

TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** April 30, 2013

From: Joseph Moon, Special Projects Manager **Item No:** 4
Municipal Operations & Contract Services

Subject: DEVELOPMENT AGREEMENT FOR ACQUISITION AND REHABILITATION OF A FORECLOSED 4-UNIT MULTI-FAMILY DWELLING LOCATED AT 16022 SAGO ROAD FOR RESALE TO FAMILY ASSISTANCE PROGRAM, A CALIFORNIA NON-PROFIT BENEFIT CORPORATION

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council approve the attached Development Agreement between the Town of Apple Valley and Family Assistance Program for the Acquisition/Rehabilitation of a 4-Unit Multi-Family Dwelling located at 16022 Sago Road under the Neighborhood Stabilization Program 3 funding as identified in the Town's Five Year Consolidated Plan 2010-2011.

SUMMARY:

The Town Council adopted an amendment to the Town's Five Year Consolidated Plan for 2010-2011 on September 25, 2012. The amendment included adding an additional activity under the Neighborhood Stabilization Program 3 (NSP 3) Funds. The additional activity allows the Town to acquire and rehabilitate for resale, foreclosed Multi-family residences. The resale of these properties would be to developers who target low income tenants that meet the required standards of the program. By adding the additional activity for Acquisition/Rehabilitation for Multi-Family Uses, the Town is able to utilize funds to acquire and rehabilitate multi-family units for the purposes of providing affordable rental opportunities. In addition, the amendment expanded the NSP scope of services to enable the Town to meet the deadlines for expenditures under the NSP regulations. Attached is the staff report from the September 25th Council Meeting.

The Developer, Family Assistance Program, is a California Non-profit Benefit Corporation located in Victorville. The Developer has made a proposal and request to Town to borrow up to Two Hundred Fifty Thousand Dollars (\$250,000) in funds awarded to Town pursuant to NSP 3 to be used in conjunction with private financing for the purchase and rehabilitation of a 4-Unit Multi-Family Dwelling located at 16022 Sago Road. *(continued on the next page)*

The Developer will utilize the property to provide transitional housing (18 months or less) for battered women. Town has reviewed the Developer's proposal and funding request, and in reliance on the accuracy of the statements in that proposal and request, has agreed to make a fifteen (15) year loan of Two Hundred Fifty Thousand Dollars (\$250,000) (the "NSP Loan") to partially fund the Project. The loan will be forgiven in increments of 1/15th of the total amount each year. In addition, a fifteen (15) year covenant will be placed on the property stating that the property shall be used to house and shall remain affordable to Qualified Households subject to the restrictions set forth in the Regulatory Agreement.

This proposal and the exhibits attached to the Agreement implement the goals and objectives of the Town and the NSP3 program. The proposal allows for the acquisition and rehabilitation of the property to provide affordable housing units that will enhance the affordable housing stock within the Town. The acquisition and rehabilitation of the property pursuant to this Agreement is in the best interests of the Town and the health, safety and welfare of the Town's taxpayers and residents. In addition, implementation of this Agreement will further the goals and objectives of the Town's General Plan by: (i) providing needed affordable housing within the Town; and (ii) strengthening the Town's land use and social structure.

Based upon the foregoing, staff recommends adoption of the form motion.

ATTACHMENTS:

1. Affordable Housing Agreement between the Town of Apple Valley and Family Assistance Program
2. Town Council Staff Report from September 25, 2012
3. Family Assistance Program proposal letter

**AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

between the

**TOWN OF APPLE VALLEY
a California municipal corporation,**

and

**FAMILY ASSISTANCE PROGRAM,
a California non-profit public benefit corporation**

[Dated as of April 30, 2013 for reference purposes only]

AFFORDABLE HOUSING AGREEMENT

This AFFORDABLE HOUSING AGREEMENT (“**Agreement**”) is dated as of April 30, 2013, for reference purposes only, and is made by and between the TOWN OF APPLE VALLEY, a California municipal corporation (“**Town**”) and FAMILY ASSISTANCE PROGRAM, a California non-profit public benefit corporation (“**Developer**”). Town and Developer are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.” This Agreement is entered into with reference to the following recitals of fact (each, a “**Recital**”):

RECITALS

A. Pursuant to Title III of Division B of HERA (Public Law 110-289, 122 Stat. 2650), the United States Government created a program known as the Neighborhood Stabilization Program (“**NSP 1**”) to make funding available for certain qualified uses in order to assist state and local governments with emergency assistance for the redevelopment of abandoned and foreclosed upon homes and residential properties, which funds are subject to the U.S. Department of Housing and Urban Development’s (“**HUD**”) “Notice of allocations, waivers granted, alternative requirements applied, and statutory program requirements” for the NSP in the Federal Register, Volume 73, No. 194, Docket No. FR-5255-N-01, published on October 6, 2008 and subsequently revised on June 11, 2009 pursuant to HUD’s “Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees under the Housing and Economic Recovery Act, 2008; Revisions to Neighborhood Stabilization Program (NSP) and Technical Corrections” in the Federal Register, Volume 74, No. 117, Docket No. FR-5255-N-02.

B. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (75 FR 64322), the Federal government provided additional funding for the Neighborhood Stabilization Program, commonly referred to as “**NSP 3**”, to be awarded by HUD to mitigate the negative impact of the nation's economic decline and housing market collapse and to stabilize and revitalize communities.

C. Developer desires to acquire a fee interest in that certain real property located at 16022 Sago Road in the Town of Apple Valley, California, as more particularly described in Exhibit A of this Agreement (the “**Property**”) which is currently improved with three buildings that include four (4) multifamily residential units and other associated improvements, and further desires to rehabilitate the residential units and common area located on the Property as more specifically described in the Scope of Development attached hereto as Exhibit B and incorporated herein by this reference (the “**Rehabilitation Work**”). The residential units located on the Property shall be operated by Developer for the purpose of providing rental housing at an affordable rent to households earning equal to or less than fifty percent (50%) of the federal poverty guidelines as established annually by the United States Department of Health & Human Services and published from time to time in the Federal Register (the “**Federal Poverty Guidelines**”). The acquisition of the Property and the Rehabilitation Work shall be referred to herein as the “**Project**”.

D. Developer has made a proposal and request to Town to borrow Two Hundred Fifty Thousand Dollars (\$250,000) in funds awarded to Town pursuant to NSP 3 to be used by Developer in conjunction with private financing for the Project. Town has reviewed Developer's proposal and funding request, and in reliance on the accuracy of the statements in that proposal and request, has agreed to make a loan of Two Hundred Fifty Thousand Dollars (\$250,000) (the "NSP Loan"), to partially fund the Project.

E. This Agreement and the exhibits attached to this Agreement implement the goals and objectives of the Town and the NSP3 program by providing for the acquisition of the Property and Rehabilitation Work to provide additional affordable housing units on the Property, that will enhance the affordable housing stock within the City. The acquisition and rehabilitation of the Property pursuant to this Agreement is in the best interests of the Town and the health, safety and welfare of the Town's taxpayers and residents. Implementation of this Agreement will further the goals and objectives of the Town's General Plan by: (i) providing needed affordable housing within the Town; and (ii) strengthening the Town's land use and social structure.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each Party, the Parties agree as follows:

TERMS AND CONDITIONS

ARTICLE I

DEFINITIONS; PARTIES;

REPRESENTATIONS AND WARRANTIES

1.1 Definitions. All initially capitalized terms used in this Agreement shall have the following meanings:

1.1.1 **Acquisition Costs.** Any amounts paid by Developer for the acquisition of the Property, including the purchase price of One Hundred and Twenty Five Thousand Dollars (\$125,000) and closing costs incurred by Developer, as set forth in the Project Budget.

1.1.2 **Acquisition Date.** The date upon which fee title interest in the Property is transferred to the Developer.

1.1.3 **Affiliate.** Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "**Affiliated**" shall have the correlative meaning.

1.1.4 **Affordable Rent.** A rental cost equal to the lesser of (i) the fair market rent for existing housing for comparable units in the San Bernardino-Riverside-Ontario MSA as established by HUD under 24 CFR 888.111; or (ii) a rent that does not exceed 30 percent (30%) of the adjusted income of a household whose annual income equals fifty percent

(50%) of the Federal Poverty Guidelines, with adjustments for household size in the applicable unit.

1.1.5 **Agreement.** This Affordable Housing Agreement between Town and Developer, including all exhibits attached to this Agreement.

1.1.6 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any law to commence, perform, or complete the Construction of the Project.

1.1.7 **Automobile Liability Insurance.** Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Developer regarding the Project, with minimum limits for bodily injury and property damage of One Million Dollars (\$1,000,000), provided, however, that if Developer does not own or lease vehicles for purposes of this Agreement, no automobile insurance shall be required for Developer. Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Town, which approval shall not be unreasonably withheld.

1.1.8 **Builder's Risk Insurance.** Builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the Project following completion of the Rehabilitation Work, including cost of debris removal (subject to a policy sublimit), but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property (subject to a policy sublimit).

1.1.9 **Certificate of Completion.** The written certification of Town, in substantially the form of Exhibit D attached to this Agreement, certifying that the Rehabilitation Work has been completed in compliance with the terms and conditions of this Agreement.

