenders, and the Authority will participate in the Closing for the Revitalization pursuant to the Revitalization

Schedule at which time, all of the Project Financing Documents described in this Article 8, and such other documents as may be reasonably required by the Developer, the Authority, other lenders, investor(s), or, if applicable, HUD for the construction of the Revitalization will be executed.

Article 9. REVITALIZATION MILESTONES

- 9.1 Generally.** Subject to the conditions and limitations contained in this Agreement, Developer and the Authority covenant to achieve each of the Revitalization Milestones and meet each targeted deadline in accordance with its terms as described in the Revitalization Schedule as the same shall be updated, modified or amended as contemplated in this Agreement. These responsibilities may be modified by mutual agreement of the parties, which agreement shall not be unreasonably withheld, delayed or conditioned.
- 9.2 Outside Factors.** The Authority and Developer acknowledge that some of the Revitalization Milestones may not be achieved by the targeted deadline and, in certain situations, may be unachievable due to factors, including changes in State laws, changes in the Revitalization Plan by the Authority and HUD, where necessary, market conditions, force majeure as defined at Section 11.6, or a combination thereof. The Parties agree to reasonably revise the Revitalization Milestones as and when necessary as a result of outside factors that are not in the control of the Parties.

Article 10. FEE AND PAYMENT

10.1 Development Fee.

- A. **Generally.** In consideration of the Revitalization, the Developer (or its affiliates) shall be entitled to a development fee (“**Development Fee**”) from the Owner Entity in the amount shown and agreed upon in the Revitalization Budget and if applicable, in compliance with the *HUD Cost Control and Safe Harbor Standards for Rental Mixed Finance Development* (“**HUD Safe Harbor**”). The Developer and the Authority shall be entitled to only those fees outlined in this Article 10.
- B. **Timing of Fee Payment.** The Parties acknowledge and agree that the payment of the Development Fee will be paid as determined by Developer’s tax credit investor. At least half of the Development Fee may be deferred if permitted by the cash flow projections.
- C. **Amount of Fee.** Subject to HUD approval and compliance with the HUD Safe Harbor requirements, (as applicable) the Development Fee payable to the Developer (or its affiliates) shall be consistent with the guidelines set forth by CTCAC and CDLAC in order to maximize the tax credits.

- 10.2 Retention of Rights.** The Authority’s review, approval or acceptance of, or payment for Revitalization Services, shall not be construed to operate as a waiver of any rights by the Authority whether arising out of this Agreement or otherwise. The Developer shall

remain liable to the Authority pursuant to this Agreement and under applicable law for all damages to the Authority arising out of the Developer's performance of work under this Agreement.

10.3 Property Management Fee. The proposed management fee shall not exceed the lesser of (i) the amount permitted under the HUD Safe Harbor (if applicable), or (ii) the amount permitted by the CTCAC.

A. All terms for the property management agreement will be subject to the Authority's review and approval, and the Developer will provide supporting documentation evidencing that fees charged by a property management entity are no greater than the customary fees charged in the market for subsidized housing and consistent with all applicable laws, rules and obligations for developments funded with tax credits and mixed-finance developments.

10.4 Treatment of HUD Funds. Any transfer of public housing funds under the Capital Fund program ("**HUD Funds**") (if any) pursuant to this Agreement will not be an assignment of HUD Funds or be deemed an assignment of HUD funds. The Developer will not succeed to any rights or benefits the Authority may have under the applicable grant agreements with HUD or attain any privilege, authority, interest, or right under applicable grant agreements between the Authority and HUD. Nothing contained in this Agreement will be construed to create any relationship of third party beneficiary or otherwise with HUD.

10.5 Cash Flow from Rental Operations.

A. Uses of Cash Flow. If applicable, the Developer shall cause the Owner Entity of the rental units financed with tax credits that are not public housing units to use any Cash Flow generated to pay any operating subsidy shortfall that may exist for operations of the Public Housing Units.

B. Definition of Cash Flow. For the purposes of this Agreement, "**Cash Flow**" shall mean otherwise-distributable cash flow after paying Property Expenses and the following costs (which definition may be revisited prior to the Closing when the details of the financing become clearer and based on the requirements of the Owner Entity's investor):

1. Payment to the Owner Entity's investor member of any credit adjuster; and
2. Payment to the Developer (or its affiliates) of any deferred Development Fee; and
3. Repayment of any Operating Deficit Loans (as defined in the Owner Entity's operating agreement) or other loans or advances made by the Developer or its affiliates; and

4. Payment of any installments of the Company Administration Fee (as defined and set forth in the Owner Entity's operating agreement); and
5. The balance shall be allocated and distributed 45% to the Developer, or its affiliate, 45% divided equally between Las Cortes and Oxnard Housing Authority and 10% to the Owner Entity's investor member.

Article 11. TERMINATION AND DEFAULT

11.1 Termination and Events of Default, Generally.

- A. This Agreement may be terminated:
 1. By the mutual agreement of the Authority and the Developer; or
 2. By either party, if an Event of Default described herein occurs with respect to the other party.
- B. Cure Period. In the event of any Event of Default by the Developer or the Authority under this Agreement, the non-defaulting party shall provide written notice to the defaulting party ("**Notice of Default**"). No remedies shall be enforced against the defaulting party unless the defaulting party fails to cure such default within thirty days (30 days) after receiving the Notice of Default.
- C. Extension of Cure Period. If the Event of Default cannot be cured within 30 days, the defaulting party shall have such additional time as is reasonably necessary to cure such default so long as the defaulting party has diligently commenced curing such default and proceeds in reasonable and good faith to correct the Event of Default.