1.1.10 **Claim.** Any claim, loss, cost, damage, expense, liability, Lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind.

1.1.11 **Close of Escrow.** The date upon which all conditions of the Town as set forth in Section 2.3.3 of this Agreement, along with any conditions required by any Institutional Lender loaning funds for the Acquisition Costs or the seller of the Property, are met and Developer takes possession of the Property, but not later than May 28, 2013.

1.1.12 **Construction.** Any alteration, construction, excavation, demolition, grading, development, expansion, reconstruction, redevelopment, repair, restoration, or other work affecting the Property, including new construction.

1.1.13 **Construction Contract.** An agreement between Developer and a California licensed contractor for the Construction of the Rehabilitation Work for a fixed or guaranteed maximum price expressly set forth in such contract.

1.1.14 **Construction Drawings.** Any and all development and rehabilitation plans, construction drawings and related documents for the Rehabilitation Work consistent with the Scope of Development.

1.1.15 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.1.16 **County.** The County of San Bernardino, California.

1.1.17 **Deed of Trust.** A deed of trust for the benefit of the Town, in substantially the form of Exhibit G, attached to this Agreement, securing repayment of the NSP Loan.

1.1.18 **Default.** The occurrence of any one or more of the following:

1.1.18.1 *Monetary Default.* A Monetary Default that continues for thirty (30) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment;

1.1.18.2 *Bankruptcy or Insolvency.* A Party admits in writing that it is unable to pay its debts as they become due or becomes subject to any bankruptcy proceeding (except an involuntary bankruptcy proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of that Party's assets or interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within sixty (60) days);

1.1.18.3 *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of law, in violation of the terms and conditions of this Agreement; or

1.1.18.4 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Sections 1.1.23.2 or 1.1.23.3, that is not cured within thirty (30) days after Notice to the Party alleged to be in Default describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of such Notice, if the Party alleged to be in Default does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party alleged to be in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion;

and (c) complete such cure within a reasonable time under the circumstances.

1.1.19 **Effective Date.** The first date on which all of the following are true: (a) this Agreement is approved by the appropriate authorities of Developer, as demonstrated through a certified copy of the Official Action signed by the authorized representative(s) of Developer, and this Agreement is signed by the appropriate authorities of Developer; and (b) following all legally required notices and hearings, this Agreement and the Assignment Agreement are approved by the Town Council and signed by the authorized representatives of Town.

1.1.20 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including reasonable attorneys fees and costs and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.1.21 **Environmental Document.** Any exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, pursuant to the National Environmental Policy Act (codified as 42 U.S.C. §§ 4321 *et seq.*) or the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*), as applicable, to issue any discretionary Approval required to approve this Agreement.

1.1.22 **Environmental Law.** Any Federal or California law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances, as now or may, at any later time, be in effect.

1.1.23 **Equity Interest.** All or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.1.24 **Escrow.** An escrow that is conducted by the Company with respect to the acquisition of the Property by Developer and the making of the NSP Loan by the Town and the making of an Institutional Loan by an Institutional Lender for the remainder of the Acquisition Costs.

1.1.25 **Federal.** The government of the United States of America.

1.1.26 **Federal Poverty Guidelines.** Defined in Exhibit C.

1.1.27 **Final.** Relative to any Approval or any Environmental Document, when all administrative appeal periods regarding such matter have expired, all administrative appeals or challenges regarding such matter (if any) have been resolved to both Town's and Developer's reasonable satisfaction, all statutory periods for challenging such matter have expired, all litigation or other proceedings (if any) challenging any such matter have been resolved to the reasonable satisfaction of both Town and Developer, all appeal periods relating to any such litigation or other proceedings have expired, all referendum periods regarding such matter have expired and all referenda regarding such matter (if any) have been resolved to both Town's and Developer's reasonable satisfaction.

1.1.28 **Government.** Each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property or the Project (or any activity this Agreement requires or allows), including the government of the United States of America, the California and the County governments and their subdivisions and municipalities, including the Town, and all other applicable governmental agencies, authorities, and subdivisions thereof, any planning agency, board of standards and appeals, department of buildings, zoning board of appeals, design review board or committee or similar body having or claiming jurisdiction over the Property or any activities on or at the Property.

1.1.29 **Hazardous Substance.** Any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxins, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) any substance defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning

protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material. Notwithstanding the foregoing, "Hazardous Substances" shall not include such products in quantities as are customarily used in the construction, maintenance, development or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner generally used in other comparable residential developments, or substances commonly ingested by a significant population living within the Project including, without limitation, alcohol, aspirin, tobacco and saccharine.

1.1.30 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Rehabilitation Work, use or operation of the Project or any activities conducted at on, under or from the Property, whether or not caused by a Party.

1.1.31 **HUD.** The United States Department of Housing and Urban Development.

1.1.32 **Insurance Documents.** Copies of insurance policies and endorsements evidencing all insurance coverage required to be obtained by Developer pursuant to ARTICLE V.

1.1.33 **Institutional Lender.** Any of the following: (a) a bank (State, Federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Fannie Mae, Freddie Mac, any Federal or State agency regularly making or guaranteeing mortgage loans, investment bank or a subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation); or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in "(a)" of this Section.

1.1.34 **Institutional Loan.** Any acquisition, construction or permanent loan that the Developer shall obtain from an Institutional Lender, the proceeds of which are to be used and applied solely to pay: (1) the reasonable costs of obtaining such loan; (2) the balance of the Acquisition Costs that are not funded by the NSP Loan, the Rehabilitation Costs and the Tenant Relocation Costs, or any refinancing of any such loan. The Institutional Loans are set forth in the Project Budget.

1.1.35 **Land Use Laws.** Defined in Section 3.3.1.

1.1.36 **Liability Insurance.** Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in, or about

the Property, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of One Million Dollars (\$1,000,000) for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.1.37 **Lien.** Any mortgage, deed of trust or other security instrument encumbering the fee interest of Developer in the Property and/or Project, or any part thereof.

1.1.38 **Monetary Default.** Any failure by a Party to pay or deposit, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with the non-defaulting Party or a Third Person.

1.1.39 **Non-Monetary Default.** A Party's: (a) failure to perform any of its obligations under this Agreement; (b) failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Agreement, excepting any such failure constituting a Monetary Default; or (c) any other event or circumstance that, with the passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement.

1.1.40 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Agreement. All Notices must be in writing.

1.1.41 **Normal Business Hours.** The Town's posted normal business hours.

1.1.42 **NSP 1.** The Neighborhood Stabilization Program created pursuant to Title III of Division B of the Federal Housing and Economic Recovery Act of 2008 (Public Law 110-289, 122 Stat. 2650).

1.1.43 **NSP 3.** Additional Federal funding allocated to the Neighborhood Stabilization Program pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (75 FR 64322).

1.1.44 **NSP Loan.** A loan in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) in NSP 3 funds, to be paid to Developer on the terms and conditions of the Promissory Note and this Agreement and allocated and used for the acquisition of the Property to provide the Units as affordable rental housing to Qualified Households.

1.1.45 **Official Action.** The official action of the directors, managers, partners or other Persons in Control of Developer in substantially the form attached to this Agreement as Exhibit I authorizing Developer to enter into and perform this Agreement.

1.1.46 **Permitted Transfer.** The recordation of any Lien on the Property for an Institutional Loan to the Project is a Permitted Transfer, which, unless otherwise provided, does not require the Town's prior written approval. No other Transfer of an interest in the

Property is a Permitted Transfer without the written consent of the Town.

1.1.47 **Person.** Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.48 **Prevailing Wage Action.** Any of the following: (a) any determination by the California Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the California Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with the Federal Davis-Bacon Act (codified as 40 U.S.C. §§ 3141 *et seq.*) or California Labor Code Sections 1720 through 1781, as amended from time to time, regarding prevailing wages, including maintaining certified payroll records; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity.

1.1.49 **Project.** The acquisition of the Property and the Rehabilitation Work to be conducted on the Property as further described in the Scope of Project, for the purpose of providing the Units as affordable rental housing to Qualified Households.

1.1.50 **Project Budget.** The total costs associated with the acquisition of the Property and the Rehabilitation Work, as more specifically set forth in Exhibit E attached to this Agreement.

1.1.51 **Project Entitlements.** Any precise plan, parcel map, variances, zone changes, grading permits, building permit or other approvals necessary from any Government for the Rehabilitation Work. “Project Entitlements” shall not include any of the foregoing which are obtained for the purpose of, and are necessary to finance or approve the construction of public improvements or the provision of public services, or for the formation or approval of districts, bonds or consents required for the construction of public improvements or the provision of public services.

1.1.52 **Promissory Note.** A promissory note in substantially the form attached to this Agreement as Exhibit F made by Developer to Town and evidencing Developer’s obligation to repay the NSP Loan.

1.1.53 **Property.** That certain real property located within the Town of Apple Valley, County of San Bernardino, State of California, which is legally described in Exhibit A and is incorporated into this Agreement by this reference.

1.1.54 **Property Insurance.** Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the

extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; an “increased cost of construction” endorsement; and an endorsement covering demolition and cost of debris removal, all subject to policy sublimits.

1.1.55 **Qualified Household.** An individual and/or families whose annual income is less than 50% of the Federal Poverty Guidelines, adjusted for household size.

1.1.56 **Qualified Residence Period.** The period of time beginning on the Acquisition Date and ending on the date which is fifteen (15) years thereafter.

1.1.57 **Qualified Units.** The four (4) residential units located on the Property, which shall be restricted by Developer for occupancy by Qualified Households in accordance with the terms and conditions of this Agreement and the Regulatory Agreement.

1.1.58 **Regulatory Agreement.** The Regulatory Agreement executed by and between Town and Developer in substantially the form attached to this Agreement as Exhibit H.

1.1.59 **Rehabilitation Costs.** The total costs to be incurred in conducting the Rehabilitation Work, which costs must be included in the Project Budget.

1.1.60 **Rehabilitation Work.** All construction work performed on the Property in rehabilitating the residential units, common areas and landscaping on the Property, more specifically set forth in the Scope of Development.

1.1.61 **Schedule of Performance.** The schedule for the performance of certain actions by Town and Developer pursuant to this Agreement, attached to this Agreement as Exhibit C.

1.1.62 **Scope of Development.** The detailed description of the Rehabilitation Work to be conducted by Developer, attached to this Agreement as Exhibit B.

1.1.63 **Third Person.** Any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.64 **Title Company.** North American Title Company or such other title insurance company mutually agreed upon in writing between Authority and Developer.

1.1.65 **Title Policy.** An ALTA Lender’s policy of title insurance issued by the Title Company to the Town, with coverage in the amount of the NSP Loan and containing endorsements reasonably requested by the Town that shall insure the Deed of Trust as a valid lien on the Property, subject only to those exceptions to title approved in writing by the Town. Developer shall pay the cost of securing the Title Policy as part of the Acquisition Costs.

1.1.66 **Town.** The Town of Apple Valley, a California municipal corporation.

1.1.67 **Town Manager.** The Town Manager of the Town or his or her designee or successor in function.

1.1.68 **Town Parties.** Collectively, the Town and all elected Town officials, employees, agents and attorneys.

1.1.69 **Transfer.** With respect to any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect:

1.1.69.1 Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by Developer of more than a 49% interest in Developer's interest in this Agreement, the Property, or the Project or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in Developer's interest in this Agreement, the Property or the Project, even if Developer is not technically the transferor; or

1.1.69.2 Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of Developer; or

1.1.69.3 Any Property Transfer; or

1.1.69.4 The recordation of any Lien against all or any portion of the Property

1.1.69.5 "Transfer" shall not include a Permitted Transfer; nor shall it include a change in the Board of Directors of Developer accomplished in the normal scope of their respective operations.

1.1.70 **Units.** The four (4) residential units located on the Property.

1.1.71 **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against any Party to this Agreement for any loss such policy covers.

1.1.72 **Workers Compensation Insurance.** Workers compensation insurance complying with the provisions of California law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of Developer.

1.2 **Prohibition Against Transfer.** The qualifications and identity of Developer is of particular concern to the Town. It is because of such qualifications and identity that Town has entered into this Agreement with Developer.

1.2.1 **No Transfer by Developer.** No voluntary or involuntary successor

in interest of Developer, shall acquire any rights or powers under this Agreement unless the transfer to that successor qualifies as a Permitted Transfer or as expressly set forth herein.

1.2.1.1 No Assignment. Except for Permitted Transfers, Developer shall not assign all or any part of this Agreement or any rights hereunder to any Person, without the prior written approval of the Town Manager, which shall not be unreasonably withheld, conditioned or delayed.

1.2.1.2 Material Change Prior to Issuance of Certificate of Completion. Developer shall promptly notify the Town in writing of any material change in the identity of the parties comprising Developer, as well as any and all changes in the interest or the degree of control of Developer by any such party, of which information Developer has been notified or may otherwise have knowledge or information. Except for a Permitted Transfer, Town may seek any appropriate relief in the event that at any time prior to the Transfer Date, a material change in the ownership or control of Developer occurs with respect to the Project; provided, however, that: (i) Town shall first notify Developer in writing of its intention to terminate this Agreement or assert any other such remedy; and (ii) Developer shall have thirty (30) calendar days following its receipt of such written notice to commence and thereafter diligently and continuously proceed with the cure of the Default of Developer hereunder and submit evidence of the initiation of satisfactory completion of such cure to Town in a form and substance deemed satisfactory to Town, in its reasonable discretion. For the purpose of this Section 1.2.1.2, “material change” refers to any total or partial sale, assignment, or conveyance, or any trust power or any transfer in any other mode or form by Developer. A material change does not include the sale, assignment, lease, or any Permitted Transfer.

1.2.1.3 No Release. In the absence of specific written agreement or approval by Town, no unauthorized Transfer of the Property or this Agreement shall relieve Developer or any other Person from any obligations under this Agreement except for a Permitted Transfer.

1.2.1.4 Termination. This Agreement may be terminated by Town if there is any unauthorized material change, whether voluntary or involuntary, in membership, ownership, management or control of Developer (other than such changes occasioned by the death or incapacity of any individual and other than Permitted Transfers) that has not been approved by Town prior to the time of such change or is otherwise expressly authorized under this Agreement, without approval by Town Manager, which shall not be unreasonably withheld, conditioned or delayed. Town may also seek other appropriate relief, in the event of any such unauthorized Transfer at any time following the Effective Date.

1.3 Representations and Warranties.

1.3.1 **Town Representations and Warranties.** Town represents and warrants to Developer that the following facts and conditions exist and are true as of the Effective Date:

1.3.1.1 *Authority.* Town is a California municipal corporation duly formed and operating under California law. Town has the power, right and

authority to enter into and perform this Agreement pursuant to California law. This Agreement was approved by the Town Council by Resolution No. _____ on _____, 20____, with such resolution authorizing the Town Manager or his designee to sign and deliver this Agreement. Town has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement, such that this Agreement is valid and enforceable against Town. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution, delivery or performance of this Agreement by Town.

1.3.1.2 *Other Agreements.* To Town's knowledge, this Agreement does not violate any agreement, contract or court order to which Town is a party. Town has the legal right, power and authority under the laws of California to enter into this Agreement and to perform its obligations hereunder.

1.3.1.3 *Valid and Enforceable.* This Agreement, when executed, shall be valid and enforceable against Town in accordance with its terms and each instrument to be executed by Town pursuant hereto or in connection with this Agreement, when executed, shall be valid and enforceable against Town in accordance with its terms.

1.3.2 **Developer Representations and Warranties.** Developer represents and warrants to Town that the following facts and conditions exist and are true as of the Effective Date:

1.3.2.1 *Authority.* Developer is a California non-profit public benefit corporation. Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced in this Agreement and to consummate the transactions contemplated by this Agreement and no consent of any member, creditor, judicial or administrative body, government agency or other Person is required for Developer to enter into or perform its obligations under this Agreement, except as has already been obtained.

1.3.2.2 *Other Agreements.* To Developer's knowledge, this Agreement does not violate any agreement, contract or court order to which Developer is a party. Developer has the legal right, power and authority under the laws of California to enter into this Agreement and to perform its obligations hereunder.

1.3.2.3 *Valid and Enforceable.* This Agreement, when executed, shall be valid and enforceable against Developer in accordance with its terms and each instrument to be executed by Developer pursuant hereto or in connection with this Agreement, when executed, shall be valid and enforceable against Developer in accordance with its terms.

ARTICLE II

FINANCING OF PROJECT

2.1 **Project Budget.** Developer has submitted to Town the Project Budget for the acquisition of the Property and the Rehabilitation Work. The Project Budget sets forth the disbursement schedule for the NSP Loan. By its execution of this Agreement, Town has given

its approval to the Project Budget. While the Project Budget has been prepared based on the best, good faith estimate of Developer of the costs which are likely to be incurred for the Project, the Parties recognize that events and circumstances not currently contemplated, some of which are outside of the control of the Parties, could result in changes necessitating changes in the Project Budget. To the extent that Developer is required to make changes to the Project Budget, Developer shall immediately submit a revised Project Budget to the Town Manager or his designee for review and approval, which review and approval shall not be unreasonably withheld, conditioned or delayed.

2.2 Rehabilitation Costs. Developer has provided a detailed scope of work for the Rehabilitation Work in the Scope of Development. The Rehabilitation Costs shall be subject to change from time to time in accordance with this Agreement, subject to the prior written approval by the Town Manager or his designee, on behalf of the Town, which approval shall not be unreasonably withheld, conditioned or delayed. Developer may, subject to Town's prior written approval, which will not be unreasonably withheld, conditioned or delayed, transfer funds reflected in one line item of the Project Budget to the account for another line item in the Project Budget, so long as the amount of Rehabilitation Costs set forth in the then-currently approved Project Budget are not exceeded.