11.2 Events of Default by Developer. Upon written notice from the Authority, and subject to the cure rights in Section 11.1 hereof, any of the following shall constitute an "Event of Default" by the Developer under this Agreement, subject to Section 11.6 (Force Majeure) and Section 11.7 (Change in Circumstances), if it has a material adverse impact upon the Revitalization, the Authority, or Owner Entity:

- A. The Developer materially breaches any covenant in this Agreement;
- B. The Developer or any Guarantor (individually, the "**Defaulting Party**" and collectively the "**Defaulting Parties**") becomes insolvent, is adjudged a bankrupt, makes a general assignment for the benefit of creditors, or becomes a subject of any proceeding commenced under any statute or law for the relief of debtors; *provided that* no Event of Default shall be deemed to have occurred if: (1) the Defaulting Party shall effect the dismissal within 90 days after commencement of any such involuntary proceeding; *or* (2) the remaining members or guarantors of the Defaulting Party shall, within the same 90-day period, either remove the Defaulting Party and (i) replace it with another entity acceptable to the Authority,

or (ii) provide the Authority with reasonable assurances of performance for the Defaulting Party's obligations; or

- C. A receiver, trustee or liquidator of any of the property or income of the Developer or any guarantor of the Developer's performance hereunder shall be appointed and such appointment is not dismissed within 90 days; or
- D. The Developer unilaterally withdraws from the Revitalization; or
- E. The Developer fails to enforce any material terms, provisions, conditions, covenants or agreements in the Construction Documents to be observed, performed, or both on the part of the Developer, its Construction Manager, and all other Subcontractors.

11.3 Events of Default by Authority. Upon written notice from the Developer, and subject to the cure rights herein, a material breach of any covenant in this Agreement shall constitute an "Event of Default" by the Authority under this Agreement, subject to Section 11.6 (Force Majeure), and Section 11.7 (Change in Circumstances), if it has a material adverse impact upon the Revitalization, the Developer, or Owner Entity.

11.4 Damages.

- A. The Developer and its sureties shall be liable for any damage to the Authority (including without limitation reasonable attorney's fees and other costs and expenses, but not consequential damages) directly resulting from (i) an Event of Default by Developer hereunder, or (ii) termination of this Agreement by the Authority pursuant to Section 11.1 A.2. if the Developer has not exercised a good-faith effort to secure the necessary funding commitments for the Revitalization as required by the Revitalization Schedule. This liability includes, without limitation, all costs incurred by the Authority or its assignee directly related to completing the Revitalization as contemplated in the Revitalization Documents (as such term is defined in Section 12.5 herein).
- B. For purposes of (ii) above, a "good faith effort" means that the Developer must explore all reasonable options available to obtain and arrange for the necessary funding commitments as required by the Revitalization Schedule.

11.5 Termination for Convenience.

- A. Convenience. The Authority may terminate this Agreement for convenience, either completely or in part.
 - 1. Any such termination shall be effected by delivery to Developer of a written notice of termination, specifying the extent to which the performance of the work under the Agreement is terminated, and the date upon which such termination becomes effective.

2. Upon any such termination for convenience, neither party shall have any obligation to the other under this Agreement, except for those obligations that expressly survive the termination of this Agreement.
- B. Procedure for Termination for Convenience. If the performance of the work is terminated for convenience, either in whole or in part, the Authority shall:
1. Forgive any outstanding advances to the Developer, and
 2. Be liable to Developer for reasonable and proper costs resulting from such termination which costs shall be paid to Developer within 30 days of receipt by the Authority of a claim setting out in detail: (1) the total costs of all third-party costs incurred to date of termination; (2) the cost of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (3) the cost of preserving and protecting the work already performed until the Authority or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated reasonable cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the Authority; and (5) fair compensation to the Developer for all tasks performed to date of termination, all to be net of amounts previously paid or advanced under this Agreement. Notwithstanding the foregoing such payments shall be made only upon delivery of any work product in the possession of the Developer.

11.6 Force Majeure.

- A. If the Developer or Authority is delayed in performing any covenant hereunder due to causes beyond the control and without intentional misconduct or negligence of the party seeking to invoke the provisions of this Section 11.6 ("Force Majeure"), then the time for performing the applicable covenant shall be extended for a period of time corresponding to the period of delay, with a reasonable adjustment to any applicable Revitalization Milestones affected by the Force Majeure event.
- B. Examples of such causes include without limitation, and if without intentional misconduct or negligence of the party claiming Force Majeure: (a) acts of God, or public enemy, (b) war, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes or labor disputes, (h) freight embargoes, (i) unusually severe weather, or (j) delays of subcontractors or suppliers at any time arising from causes that were not reasonably foreseeable and beyond the control and without the intentional misconduct or negligence of the Developer, (k) acts or failure to act of HUD or other governmental entity in either their sovereign or contractual capacity, to the extent that action by HUD or other governmental entity is required hereunder, provided that the party hereunder seeking such action by HUD or other governmental entity properly requests same in a timely manner

and thereafter diligently pursues the same; and (l) litigation other than litigation between the Authority and the Developer or the Developer's affiliates.