2.3 Tenant Relocation. Developer shall take all necessary and appropriate steps to provide for the relocation of eligible occupants of the Property in accordance with the provisions of the Uniform Relocation Act (42 U.S.C. §§ 4601 *et seq.*), California Government Code Sections 7260 *et seq.*, the Relocation Plan and other applicable law. Prior to Developer's commencement of the Construction of the Project, any occupants of the Property shall be given written notice of displacement instructing the occupant to vacate the Property and surrender possession of the Property, within the following times: (i) ninety (90) days following the date of such notice of displacement; or (ii) such other date designated in compliance with applicable law. Each notice of displacement shall advise the occupant that the occupant shall be entitled to relocation assistance benefits in accordance with applicable law and the Relocation Plan.

2.4 NSP Loan.

2.4.1 Disbursal of Funds. Subject to the terms and conditions of this Agreement, Town shall pay to or for the benefit of Developer the NSP Loan solely for the purposes of acquisition and rehabilitation of the Property, and insuring that the restrictive covenants set forth in the Regulatory Agreement run with the Units for the Qualified Residence Period. Developer shall use the NSP Loan solely for the payment of the Acquisition Costs and Rehabilitation Costs in accordance with the Project Budget. As an inducement to Town to make the NSP Loan, Developer has agreed to enter into this Agreement and has agreed to the performance of the terms and conditions set forth in this Agreement.

2.4.2 Closing of NSP Loan and Disbursement of Funds for Acquisition Costs. The disbursement of the Acquisition Costs shall be disbursed at the Close of Escrow for the acquisition of the Property. Disbursement of such funds shall be subject to the satisfaction or waiver by Town of all of the conditions precedent set forth in this Section 2.4.2, as determined in the reasonable discretion of the Town Manager or his designee:

2.4.2.1 Developer has provided Town with satisfactory evidence of commitments from Institutional Lender(s) to provide the remaining portion of the Acquisition Costs for the Property not provided by the NSP Loan, costs to complete the Rehabilitation Work for the Property as identified in the Scope of Development, and costs for any relocation that must commence after Close of Escrow as set forth in Section 2.3 of this Agreement.

2.4.2.2 Developer has provided Town with satisfactory evidence that the Purchase Price to be paid for the Property is at least one percent (1%) less than the appraised market value of the Property, consistent with the requirements of NSP 1 and NSP 3.

2.4.2.3 Developer has submitted evidence of insurance coverage(s) as required by this Agreement provided that Builder's Risk Insurance will only be required during the period of rehabilitation of the Project.

2.4.2.4 Developer is in compliance with all of the applicable terms, covenants, and conditions set forth in this Agreement.

2.4.2.5 Developer has submitted into the Escrow the following documents, which have been signed by the authorized representative(s) of Developer; (i) the Regulatory Agreement (in recordable form); (ii) the Promissory Note; and (iii) the Deed of Trust (in recordable form);

2.4.2.6 The Title Company has issued the Title Policy to the Town;

2.4.3 Following acquisition of the Property by Developer, Town shall disburse the remainder of the NSP Loan for Rehabilitation Costs incurred in accordance with the Project Budget. Disbursement will be allowed for direct payment of services rendered or products delivered in furtherance of the Rehabilitation Work and in accordance with the Project Budget, subject to reasonable approval by the Town.

2.4.4 Repayment of NSP Loan. Developer shall repay the NSP Loan pursuant to the terms and conditions of the Promissory Note.

2.4.4.1 The NSP Loan shall be evidenced by the Promissory Note. The Promissory Note shall not bear interest unless an event of default, as defined in the Promissory Note, occurs.

2.4.4.2 Payment on the Promissory Note shall be applied in the following order: (i) to repayment of any accrued interest, if any; and (ii) to repayment of principal.

2.4.4.3 The Promissory Note shall be secured by the Deed of Trust. executed by Developer. This Agreement shall be incorporated by reference into the Deed of Trust but shall not be attached to the Deed of Trust. Any breach of a material misrepresentation by Developer, as applicable, under this Agreement shall constitute an event of

default under the Deed of Trust after expiration of applicable cure periods.

2.4.5 Purpose of NSP Loan. Town is making the NSP Loan to Developer expressly for the purpose of acquiring and rehabilitating the Property and ensuring that the Units shall remain affordable to Qualified Households for the Qualified Residence Period.

2.4.5.1 Non-Recourse. Except as provided below, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the NSP Loan or the performance of the covenants of the Developer under the Deed of Trust. The sole recourse of the Town with respect to the principal of, or interest on, the Note and defaults by Developer in the performance of its covenants under the Deed of Trust shall be to the property described in the Deed of Trust.

2.5 Subordination. The Deed of Trust may be subordinated to other Institutional Loans (in each case, a "Senior Loan"), but only on condition that all of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide financing for the Project. Upon a determination by the Town Manager that the condition in this Section have been reasonably satisfied, the Town Manager or his/her designee will be authorized to execute a subordination agreement in a form and pursuant to terms and conditions as approved by the Town Manager and Town Attorney without the necessity of any further action or approval.

ARTICLE III

REHABILITATION OF THE UNITS

3.1 Developer's Covenant to Rehabilitate the Units. Developer covenants to and for the exclusive benefit of Town that following acquisition of the Property, Developer shall commence, pursue and complete the Rehabilitation Work in accordance with the deadlines and other requirements of this Agreement. Developer covenants and agrees for itself, its successors and assigns that the Rehabilitation Work shall be completed as set forth in the Scope of Development, in conformity with the terms and conditions of this Agreement and all applicable laws and conditions of each Government. The covenants of this Section 3.1 shall run with the Property, until the date of issuance of a Certificate of Completion for the Project.

3.2 Project Entitlements.

3.2.1 **Project Subject to Land Use Laws.** Developer acknowledges and agrees that the Rehabilitation Work shall be subject to the Town's zoning, building and land use regulations (whether contained in ordinances, the municipal code of the Town, conditions of approval or elsewhere) (collectively, "Land Use Laws"). No action by Town with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any Land Use Laws required for any Construction of the Project as applicable to Developer, any successor in interest of Developer, or any successor in interest to the ownership, use or occupancy of the Property. Land Use Laws may only be changed or waived by modification or variance approved by the Town. Under no circumstances shall Developer commence the Rehabilitation Work on any portion of the Property prior to receiving any required Project Entitlements.

3.2.2 **Project Subject to Federal Law.** Developer acknowledges and agrees that because the NSP Loan consists of funding provided by the Federal Government, the acquisition of the Property and the Rehabilitation Work is subject to applicable Federal laws and regulations including, without limitation, NSP, the Fair Labor Standards Act of 1938 (codified as 29 U.S.C. § 207), the Davis-Bacon Act (codified as 40 U.S.C. § 3141 *et seq.*), and Section 3 of the Housing and Urban Development Act of 1968 (codified as 12 U.S.C. § 1701u). Developer shall be solely responsible for ensuring that the Rehabilitation Work is in conformance with all applicable Federal laws and regulations, which responsibility shall survive any subsequent transfer of the Property hereunder.

3.2.3 **Developer to Obtain Project Entitlements.** Developer shall be responsible for obtaining any Project Entitlements required for the Rehabilitation Work and Developer shall submit all applications within the time period set forth in the Schedule of Performance. Developer shall be responsible for all of the costs incurred in connection with obtaining any such Project Entitlements. Developer shall also be responsible for satisfying all conditions of approval and mitigation measures relating to the Project. Town shall reasonably cooperate with Developer's efforts in obtaining any Project Entitlements, so long as Town incurs no expense by this Agreement, other than insignificant amounts of the time of Town's officers and employees. However, Town makes no representations or warranties regarding its approval or denial of the Project Entitlements.

3.2.4 **Cooperation; Delay.** Town shall cooperate with and shall assist Developer in obtaining the approval of any and all drawings, plans, specifications and related documents submitted by Developer to Town consistent with the Schedule of Performance. Any failure by Town to approve any such plans or to issue necessary permits for the Rehabilitation work on the Property within the time period provided in the Schedule of Performance shall constitute an Enforced Delay, and the Schedule of Performance shall be extended by that period of time beyond the period described in the Schedule of Performance until the Town takes action regarding said documents; provided, however, that in the event that the Town disapproves of any of such documents, Developer shall within thirty (30) calendar days after receipt of such disapproval, revise and resubmit such documents in accordance with the Town's requirements and in such form and substance so as to obtain the Town's approval thereof.

3.2.5 **Project Scope of Development.** If any material change in the Scope of Development previously approved by Town shall be required by another Government having jurisdiction over the development of the Property, Developer and the Town shall cooperate in efforts to obtain waivers of such revisions, or to obtain approvals of any such revisions which have been made by Developer and have thereafter been approved by the Town. Town shall not unreasonably withhold or delay approval of such revisions to the Scope of Development; provided, however that no such change may result in the reduction of the number of Units provided to Qualified Households pursuant to the Regulatory Agreement.

3.2.6 **Town Approval of Construction Drawings.** Developer shall submit to the Town the Construction Drawings as set forth in the Schedule of Performance. Upon receipt, the Town shall approve, disapprove or provide corrections to the Construction Drawings to Developer within the standard review period. Town's failure to approve, disapprove or provide corrections to the Construction Drawings submitted by Developer within

said review period shall constitute Town's disapproval of such Construction Drawings until such time, if ever, as Town approves the Construction Drawings. Any Approvals granted pursuant to this Section 3.2.6 shall be in addition to, and not in lieu of, any other Approvals required by the Town or any other Government for the Rehabilitation work. Developer shall be solely responsible for determining what additional Approvals, if any, are required by the Town and/or any Government prior to commencing the Rehabilitation Work.

3.2.7 **Changes to Construction Drawings.** If Developer desires to make any material change in the Construction Drawings after their approval by the Town, Developer shall submit the proposed change in writing to Town for approval. Town shall notify Developer of approval or disapproval thereof in writing within the Town's standard review period. Any such change shall, in any event, be deemed to be approved by Town unless rejected, in whole or in part, by written notice thereof submitted by Town to Developer, setting forth in detail the reasons therefore, and such rejection shall be made within the Town's standard review period, unless extended as permitted in this Agreement. Town shall diligently review and approve or disapprove any such change.

3.2.8 **Field Changes.** Developer shall have the right during the course of Construction to make changes minor field changes with respect to the Rehabilitation Work without seeking the approval of Town; provided, however, that such changes do not affect the type of use to be conducted within all or any portion of a Unit or the ability of the Town to accept the completion of the public improvements necessary for the Rehabilitation Work; and further provided that the Town has approved any such minor field change in accordance with the Town's general standards and practices. The term "minor field changes" shall be defined as those changes from the approved Construction Drawings that have no substantial effect on the improvements and are made in order to expedite the Rehabilitation Work in response to field conditions. Nothing contained in this Section 3.2.8 shall be deemed to constitute a waiver of or change in the Town's general requirements governing such minor field changes or in any and all approvals by the Town otherwise required for such minor field changes.

3.3 **Project Schedule.** Developer shall begin and complete the Rehabilitation Work and undertake all obligations and responsibilities of Developer within the times specified in the Schedule of Performance or within such reasonable extensions of such times as may be granted by Town Manager or designee or as otherwise provided for in this Agreement. Any and all deadlines for performance by the Parties shall be extended for any time attributable to Enforced Delay.

3.4 **Regular Progress Reports.** Prior to and during the period of Rehabilitation Work, Developer shall submit to Town written progress reports and/or hold progress meetings when and as reasonably requested by Town. The reports shall be in such form and detail as may reasonably be required by Town.

3.5 **Progress Meetings.** At the reasonable request of Town, Developer shall schedule, coordinate and attend construction progress meetings. The purposes of such meetings shall include but not be limited to discussing engineering matters, changes, delays, and extensions, reviewing work progress in relation to the Schedule of Performance, sharing new information, reporting on any significant events or developments, and otherwise carrying out the purposes of

this Agreement. Developer shall provide Town at least 24 hours prior notice (written or telephonic) of each such meeting.

3.6 Town Right to Inspect. Town shall have the right of reasonable access to the Units and the Property, without the payment of charges or fees, during Normal Business Hours during the period of Rehabilitation Work in order to inspect the work being performed in the Units and to ensure that Developer is complying with this Agreement. The Town Manager shall designate which officers, employees, agents or representatives of the Town may inspect the Units and the Property. Any and all officers, employees, agents or representatives of the Town who enter the Property pursuant to this Agreement shall identify themselves at the Property office upon their entrance on to the Property and shall at all times be accompanied by a representative of Developer while on the Property; provided, however, that Developer shall make a representative of Developer available for this purpose at all times during Normal Business Hours, upon reasonable notice from Town. Town shall indemnify, defend and hold Developer harmless from injury, property damage or liability arising out of the exercise by the Town of this right of access, other than injury, property damage or liability relating to the negligence of Developer or its officers, agents or employees. This section does not limit or restrict the rights or responsibilities of any Town inspectors, code enforcement officers, law enforcement, or other Town employees to the extent authorized by California law or the Apple Valley Municipal Code to enter or be provided access to the Property in connection with any Construction on the Property or the preservation of public health and welfare in the Town of Apple Valley.

3.7 Compliance with Law. Developer shall carry out the Rehabilitation Work in conformity with all applicable Federal and California laws including, without limitation, all applicable Federal and California labor standards.

3.8 Prevailing Wage.

3.8.1 **RESPONSIBILITY.** DEVELOPER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE REHABILITATION WORK MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION AND THE APPLICABLE PREVAILING PER DIEM WAGE RATE PURSUANT TO EITHER THE DAVIS BACON ACT (40 U.S.C. §§ 3141 *ET SEQ.*) OR LABOR CODE SECTIONS 1720 *ET SEQ.*, AS APPLICABLE.

3.8.2 **WAIVERS AND RELEASES.** DEVELOPER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES TOWN FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO DEVELOPER PURSUANT TO LABOR CODE SECTION 1781 OR THE DAVIS BACON ACT. RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 3.9.2, DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3.8.3 **INITIALS.** BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF SECTION 3.9.2:

Initials of Authorized
DEVELOPER Representative

3.8.4 **INDEMNITY.** DEVELOPER SHALL INDEMNIFY TOWN, PURSUANT TO SECTION 6.7, AGAINST ANY PREVAILING WAGE ACTIONS ARISING FROM THIS AGREEMENT, THE REHABILITATION WORK OR THE CONSTRUCTION ASSOCIATED WITH THE PROJECT.

3.9 Representation, Warranty and Indemnity Regarding Relocation

3.9.1 Developer agrees to indemnify Town pursuant to Section 6.7 from any and all costs, claims, expenses (including reasonable attorneys' fees), demands or damages arising under the California Relocation Assistance Act or the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 from or as a consequence of this Agreement or Developer's or Town's actions pursuant to or in furtherance of this Agreement, as well as any and all costs, claims, expenses (including reasonable attorneys' fees), demands or damages arising under the California Relocation Assistance Act or the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as a consequence of any actions or agreements of any government other than the Town.

3.10 Certificate of Completion.

3.10.1 **Developer Request.** Following Notice by Developer of the completion of Rehabilitation Work, excluding minor building punch-list items to be completed by Developer upon any Unit in the Project, Town shall furnish Developer with a Certificate of Completion for the Project, and such Certificate of Completion shall be recorded after Developer's completion of the Project if requested by Developer. Notwithstanding any provision set forth herein to the contrary, the completion of the Project shall include the completion of the Rehabilitation Work and any additional improvements as set forth in the Scope of Development. Town shall issue a Certificate of Completion following an appropriate request from Developer if the Project has been completed in accordance with the terms and conditions of this Agreement.

3.10.2 **Reasonableness.** Town shall not unreasonably withhold, condition or delay the issuance of a Certificate of Completion.

3.10.3 **Effect.** After the recordation of the Certificate of Completion, any Person thereafter leasing or otherwise acquiring any interest in a Unit shall not (because of such lease or acquisition) incur any obligation or liability under this Agreement regarding the Rehabilitation Work. A Certificate of Completion shall not be deemed to constitute a notice of

completion as referred to in California Civil Code Section 3093, nor shall it act to terminate the continuing covenants or conditions required by this Agreement or the Regulatory Agreement.

3.10.4 **Issuance.** If Town refuses or fails to furnish a Certificate of Completion after an appropriate written request from Developer, Town shall, within fifteen (15) calendar days of the written request or within three (3) calendar days after the next regular meeting of Town, whichever date occurs later, provide to Developer a written statement setting forth the reasons for the Town's refusal or failure to furnish a Certificate of Completion. The statement shall also contain Town's opinion of the action(s) Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for Construction or landscaping at a price reasonably acceptable to Developer or other minor building "punch-list" items, Town may issue its Certificate of Completion upon the posting of appropriate security to ensure the satisfactory completion of such work. If Town fails to provide such written statement within the foregoing period, Developer shall be deemed conclusively and without further action of Town, to have satisfied the requirements of this Agreement with respect to the Construction of the Project as if a Certificate of Completion had been issued.

ARTICLE IV

USE OF THE PROPERTY

4.1 Project Restricted to Qualified Households. As more specifically provided in the Regulatory Agreement, Developer covenants and agrees for itself, its successors, and assigns that the four (4) Units located on the Property shall be used to house and shall remain affordable to Qualified Households subject to the restrictions set forth in the Regulatory Agreement, which shall run with the land and remain in effect commencing at the Close of Escrow, and continuing for a period of fifteen (15) years following the recordation of the Certificate of Completion.

4.2 Obligation to Maintain Property. Developer covenants and agrees for itself, its successors, and assigns to maintain the Property in a good condition free from any accumulation of debris or waste material, subject to normal job-site conditions, and shall maintain in a neat, orderly, healthy and good condition the landscaping at the Property in accordance with the Scope of Development. In the event Developer, or its successors or assigns, fails to perform the maintenance as required herein, Agency shall have the right, but not the obligation, to enter the Property and undertake such maintenance activities. In such event, Developer shall reimburse Agency for all reasonable sums incurred by it for such maintenance activities. The covenants of this Section 4.2 shall run with the land and remain in effect commencing at the Close of Escrow, and continuing for a period of fifteen (15) years following the recordation of the Certificate of Completion.