11.7 Changed Circumstances.

- A. **Development Contingencies.** The Authority acknowledges that the Developer's ability to perform many responsibilities under this Agreement (collectively, "**Development Contingencies**") is substantially contingent upon actions by third parties over which the Developer has limited control, or factual circumstances that could not reasonably have been determined as of the date of this Agreement. Such Development Contingencies include, but may not be limited to, the following items as to which the Revitalization Plan reflects certain expectations of the parties:
1. The successful elimination from the Property of Prohibited Substances;
 2. The successful elimination or control of adverse geotechnical conditions or environmental matters; *provided however*, the cause of the environmental matter is not attributed to the Developer's or Authority's direct or indirect action or inaction;
 3. The receipt of all HUD-required and City-required approvals;
 4. The availability of Low Income Housing Tax Credit allocations for the Revitalization; *provided, however*, that the acquisition of such credits, if available, is an explicit responsibility of the Developer;
 5. The availability of public and private assistance, including grants and loans in the aggregate amounts set forth in the Revitalization Budget.
- B. **Change in Circumstances.** If a Development Contingency necessary for completion of the Revitalization fails to occur after all commercially reasonable efforts by Developer to cause it to occur in a manner generally consistent with this Agreement, the Authority and the Developer shall jointly revise the Revitalization Plan by extending deadlines, revising goals, or as otherwise agreed. The failure of a Development Contingency due to causes beyond the control of the Developer shall not be deemed an Event of Default of the Developer.
- C. **Withdrawal.** If a Development Contingency necessary for completion of the Revitalization fails to occur due to causes beyond the control of the Developer, and the parties, using commercially reasonable and good faith efforts, cannot within ninety (90) days after the occurrence of any Development Contingency resolve such Development Contingency in a manner reasonably satisfactory to the Developer, then the Developer may, upon written notice to the Authority, terminate this Agreement, in which case neither party shall have any obligation to the other under this Agreement, except for those obligations that expressly survive the termination of this Agreement.

11.8 Arbitration of Disputes. If a dispute arises under this Agreement and if the dispute cannot be settled first through good-faith negotiation or mediation, then the Parties shall arbitrate in accordance with the Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

- A. The party initiating the arbitration (the “**Initiating Party**”) shall file notice of the demand for arbitration (“**Arbitration Notice**”) in writing with the other party to this Agreement (the “**Non-Initiating Party**”) and with the American Arbitration Association. The Arbitration Notice shall be sent within a reasonable time after the dispute in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such dispute in question would be barred by the applicable statute of limitations.
- B. The Arbitration Notice shall name an arbitrator having experience with and knowledge of public housing and mixed-finance real estate development. If the Non-Initiating Party selects a different arbitrator within fifteen days of receiving the Arbitration Notice, the two arbitrators shall select a third arbitrator of their choice. If the Non-Initiating Party fails to timely name an arbitrator, the arbitrator selected by the Initiating Party shall hear and determine the matter.
- C. The same arbitrator shall hear all claims that are related to or dependent on each other. The arbitrator shall decide the dispute in accordance with this Agreement and the laws of the State. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- D. Unless otherwise agreed in writing, both parties shall continue to carry out their obligations under this Agreement during any arbitration proceedings.
- E. Each party shall bear its own costs, if any, in any arbitration pursuant to this Section 11.8; provided however, that the arbitrator shall have the power to award all or a portion of costs against a party found to have pursued the grievance or dispute in bad faith or for undue delay.

Article 12. REMEDIES

12.1 Remedies, Generally. Upon the occurrence of an Event of Default by either the Developer or Authority, as defined at Sections 11.1 - 11.3, and expiration of any applicable cure period, the non-defaulting party may terminate this Agreement and exercise any and all remedies available at law or equity pursuant to this Agreement or any subsequent project financing documents. However, this Article 12 shall not apply to the Revitalization if it has achieved Closing.

12.2 Alternate Authority Remedies. After expiration of the applicable cure period for any Event of Default by the Developer without cure, the Authority shall have the right to impose reasonable special conditions or restrictions upon the Developer in addition to any remedies provided at law or pursuant to this Agreement, with which the Developer

shall comply, including, but not limited to the following types of special conditions or restrictions:

- A. Requiring additional, more detailed financial reports.
- B. Requiring additional monitoring.
- C. Establishing additional prior approvals.
- D. Requiring the Developer, within a time period established by the Authority, to prepare a revised plan for implementation.
- E. Requiring the Developer to terminate defaulting contractors, subcontractors, and service providers.

12.3 [RESERVED]

12.4 Assignment

- A. **Generally.** All Developer's right, title and interest in, to and under any and all documents, drawings, plans, specifications, studies, files, contracts, permits, approvals, grants, tax credit reservations, bond allocations and all other documents and materials (including but not limited to architectural documents) accumulated, generated, prepared for or by the Developer (the "**Revitalization Documents**"), whether completed or in process, shall be assigned and transferred, to the extent assignable and subject to the rights of lenders, to the Authority, or at its option, a designee entity upon an Event of Default not cured within the applicable notice and cure periods hereunder by the Developer or Owner Entity, subject to the payment therefore by the assignee. As security for the Developer's obligations hereunder, the Developer hereby pledges and assigns to the Authority and grants the Authority a security interest in any and all rights, title and interest of the Developer in, to or under the Revitalization Documents. It is understood that the Developer does not represent such data to be suitable for use or re-use for another project or purpose. If the Authority re-uses the subject data without the Developer's written permission, such re-use will be at the Authority's sole risk without liability to the Developer.
- B. **Compensation for Work Product Documents.** Upon termination of this Agreement due to an Event of Default by the Developer, change in circumstances or convenience of the Authority, all plans, studies, reports, drawings, permits, approvals, and other work product produced or obtained by the Developer in connection with the Revitalization and all of Developers interests in agreements relating to such work product shall, to the extent legally assignable and subject to the rights of other lenders, be properly assigned to the Authority so long as such items have been paid for by the Authority without further compensation due the Developer (except for such compensation as may be determined owed under section 11.5, by mutual agreement or subsequently by an arbitrator).