ARTICLE V

INSURANCE

5.1 Required Insurance.

5.1.1 Developer shall maintain, to protect Town Parties against all insurable Claims resulting from the actions of Developer in connection with this Agreement, the Property and the Project, at the sole cost and expense of Developer, until issuance of a Certificate of Completion for the Project, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance to the degree required by this Agreement; (c) Property Insurance; (d) Builder's Risk Insurance (only during the construction period for the Rehabilitation Work); and (e) Workers Compensation Insurance.

5.2 Nature of Insurance. All Liability Insurance, Property Insurance, Workers Compensation Insurance and Automobile Liability Insurance policies required by this Agreement shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "XI" (exception may be made for the California Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in California. A Party may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement; and (ii) such policy otherwise complies with this Agreement.

5.3 Policy Requirements and Endorsements. All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:

5.3.1 **Insured.** Liability Insurance and Automobile Liability Insurance policies shall name Town Parties as "additional insured." Property Insurance and Builder's Risk Insurance policies shall name Town as a "loss payee." The coverage afforded to Town Parties shall be at least as broad as that afforded to Developer regarding the Property and the Project and may not contain any terms, conditions, exclusions, or limitations applicable to Town Parties that do not apply to Developer.

5.3.2 **Primary Coverage.** Any insurance or self-insurance maintained by Town Parties shall be in excess of all insurance required under this Agreement and shall not contribute to any insurance required under this Agreement.

5.3.3 **Contractual Liability.** Liability Insurance policies shall contain contractual liability coverage, for Developer's indemnity obligations under this Agreement. Developer's obtaining or failure to obtain such contractual liability coverage shall not relieve Developer from nor satisfy any indemnity obligation of Developer under this Agreement.

5.3.4 **Deliveries to Town.** Developer shall deliver to Town evidence of all insurance policies required by this Agreement as set forth in Section 5.1.1. Builder's Risk Insurance shall commence prior to commencement of the Rehabilitation Work. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Developer shall deliver to Town evidence of that

Party's maintenance of all insurance this Agreement requires. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to Town by certified mail, return receipt requested; provided, however, that thirty (30) days advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to Town Parties pursuant to this Agreement.

5.3.5 **Waiver of Certain Claims.** Each Party required to obtain insurance pursuant to Section 5.1 shall cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to Town Parties, if not already in the policy. To the extent that such Party obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this Agreement.

5.3.6 **No Claims Made Coverage.** None of the insurance coverage required under this Agreement may be written on a claims-made basis.

5.3.7 **Fully Paid and Non-Assessable.** All insurance obtained and maintained by any Party pursuant to Section 5.1 shall be fully paid for and non-assessable. However, such insurance policies may be subject to insurer audits.

5.3.8 **Town Option to Obtain Coverage.** During the continuance of a Default arising from the failure of any Party to carry any insurance required by this Agreement, Town may, at its sole option, purchase any such required insurance coverage and Town shall be entitled to immediate payment from the defaulting Party of any premiums and associated reasonable costs paid by Town for such insurance coverage. Any amount becoming due and payable to Town under this Section 5.3.8 that is not paid within fifteen (15) calendar days after written demand from Town for payment of such amount, within an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the maximum interest rate allowed by applicable law, whichever is less. Any election by Town to purchase or not to purchase insurance otherwise required by the terms of this Agreement to be carried by any Party shall not relieve that Party of its obligation to obtain and maintain any insurance coverage required by this Agreement.

5.3.9 **Separation of Insured.** All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Developer and the Town Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

5.3.10 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions under insurance policies required by this Agreement shall be declared to and approved by Town. Each Party required to obtain insurance in accordance with Section 5.1 shall pay all such deductibles or self-insured retentions regarding Town Parties or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to Town Parties.

5.3.11 **No Separate Insurance.** Developer shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Agreement, unless Town is made an additional insured thereon, as required by this Agreement.

5.3.12 **Insurance Independent of Indemnification.** The insurance requirements of this Agreement are independent of the Parties' indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Parties' indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude Town from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

ARTICLE VI

DEFAULTS; REMEDIES; INDEMNIFICATION

6.1 Governing Law. Unless otherwise required by Federal law for the use of NSP funds, the laws of the State of California shall govern the interpretation and enforcement of this Agreement, without application of conflicts or choice of laws principles or statutes.

6.2 Defaults.

6.2.1 Subject to the extensions of time set forth in Section 7.5, failure or delay by any Party to perform any term or provision of this Agreement shall constitute a Default under this Agreement; provided, however, that if a Party otherwise in default commences to cure, correct or remedy the Default within thirty (30) calendar days after receipt of Notice specifying the Default, and thereafter diligently and continuously prosecutes such cure, correction or remedy to completion (and where any time limits for the completion of such cure, correction or remedy are specifically set forth in this Agreement, then within said time limits), such Party shall not be deemed to be in default hereunder.

6.2.2 The non-defaulting Party shall give Notice of the Default to the Party in default, specifying the Default complained of by the non-defaulting Party. Delay in giving Notice shall not constitute a waiver of any Default nor shall it change the time of the Default.

6.2.3 Any failure or delays by any Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by any Party in asserting any of its rights and remedies shall not deprive any Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6.3 Legal Actions. Any Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

6.4 Attorneys' Fees. If any Party to this Agreement files any action or brings any action or proceeding against another arising out of this Agreement, the prevailing Party shall be entitled to recover as an element of its costs of suit, and not as damages, its reasonable attorneys' fees and costs of experts as fixed by the Court, in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees.

6.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by any other Party.

6.6 Nonliability of Town Parties. No member, official or employee of Town shall be personally liable to Developer, or any successor in interest, in the event of any Default by Town or for any amount which may become due to Developer, or to its successors, or on any obligations under the terms of this Agreement.

6.7 Indemnification.

6.7.1 **Town Indemnity Obligations.** Town shall indemnify Developer against any claim to the extent such claim arises from any wrongful intentional act or negligence of Town, but only to the extent that Town may be held liable under applicable law for such wrongful intentional act or negligence and exclusive of any violation of law (including the California Constitution) relating to Town's approval, entry into or performance of this Agreement. Nothing in this Agreement is intended nor shall it be interpreted to waive any limitation on Town's liability, any exemption or immunity from liability in favor of Town, any claim presentment requirement for bringing an action regarding any liability of Town or any limitations period applicable to liability of Town, as set forth in Government Code Sections 800 *et seq.*, Sections 900 *et seq.*, or in any other law or require Town to indemnify any Person beyond such limitations on Town's liability.

6.7.2 **Developer Indemnity Obligations.** Developer shall indemnify Town against any claim to the extent such claim arises from any wrongful intentional act or negligence of Developer. Developer shall also indemnify Town against any and all of the following: (a) any application made by or at Developer's request; (b) any agreements that

Developer (or anyone claiming by or through Developer) makes with a Third Person regarding the Property or the Project; (c) any workers compensation claim or determination relating to any employee of Developer or their contractors; (d) any Prevailing Wage Action relating to this Agreement or the Project; and Relocation Claims relating to this Agreement or the Project; and (f) any Environmental Claim attributable to any action or failure to act by Developer. Developer assumes the risk of delays and damages that may result to Developer from any Third Person legal actions related to Town's approval of this Agreement or any associated approvals, even in the event that an error, omission or abuse of discretion by Town is determined to have occurred. If a Third Person files a legal action regarding Town's approval of this Agreement or any associated approval (exclusive of legal actions alleging violation of Government Code Section 1090 by elected officials of Town), Developer shall indemnify Town against such Third Person legal action, including all legal costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Town shall reasonably cooperate in its defense in any legal action subject to this Section 6.7.2 subject to Developer's indemnity obligations for such legal action. Nothing contained in this Section 6.7.2 is intended to be nor shall be deemed or construed to be an express or implied admission that Town may be liable to Developer or any other party for damages or other relief regarding any alleged or established failure of Town to comply with any law. Any legal action that is subject to this Section 6.7.2 (including any appeal periods and the pendency of any appeals) shall constitute an Enforced Delay and the time periods for performance by any Party under this Agreement may be extended pursuant to the provisions of this Agreement in Section 7.5.

6.7.3 Independence of Insurance Obligations. The indemnification obligations made by Developer under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Agreement. Developer's obligation to indemnify Town under this Agreement is independent of Developer's insurance and other obligations under this Agreement. Developer's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Developer's indemnification obligations under this Agreement and are independent of Developer's indemnification and other obligations under this Agreement.

6.7.4 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

6.7.5 Indemnification Procedures. Wherever this Agreement requires any Party to indemnify the other Party:

6.7.5.1 Prompt Notice. The indemnifying Party shall promptly notify the other Party of any claim.

6.7.5.2 Selection of Counsel. The indemnifying Party shall select counsel reasonably acceptable to the other Party. Counsel to indemnifying Party's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory,

except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the indemnifying Party shall defend the claim, the other Party may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The other Party's separate counsel may attend all proceedings and meetings. The indemnifying Party's counsel shall actively consult with the other Party's separate counsel. The indemnifying Party's counsel shall, however, control the defense, except to the extent that the other Party waives its rights to indemnity and defense of such Claim.

6.7.5.3 *Cooperation.* The other Party shall reasonably cooperate with the indemnifying Party's defense of the other Party.

6.7.5.4 *Settlement.* The indemnifying Party may only settle a claim without the consent of other Party, if the claim is within the policy limits of applicable insurance policies provided in satisfaction of the requirements of this Agreement and such settlement procures a release of other Party from the subject claims, does not require other Party to make any payment to the claimant and neither the indemnified Party nor indemnifying Party on behalf of the indemnified Party admits any liability.

6.7.5.5 *Insurance Proceeds.* The indemnifying Party's obligations shall be reduced by any net insurance proceeds actually received by the other Party for the matter giving rise to the indemnification obligation.

ARTICLE VII

GENERAL PROVISIONS

7.1 Notices, Demands and Communications Between the Parties.

7.1.1 **Notices.** Any and all Notices submitted by any Party to another Party pursuant to or as required by this Agreement shall be dispatched by messenger for immediate personal delivery, or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the Party, as set forth in Section 7.1.2. Such Notice may be sent in the same manner to such other addresses as any Party may from time to time designate by Notice. Any Notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, or two (2) calendar days after it is placed in the United States mail, as provided in this Section 7.1. Rejection, other refusal to accept or the inability to deliver any Notice because of a changed address of which no Notice was given or other action by a Person to whom Notice is sent, shall be deemed receipt of the Notice.

7.1.2 **Addresses.** The following are the authorized addresses for the submission of Notices to the Parties, as of the Effective Date:

To Developer: Family Assistance Program
15075 7th Street
Victorville, CA 92395
Attn: Darryl Evey
Facsimile: (760) 843-9551

With a courtesy copy to: _____

Attn: _____
Facsimile: _____

To Town: Town of Apple Valley
Attn: Frank W. Robinson, Town Manager
14955 Dale Evans Parkway
Apple Valley, CA 92307
Facsimile: (760) 240-7399

With a courtesy copy to: Best Best & Krieger LLP
18101 Von Karman Ave., Suite 1000
Irvine, CA 92612
Attn: Elizabeth W. Hull
Facsimile: (949) 260-0972

7.2 Conflict of Interest. No member, official or employee of the Town having any conflict of interest, direct or indirect, related to this Agreement, the Property, or the development or operation of the Project shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

7.3 No Third-Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

7.4 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any Third Person any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 7.4, shall not include Persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Developer.

7.5 Enforced Delay: Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in Default, or considered to be a Default, where delays or Defaults are due to the force majeure events of war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires,

casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation, weather-caused delays, inability to secure necessary labor, materials or tools, delays of any contractors, subcontractor or supplier, which are not attributable to the fault of the Party claiming an extension of time to prepare or acts or failure to act of any Government (“**Enforced Delay**”). An extension of time for any such force majeure cause shall be for the period of the Enforced Delay and shall commence to run from the date of occurrence of the delay; provided however, that the Party which claims the existence of the delay has first provided the other Party with written notice of the occurrence of the delay within ten (10) calendar days of the commencement of such occurrence of delay. The inability of Developer to satisfy any condition of this Agreement relating to the acquisition of the Property or the Rehabilitation Work shall not be deemed to be a force majeure event or otherwise provide grounds for the assertion of the existence of a delay under this Section 7.5. The Parties to this Agreement expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Agreement and which occur at any time after the execution of this Agreement, are not force majeure events and do not provide any Party with grounds for asserting the existence of a delay in the performance of any covenant or undertaking which may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such Party of its obligations under this Agreement.

7.6 Inspection of Books and Records. Town shall have the right at all reasonable times, at the Town’s cost and expense, to inspect the books and records of Developer pertaining to the acquisition of the Property and Construction of the Project or the Property as necessary for the Town, in its reasonable discretion, to enforce its rights under this Agreement. Matters discovered by Town shall not be disclosed to third parties, unless required by law or unless otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of Town hereunder.

7.7 Approvals. Except as otherwise provided in this Agreement, approvals required of Town or Developer, or any officers, agents or employees of Town or Developer, shall not be unreasonably withheld and approval or disapproval shall be given within the time set forth in this Agreement or, if no time is given, within a reasonable time.

7.8 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns.

7.9 Further Assurances. The Parties agree to reasonably consider such additional actions or the execution of such other documents as may be reasonably necessary or convenient to the financing, development, and operation of the Project, although nothing in this Section 7.9 shall be deemed a representation, guaranty or commitment by any Party to take any action or execute any document.

7.10 Town Approvals and Actions. The Town Manager or his designee shall have the

authority to make approvals, issue interpretations, waive provisions, grant extensions of time, approve amendments to this Agreement and execute documents on behalf of the Town so long as such actions do not materially or substantially change the number of the Units that will remain affordable for the term of the Regulatory Agreement, the affordability level of the Units, reduce the length of affordability of the Project or add to the costs incurred or to be incurred by Town as specified herein. The Town Manager or his designee reserves the right, in its sole and absolute discretion, to submit any requested modification, interpretation, amendment or waiver to the Town Council if the Town Manager or his designee determines or believes that such action could increase the risk, liability or costs to Town, or change the affordability covenants or reduce the length of affordability of the Project.

7.11 Non-Recourse Liability. No member, official, employee, attorney or consultant of Developer shall be personally liable to Town, or any successor in interest, in the event of any default or breach by Developer, or for any amount which may become due to Town or to its successor, or on any obligations under the terms of this Agreement.

ARTICLE VIII

ENTIRE AGREEMENT, EXHIBITS, WAIVERS AND AMENDMENT

8.1 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to all or any portion of the Property and the development thereof.

8.2 Exhibit List. The following is a list of the Exhibits attached to this Agreement. Each of the exhibits referenced in this Section 8.2 are incorporated by this reference into the text of this Agreement.

<u>Exhibit A</u>	Legal Description of Property
<u>Exhibit B</u>	Project Scope of Development
<u>Exhibit C</u>	Project Schedule of Performance
<u>Exhibit D</u>	Certificate of Completion
<u>Exhibit E</u>	Project Budget
<u>Exhibit F</u>	Promissory Note
<u>Exhibit G</u>	Deed of Trust
<u>Exhibit H</u>	Regulatory Agreement
<u>Exhibit I</u>	Official Action

8.3 Waivers and Amendments. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the appropriate authorities of each Party to this Agreement.

8.4 Execution of Agreement. This Agreement may be executed in multiple counterpart originals each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties regarding the acquisition, Construction and operation of the Project on the Property.

[Signatures on following pages]

**SIGNATURE PAGE
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the dates set forth below:

TOWN:

TOWN OF APPLE VALLEY,
a California municipal corporation

By: _____
Frank W. Robinson
Town Manager

Date: _____

ATTEST:

Town Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

Town Attorney

**SIGNATURE PAGE
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

DEVELOPER:

FAMILY ASSISTANCE PROGRAM, a California non-profit public benefit corporation

By:

Its:

**EXHIBIT A
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

Legal Description of Property

[Attached behind this cover page]

**EXHIBIT B
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

Project Scope of Development

[Attached behind this cover page]

**EXHIBIT C
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

Project Schedule of Performance

[Attached behind this cover page]

**EXHIBIT D
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

Certificate of Completion

[Attached behind this cover page]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Town of Apple Valley
Attn: Town Clerk
14955 Dale Evans Parkway
Apple Valley, CA 92307
Facsimile: (760) 240-7399

EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE SECTION 27383

(Space above for Recorder's Use)

**CERTIFICATE OF COMPLETION
16022 SAGO ROAD**

I, Frank W. Robinson, Town Manager of the Town of Apple Valley ("Town"), certify as follows:

By its Resolution No. , adopted and approved April 30th, Town resolved as follows:

Section 1. This Certificate of Completion is made with respect to that certain Affordable Housing Agreement entered into by and between the Town and Family Assistance Program, a California non-profit corporation ("Developer"), dated April 30, 2013 ("Agreement"). The Agreement is an official record of the Town and a copy of the Agreement may be inspected in the office of the Town Clerk, located at 14955 Dale Evans Parkway, Apple Valley, California, during regular business hours. All capitalized terms not otherwise defined in this certificate shall have the same meaning as ascribed to those terms in the Agreement.

Section 2. The rehabilitation of that certain real property ("Property") described in Attachment No. 1 to this Certificate of Completion, which includes the four (4) multifamily residential units utilized as affordable housing for households that receive annual income less than 50% of Federal Poverty Guidelines and associated common areas and around the building(s) located at 16022 Sago Road, Apple Valley, California ("Project") as required in accordance with the Agreement has been completed in accordance with the provisions of the Agreement.

Section 3. Pursuant to Section 3.10 of the Agreement, this Certificate of Completion is a conclusive determination of the satisfactory completion of Developer's obligation to complete the Project on the Property; provided, however, that Town may enforce any covenants and obligations surviving this Certificate of Completion in accordance with the terms and conditions of the Agreement and the Regulatory Agreement.

[Signatures on following page]

**SIGNATURE PAGE
TO
CERTIFICATE OF COMPLETION
16022 SAGO ROAD**

DATED AND ISSUED this ____ day of _____.