Article 13. DEVELOPER REPRESENTATIONS AND WARRANTIES

- 13.1 Organization and Powers.** The Developer represents and warrants that it is duly organized, validly existing and in good standing under the laws of the State. The Developer has the power and authority to own assets and properties, to carry on activities as now conducted by them, and to execute, deliver and perform this Agreement.
- 13.2 Authorization and Binding Agreement.** The Developer represents and warrants that this Agreement has been duly and validly executed and delivered by the Developer and constitutes a valid and legally binding obligation enforceable in accordance with its terms.
- 13.3 Litigation, Limited Denial of Participation, or Debarment.**
- A. The Developer represents and warrants that there is no action, suit or proceeding pending or threatened before any court or government or administrative body or agency which may reasonably be expected to: (1) result in a material adverse change in the activities, operations, assets or properties or in the condition, financial or otherwise, of the Developer or Owner Entities, or (2) impair the ability of the Developer Parties to perform their obligations under this Agreement.
 - B. The Developer is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court or any governmental or administrative body or agency.
 - C. The Developer is not the subject of a limited denial of participation or debarment by HUD or other federal Executive agency or any similar prohibition on conducting business with public agencies in the State or other jurisdictions.
- 13.4 Conflicting Obligations.**
- A. The Developer represents and warrants that it is not a party to any contract or agreement, nor subject to any charter or other legal restriction of any kind, that materially and adversely affects the business, property or assets, or the condition, financial or otherwise, of the Developer.
 - B. Neither the execution and delivery of this Agreement, nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any law or any regulation, order or decree of any court or governmental agency, or any indenture or other agreement or instrument to which the Developer is subject, or will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer pursuant to the terms of any such indenture or agreement or instrument, and will not require the approval of any federal regulatory body or of any state or local commission or authority having jurisdiction with respect thereto, unless such approval has been obtained and is in full force and effect on the Effective Date.

Attn: William E. Wilkins, Housing Director

With copies to: Alan Holmberg
City Attorney
300 W. Third Street, 3rd Floor
Oxnard, CA 93030

Mark S. Manion
Price, Postel & Parma LLP
200 East Carrillo Street, Suite 400
Santa Barbara, CA 93101

If to Developer The Courts, Oxnard, L.P.
2000 E Fourth Street
Suite 205
Santa Ana, CA 92705
Attn: John Bigley

With copy to: Ballard Spahr LLP
300 East Lombard Street
18th Floor
Baltimore, MD 21202
Attn: Lila Shapiro-Cyr, Esq.

- 15.2 Written Materials and Public Statements.** The parties agree to cooperate and consult with each other regarding any public statements or publication made regarding the Revitalization. The Developer shall provide the Authority with drafts of any written material prepared in connection with the Revitalization prior to submission. The Developer shall revise such drafts in accordance with reasonable requests by the Authority. In addition, the Developer shall provide the Authority with any changes to documents that materially affect the activities or understandings reflected by this Agreement and final versions of all written submissions.
- 15.3 Contracting Officer.** The Contracting Officer shall be the Authority's Housing Director, until changed by written notice to the Developer.
- 15.4 Further Assurances.** Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transactions contemplated by this Agreement.
- 15.5 Subcontracts.** The Developer will cause all applicable provisions of this Agreement to be inserted in all contracts with third parties and subcontractors.
- 15.6 Assignment.** Except with respect to an Owner Entity to which the Authority has agreed to make a loan, the obligations under this Agreement shall not be assignable by either party except upon written consent of the other party. Notwithstanding the foregoing, the

Developer may assign its rights and obligations hereunder to an affiliate of the Developer.

- 15.7 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.
- 15.8 Interpretation and Governing Law.** This Agreement shall not be construed against the party who prepared it, but shall be construed as though prepared by both parties. This Agreement shall be construed, interpreted, and governed by the laws of the State.
- 15.9 Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.
- 15.10 Parties Bound.** No officer, director, shareholder, employee, agent, or other person authorized to act for and on behalf of either party shall be personally liable for any obligation, express or implied, hereunder.
- 15.11 Final Agreement.** Unless otherwise provided herein, this Agreement constitutes the final understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby.
- 15.12 Modification of Agreement.** This Agreement may not be altered, modified, rescinded, or extended orally.
- 15.13 Conflict of Interest.** Developer covenants that neither it nor any of its directors, officers, partners or employees has any interest, nor shall acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder, including the causing of the Authority to suffer a conflict of interest prohibited by applicable laws, regulations, or contracts with a funding entity. The Developer further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or shall subcontract with it to perform duties under this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Developer intends for and the Authority has approved, subject to HUD's approval, if applicable, the Construction Manager and the management agent to be Affiliates of Developer.
- 15.14 Waivers.** The failure of any party to insist in any one or more cases upon the strict performance of any of the obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver by any party of any provision of this Agreement shall be deemed to have been made unless set forth in writing and signed by the party to be charged. In addition to the other remedies herein provided, either party may restrain by injunction the violation or threatened violation of either Party's

obligations under this Agreement and may obtain specific performance by either party of its obligations under this Agreement.

- 15.15 Successors.** The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, their successors and assigns.
- 15.16 Certain Approvals.** Unless otherwise stated, all approvals or consents required of either party hereunder shall not be unreasonably withheld, conditioned or delayed.
- 15.17 References to this Agreement.** All references to this Agreement shall include all documents and exhibits incorporated by reference. If there is any ambiguity or conflict among any two or more of these, or internally in any one of such documents, if the ambiguity or conflict arises from the use of development funds, the resolution of the ambiguity shall be consistent with the Authority's obligations and commitments to HUD, as determined by the Authority in its reasonable discretion.
- 15.18 Headings.** The headings in this Agreement are inserted for convenience only and shall not be used to define, limit or describe the scope of this Agreement or any of the obligations herein.
- 15.19 Construction.** Whenever in this Agreement a pronoun is used, it shall be construed to represent either the singular or the plural, either the masculine or the feminine, as the case shall demand.
- 15.20 Document Retention Period.** The Developer shall maintain a copy of all Construction Documents and records for the Revitalization for a period of three (3) years that begins upon completion of each component, unless State law mandates otherwise. Such obligation shall survive the termination of this Agreement.
- 15.21 Power to Execute.** The undersigned individuals represent and warrant that they are expressly authorized by their respective entities or agencies to execute this Agreement and to bind their respective entities or agencies legally as set forth in this Agreement.
- 15.22 Reasonableness.** The Authority and the Developer shall act in a reasonable manner with respect to their respective obligation as set forth in this Agreement, including the granting of any consent or approval.
- 15.23 Certification Regarding Lobbying.** The Developer and the Subcontractors shall execute prior to or simultaneously with this Agreement or any contract for services related thereto a certification regarding lobbying in the format provided at Exhibit F.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the date first above written.

Authority: **Housing Authority of the City of Oxnard**

By: _____
Name: **Dr. Thomas E. Holden**
Title: **Chairperson**

ATTEST

By: _____
Name: **Daniel Martinez**
Title: **Secretary**

APPROVED AS TO FORM:

By:  _____
Name: **Alan Holmberg**
Title: **General Counsel**

By: _____
Name: **Mark S. Manion**
Title: **Special Counsel**

APPROVED AS TO INSURANCE:

By:  _____
Name: **Carrie Sabatini**
Title: **Financial Officer**

Developer: **UHC 00558 Oxnard, L.P., a California limited partnership**

By:  _____
Name: **John Bigley**
Title: **Chief Operating Officer**

Exhibit A - Legal Description of Property

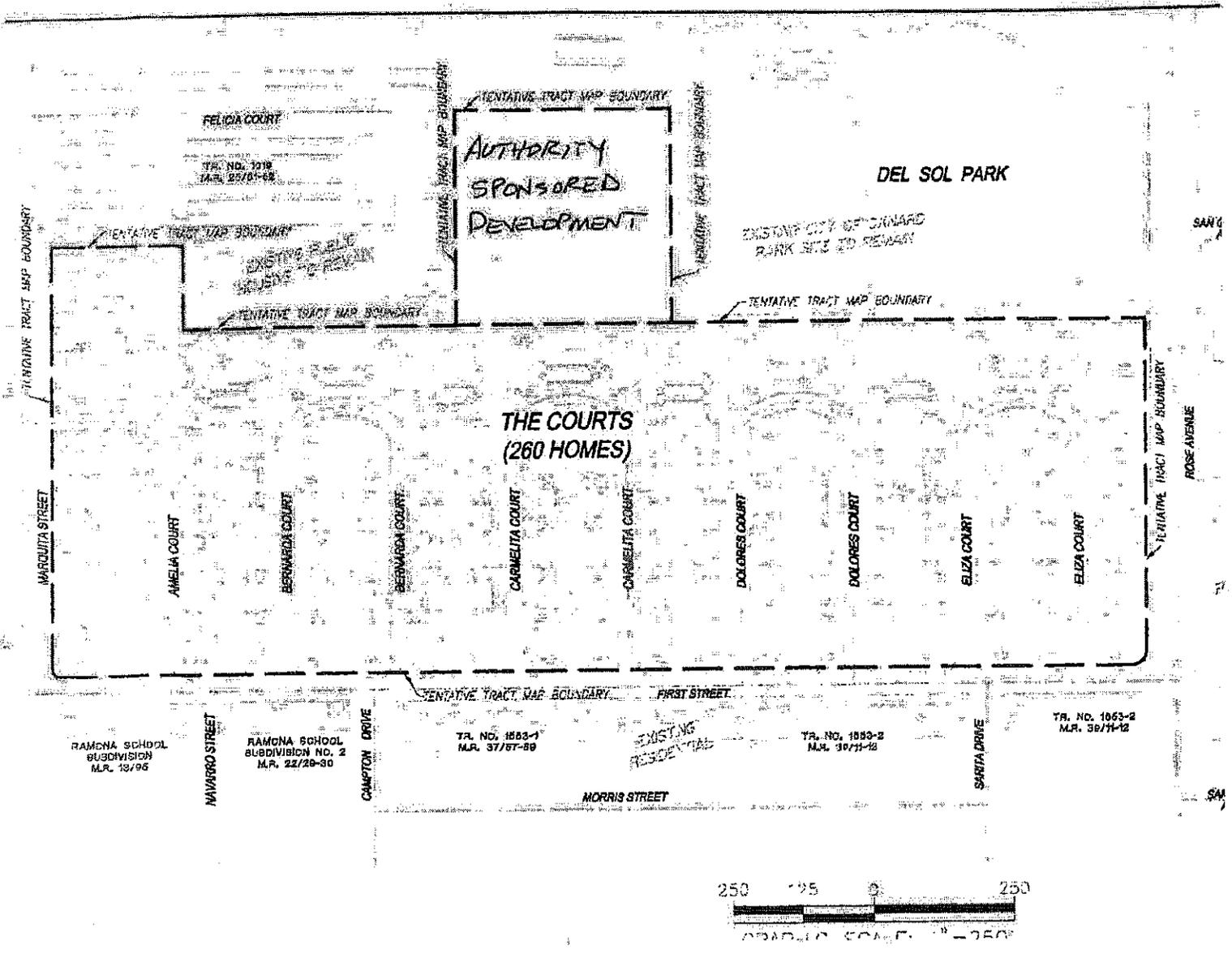


Exhibit B Definitions

ACC means any Consolidated Annual Contributions Contract between HUD and the Authority, dated as of _____, as the same may be further amended from time to time.

Affiliate is defined at Section 4.8B.

Agreement means this Development Agreement.

Agreement to enter into a Housing Assistance Payment Contract means an agreement as defined in 24 C.F.R 983.3(b).

Arbitration Notice is defined at Section 11.8A.

Arrangement is defined at Section 4.8.

Authority means Oxnard Housing Authority, including any successor in interest or assigns by the act of the Authority, or by operation of law, or otherwise.

Authority Board means the Board of Commissioners of the Oxnard Housing Authority.

Authority Sponsored Development means the development of affordable multi-family housing units by the Authority on a portion of the Property designated as reserved for Authority sponsored development on Exhibit A.

Capital Fund as defined at 24 CFR Part 990, and referenced at Section 10.8.

Cash Flow is defined at Section 10.5B.

City means the City of Oxnard, California.

Attachment No. 1, Exhibit B
Page 3 of 5

Closing is defined at Section 8.10.

Construction Budget means the sum established by the Developer as needed for construction of the Revitalization, as such sums shall be approved by the Authority and the Developer at Closing.

Construction Documents are defined as all documents required to obtain permits and to complete the revitalization of the Courts, which includes all surveys and all architectural, landscape and engineering drawings and reports.

Construction Services are defined at Exhibit C-4.

County means the County of Ventura, California.

CSSP means the Community and Supportive Services Program and is defined at Section 2.2.

CTCAC means the California Tax Credit Allocations Committee.

Defaulting Party is defined at Section 11.2B.

Declaration of Restrictive Covenants is defined at Section 8.9.

Design Services are defined at Exhibit C-3.

Designated Guarantor is defined at Section 2.8.

Developer means The Courts, Oxnard, L.P.

Developer Party (and “Developer Parties”) means the Developer, applicable Owner Entities, and any of their respective employees, subcontractors, or agents.

Developer Updates is defined at Section 2.5.

Development Contingencies is defined at Section 11.7A.

Development Fee is defined at Section 10.1A.

Effective Date is defined at Section 1.1.

Entry Date means as applicable, the date when any Developer Party enters the Property and begins any activity, other than Environmental Testing, that physically affects the real property or buildings thereupon including, but not limited to abatement, site preparation, demolition, or infrastructure or construction.

Environmental Laws is defined at Section 6.3A.

Environmental Testing means, for purposes of this Agreement, onsite activities of the Authority including test borings, soil sample collections, geotechnical analysis and other similar physical investigations in connection with the environmental condition of the Property.

Event of Default is defined at Article XI (11.2).

Financing Services are defined at Exhibit C-2.

Force Majeure is defined at Section 11.6.

CM Contract is defined as the AIA Contract between the Owner Entity and the General Contractor for the revitalization of the Courts.

Construction Manager (or “CM”) is defined as the approved General Contractor for the revitalization of The Courts.

Development Services is defined at Exhibit 2.2A1.

Ground Lease is defined at Section 8.3.

Guarantor (or “Guarantors”) is defined at Section 2.8.

Hazardous Substances is defined at Section 6.3B.

Housing Assistance Payment Contract means an agreement defined in 24 C.F.R 983.152 and 24 C.F.R. 982.162.

HUD means the U.S. Department of Housing and Urban Development.

HUD Safe Harbor is defined at Section 10.1A.

Initiating Party means the party initiating the arbitration, as defined at Section 11.8A.

Monthly Report is defined at Section 2.5A.

Non-Initiating Party is defined at Section 11.8A.

Notice means all notices, demands, requests or other communications or documents to be provided under this Agreement.

Notice of Default is defined at Section 11.1B.

Loans is defined at Section 8.6.

Loan Documents is defined at Section 8.6.

Owner Entity means any entity formed by the Developer or its Affiliates to own the Revitalization. The Owner Entity shall be organized as a limited partnership under the laws of the State. All documents evidencing the formation of the Owner Entity and its rights and obligations with regard to the general and limited partners, including, but not limited to, the payment of development fees, guarantees, and pledges (collectively, the "Owner Entity Documents"), may be, if applicable, subject to the reasonable approval of the Authority prior to submission to HUD as part of the Mixed-Finance Evidentiary Documents.

Parties mean The Courts, Oxnard, L.P. and the Authority, and their agents, assigns and members.

Partnership Documents is defined at Section 8.7.

Principal Architect means _____, the lead architect for the Revitalization, or portion thereof, with a direct contractual relationship to the Authority, and primary responsibility for the architectural/engineering services of the Revitalization.

Project Financing Documents are defined at Section 8.1.

Prohibited Substances is defined at Section 6.1A.

Property means the land more specifically described at Exhibit A.

Property Expenses is referenced at Section 10.8B and if applicable, means (1) all necessary and reasonable operating expenses of each Property including those shown as line items on Form HUD-92547-A (Budget Worksheet) including debt service requirements of any fixed payment

lender mortgages issued and real property taxes; (2) payments in lieu of real property taxes (“PILOT”) provided this does not violate any BOE regulation; (3) deposits to any lender- or investor-required reserve for replacement and required deposits other than for replacement reserve, (4) management fees payable pursuant to the Management Agreement (5) legal and accounting expenses associated with the operation of the property pursuant to HUD Handbook 4370.2 REV - 1, Financial Operation and Accounting Procedures for Insured Multifamily Projects, or any successor thereto; (6) any amounts paid to tenants as a utility allowance, and (7) replenishment of reserves previously drawn upon, to the extent agreed upon by the Authority in applicable operating agreements.

Public Housing Units means a rental housing unit that is eligible to receive federal operating subsidy from HUD pursuant to Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437), as amended, and is referenced at Section 3.11A.

Refusal Right is defined at Section 8.1A.

Regulatory and Operating Agreement is defined at Section 8.4.

Revitalization is defined in the third Recital.

Revitalization Plan is defined at Section 2.1(a).

Revitalization Site is defined at Section 1.2

Revitalization Budget is a “sources and uses” budget covering the Revitalization described at Section 2.3. The current version is attached at Exhibit E. References thereto are to the Revitalization Budget, as it may be changed in accordance with this Agreement.

Revitalization Cost Savings is defined at Section 4.10.

Revitalization Documents is defined at Section 12.4A.

Revitalization Milestones as defined in section 9.1.

Revitalization Plan is defined at Section 2.1.

Revitalization Schedule is the schedule for the Revitalization to be agreed upon by the Parties. References thereto are to the Revitalization Schedule as it may be changed in accordance with this Agreement.

Revitalization Services is defined at Section 2.2A.

Specific Plan is defined at Section 2.1(a).

State means the State of California.

Subcontractor is defined at Section 2.6C.

Substantial Completion means that time in the construction process at which the Principal Architect or supervising architect certifies that the Revitalization is substantially complete in accordance with the Revitalization Plan and the Owner Entity receives a temporary or final Certificate of Occupancy, or its equivalent, issued by the appropriate local governmental entity for any part of the Revitalization and the Owner Entity provides such documentation to the Authority.

Tax Credit Unit means a rental housing unit that is funded, in whole or in part, with equity invested in connection with low-income housing tax credits.

Turn-Over Vouchers is defined at Section 3.5B.

Exhibit C - General Description of Revitalization:

The Revitalization will be comprised of 260 units, as follows:

Rental Units (9% Tax Credit or 4% Tax Credit and Tax Exempt Bonds):

- (i) Public Housing Units: 0
- (ii) Project Based Voucher units subject to Section 3.5: 260

Exhibit C-1 - Development Services

The Developer shall be responsible for the following:

1. Developing and organizing an Owner Entity for the Revitalization in form and with such partners as are reasonably approved by the Authority.
2. Using commercially reasonable efforts to cause the Revitalization to proceed and close in accordance with the Revitalization Schedule and the Revitalization Budget.
3. Assisting the Authority to secure all necessary HUD approvals.
4. Assuring that all Revitalization activities performed shall be provided in accordance with generally accepted standards for quality development and construction of housing of a similar nature in Oxnard.
5. Furnishing the skill and judgment necessary to perform Revitalization services in a quality, expeditious and economical manner consistent with the best interests of the Authority and HUD.
6. Subject to the review and approval of the Authority and HUD, if applicable, negotiating and entering into all necessary agreements between lenders, Construction Manager, equity investors, governmental bodies and the Owner Entity.
7. Entering into an agreement, including management policies, with a management agent approved by the Authority and HUD, if applicable, to manage the Revitalization.
8. Performing such other services that are necessary for the Revitalization.
9. Cooperate with the Authority in connection with their implementation of the Community Supportive Services Plan.

Exhibit C-2 - Financing Services

The Developer shall be responsible for preparing for the Authority's review and approval, an overall plan for the financing and equity investment necessary to complete the Revitalization ("**Financing Plan**"). Such plan shall set forth, *inter alia*, the debt and equity to be raised, the sources for all funds, and expected uses. Once the Financing Plan is approved by the Authority, the Developer shall be responsible for its implementation including:

1. Applying for and obtaining from issuing agencies such, low income housing tax credits, as necessary to (a) attract equity investments; (b) ensure such allocations are preserved through the Closing, and (c) ensure such equity investments are made. Prior to selecting a tax credit investor, unless otherwise agreed to by the Authority in its sole discretion, the Developer will consult with the Authority as to the tax credit investor it intends to select for the Revitalization, which shall be subject to the reasonable approval of the Authority.
2. Providing legal counsel for tax credit syndication.
3. Procuring all construction, permanent financing, or both for the Revitalization, including any public funding.
4. Maintaining all Revitalization books of account and financial records in accordance with HUD and other equity requirements.
5. Preparing and submitting to the Authority such financial reports relating to the Revitalization as the Authority may reasonably request.
6. Performing such other Financing Services that are reasonably requested by the Authority, or necessary for the Revitalization.

Exhibit C-3 - Design Services and Guidelines

In conjunction with Section 3.1 herein, the Developer shall be responsible for the following:

1. Selecting the Principal Architect and preparing a bidding package strategy.
2. Preparing and submitting all design documents, as defined by AIA document B-141 to the Authority for review and approval and, if necessary, subsequent submission to HUD.
3. Perform all such other Design Services that are necessary in connection with the Revitalization.
4. Monitoring the performance of all persons and entities that are to provide Design Services to the Revitalization and take such actions as are necessary to maintain adherence to commercially reasonable quality standards.

Exhibit C-4 - Construction Services

In conjunction with Article 3 herein, the Developer shall be responsible for the following:

1. Reviewing all construction plans, budgets, schedules and contracts, including those with the Principal Architect, contractors and other parties working on the Revitalization. All such plans, budgets, schedules and contracts shall be subject to the review and approval of the Authority.
2. Performing all necessary duties for the Revitalization itself or through an affiliate.
3. Working with the Principal Architect and prepare a bidding package strategy with the advice and consent of the Authority.
4. Selecting the construction contractor with the advice and consent of the Authority.
5. Applying for and obtaining all permits (including building and construction permits), licenses, easements and approvals necessary for the physical improvements contemplated by the Revitalization. The process for such permitting and approvals shall run concurrently with the amendment to the Specific Plan contemplated herein.
6. Monitoring, reviewing and certifying draw schedules, and monitoring the approved Revitalization Budget and construction budget. In conjunction with its monthly report requirements described at Section 2.5A., the Developer shall develop and submit to the Authority cash flow reports and forecasts showing actual costs for activities in process and estimates for uncompleted work.
7. On an ongoing and timely basis, advising the Authority on the status of all applications necessary to obtain all governmental approvals required for the Revitalization. Advising the Authority as to any hearings or meetings regarding the Revitalization with sufficient advance notice to enable the Authority to participate in the hearings or meetings.
8. Permit the Authority or its representative, as reasonably requested by the Authority, to participate in all meetings with the construction contractor, Principal Architect and other contractors. The Developer shall also insure that the Authority or its representative has access to the Revitalization to inspect its progress as set forth in the Agreement.
9. Causing the construction and completion of the Revitalization in accordance with this Agreement, the Revitalization Schedule, and the Revitalization Budget.
10. Monitoring the performance of all persons and entities that are to provide materials, equipment, or services to the Revitalization. The Developer shall take necessary actions to maintain adherence to commercially reasonable quality standards, safety standards, production schedules, shipping dates, and job-site requirements.
11. Submitting construction progress reports to the Authority in conjunction with its monthly report requirements described at Section 2.5A.

12. At both Substantial Completion and six months after Substantial Completion of the Revitalization, the Developer shall inspect the work in conjunction with the Principal Architect. The Developer shall require the construction contractor to replace or correct faulty work.
13. Require the construction contractor to provide property insurance with coverages and amounts required under the Agreement, and in form and substance reasonably acceptable to the Authority. Additionally, the Developer shall provide the Authority with payment and performance bonds, and warranties of good title and workmanship for the Improvements.
14. Perform all such other Construction Services that are reasonably necessary in connection with the Revitalization.

Exhibit C-5 - Approved Subcontractors

Architects and Engineers

Ballard Spahr LLP
300 East Lombard Street
18th Floor
Baltimore, MD 21202
410-528-5624

Legal Counsel – Developer, Real Estate

Principal Contacts: Lila Shapiro-Cyr

Exhibit D

Necessary Amendments to City's Specific Plan

The Amendments to the City's Specific Plan shall include, but not be limited to:

1. Adjustment overall density of the project and density per parcel of the TTM, but no less than 260 units over the site.
2. Increase open space within project.
3. Enhanced landscape to meet water quality standards.
4. Minimize impact to mature trees.
5. Modification of TTM for cost efficiencies, including street layouts, parcels, parking.
6. Land shall be dedicated for the development of San Geronio.
7. Adjustment to maximum height to up to 42 feet for senior building, if applicable.
8. Modification of CFD consistent with above changes to specific plan.

Exhibit E

**Potential Phasing Approaches
(These alternatives are not mutually exclusive)**

Bond and 4% Tax Credit Funding

Phase 1:

132 Units, mix of one, two, three and four bedroom units
Community room

Phase 2:

132 Units, mix of one, two, three and four bedroom units
Community room

9% Tax Credit Funding and 4% bond

Phase 1:

51 Units, Senior
Community room

Phase 2:

133 Units mix of one, two, three and four bedroom units
Community room

Phase 3

80 Units mix of one, two, three and four bedroom units
Community room

Exhibit F - Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.