Dated: _____

By: _____

Frank W. Robinson
Town Manager

ATTEST:

Town Clerk

ATTACHMENT NO. 1
TO
CERTIFICATE OF COMPLETION

Legal Description of the Property

[INSERT LEGAL DESCRIPTION]

EXHIBIT E
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD

Project Budget

[Attached behind this cover page]

**EXHIBIT F
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

Promissory Note

[Attached behind this cover page]

PROMISSORY NOTE SECURED BY DEED OF TRUST
16022 SAGO ROAD

Principal Amount: \$250,000

Date of Note: _____, 2013

Developer: FAMILY ASSISTANCE PROGRAM, a California non-profit corporation

Lender: TOWN OF APPLE VALLEY, a municipal corporation

Maturity Date: _____

Interest Rate: Three Percent (3%)

1. NSP Loan.

FOR VALUE RECEIVED, the undersigned FAMILY ASSISTANCE PROGRAM, a California non-profit corporation (“Maker”), with its principal place of business located at 15075 7th Street, Victorville, CA 92395, promises to pay to the TOWN OF APPLE VALLEY, a municipal corporation (the “Town” or “Holder”) at 14955 Dale Evans Parkway, Apple Valley, California 92307, or such place as the Holder may, from time to time, designate by written notice to the Maker, the principal sum of Two Hundred Fifty Thousand Dollars (\$250,000) (the “NSP Loan”), together with any accrued interest, if applicable, as set forth in this Promissory Note. This Promissory **Note** (the “Promissory **Note**”) is made and given pursuant to that certain Affordable Housing Agreement between the Town and Maker, dated April 30, 2013 (the “Affordable Housing Agreement”). The Affordable Housing Agreement is incorporated herein by this reference. All initially capitalized terms used but not defined herein shall have the meanings given to them in the Affordable Housing Agreement. The NSP Loan shall be disbursed (and such proceeds shall be used by Developer) in accordance with the terms and conditions of the Affordable Housing Agreement.

2. Term of Loan and Right of Prepayment.

a. Maturity Date. Unless forgiven or extended in accordance with Section 2.b. hereof, all accrued interest, if any, and principal shall be due and payable in full without any further demand or notice fifteen (15) years from the date on which the Certificate of Completion is issued (“Maturity Date”).

b. NSP Loan Forgiveness. Provided that Developer owns and operates the Project in conformance with all terms and conditions of the Affordable Housing Agreement and the Regulatory Agreement, the NSP Loan shall be forgiven and discharged in fifteen (15) equal installments, with each installment forgiven on the yearly anniversary of the date upon which the Certificate of Completion for the Rehabilitation Work is recorded against the Property.

c. Prepayment. This Promissory Note may be prepaid in whole or in part at any time and from time to time without penalty or premium.

3. Security for Note.

This Promissory **Note** is secured by a Deed of Trust executed by Maker which creates a lien on that certain real property as described therein and in the Affordable Housing Agreement.

4. Interest Calculation.

Principal and interest shall be payable in lawful money of the United States of America. If applicable, interest shall be computed based on an actual day year and the actual number of days elapsed. Interest shall commence on amounts disbursed hereunder from the date of disbursement.

5. Acceleration Upon Certain Events or Upon Default.

In the event of any default under the terms of this Promissory **Note**, the Affordable Housing Agreement or the Regulatory Agreement, under the Deed of Trust which is the security for this instrument, or under any senior loans, notes or deeds of trust, at the option of the Holder and after notice to the Maker, providing Maker with thirty (30) days in which to cure any default, and such default not having been cured within thirty (30) days (or if a greater amount of time is reasonably necessary to effect a cure, if actions to cure such default are not undertaken within said thirty (30) day period and pursued with reasonable diligence thereafter), all principal and interest due under this Promissory **Note** shall immediately become due and payable, upon thirty (30) days written notice from the Holder to the Maker. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.

Should the undersigned Maker agree to or sell, convey, transfer, or dispose of the real property described in the Deed of Trust securing this Promissory **Note** or any part thereof or interest therein, without first obtaining the prior written consent of the Holder (except for a Permitted Transfer, as defined in the Affordable Housing Agreement), then, at the option of the Holder, all principal due hereunder shall immediately become due and payable upon thirty (30) days written notice from the Holder to the Maker. Consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions.

Notwithstanding the generality of the foregoing, certain transfers permitted under the Affordable Housing Agreement shall not constitute a default hereunder or under the Affordable Housing Agreement, and any such action shall not accelerate the maturity of this Promissory **Note**, provided that any transfer is either a Permitted Transfer as defined in the Affordable Housing Agreement or is reasonably acceptable to the Town with reasonable promptness, and any transferee under such a transfer agrees to be bound by any and all instruments in favor of the Town.

6. Interest on Default. From and after a Default, the entire outstanding principal balance of this Promissory Note shall automatically bear an annual interest rate equal to the lesser of: (a) eight percent (8%) compounding annually; or (b) the maximum interest rate allowed by law.

7. Costs Paid by Maker.

Maker agrees to pay the following costs, expenses and attorneys fees paid or incurred by the Holder of this Promissory **Note**, or as adjudged by a court of competent jurisdiction: (a) reasonable costs of collection, costs and expenses and attorneys fees paid or incurred in connection with the collection or enforcement of this Promissory **Note**, whether or not suit is filed; and (b) costs of suit in such sum as the court may adjudge reasonable as attorneys fees in any action to enforce payment of this instrument.

8. Waiver.

Maker hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this instrument, and expressly agrees that, without in any way affecting the liability of Maker hereunder, the Holder hereof may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder or release any security now or hereafter securing this Promissory **Note**. Maker hereby waives, to the fullest extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this instrument or any deed of trust, security agreement, guarantee or other agreement now or hereafter securing this Promissory **Note**.

9. Indemnification.

Maker shall indemnify, defend, protect and hold the Town harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense, including, without limitation, reasonable attorneys fees and expenses incurred by the Holder hereof, arising as a result of any (i) fraud or material misrepresentation by the Maker under or in connection with the Affordable Housing Agreement or related agreements; (ii) intentional bad faith waste of the real property encumbered by the deed of trust which secures this Promissory **Note**; and (iii) losses resulting from Maker's failure to maintain insurance as required under the provisions of the deed of trust securing this Promissory **Note** and the Affordable Housing Agreement.

10. Severability.

If any provision of this Promissory **Note** is determined by a court of competent jurisdiction to be void or unenforceable, such determination shall not affect any other provision of this instrument, and all other provisions hereof shall remain valid and in full force and effect.

11. Non-Waiver.

No delay in demanding or failure to demand performance hereunder shall constitute a waiver by the Holder hereof of its right to subsequently demand such performance or to exercise any remedies for any default hereunder. Further, in order to be effective, any waiver of any of the Holder's rights and remedies hereunder shall be expressed in a writing signed by a duly appointed representative of the Holder hereof. Further, waiver by the Holder hereof of any right hereunder shall not constitute a waiver of any other right, including, but not limited to, the right to exercise any and all remedies for a different or subsequent event of default hereunder.

MAKER:

FAMILY ASSISTANCE PROGRAM, a California non-profit public benefit corporation

By:

Its:

EXHIBIT G
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD

Deed of Trust

[Attached behind this cover page]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Town of Apple Valley
Attn: Town Clerk
14955 Dale Evans Parkway
Apple Valley, CA 92307

APN 0441-101-13

SPACE ABOVE FOR RECORDER'S USE ONLY

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)
16022 SAGO ROAD

This Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) ("Deed of Trust") is dated as of April 30, 2013, by FAMILY ASSISTANCE PROGRAM, a California non-profit public benefit corporation, whose address is 15075 7th Street, Victorville, CA 92395 ("Trustor"), to _____ ("Trustee"), for the benefit of the Town of Apple Valley, a California municipal corporation, whose address is 14955 Dale Evans Parkway, Apple Valley, CA 92307 ("Beneficiary"), and is executed to secure that certain Promissory Note of even date herewith, in the principal amount of Two Hundred Fifty Thousand Dollars (\$250,000), executed by Trustor in favor of Beneficiary (such Promissory Note, as it may from time to time be supplemented, amended extended, renewed or otherwise modified), the provisions of which are incorporated in the Deed of Trust by this reference. This Deed of Trust is made with respect to that certain "Affordable Housing Agreement 16022 Sago Road

” dated April 30, 2013, for reference purposes only, between the Trustor and the Beneficiary (the "Affordable Housing Agreement").

Trustor hereby IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION, the following property (“Trust Estate”):

(a) All of that certain real property in the Town of Apple Valley, County of San Bernardino, State of California, more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (“Subject Property”);

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (“Improvements”);

(c) All tenements, hereditament, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (“Appurtenances”). (Appurtenances, together with the Subject Property and the Improvements, are hereafter collectively referred to as the “Real Property”);

(d) Subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management operation, leasing or occupancy of the Trust Estate, including those past due and unpaid (“Rents”);

(e) All present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (“UCC”), whether existing now or in the future) located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating, ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property (“Goods,” and together with the Real Property, collectively the “Property”); and

(f) All present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and

permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types of intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (collectively, "Intangibles").

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the "Personal Property"). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Sections 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following: (a) payment of that certain Promissory Note dated April 30, 2013 in the original principal amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Note"), and (b) due, prompt and complete observance, performance and discharge of each and every monetary and non-monetary condition, obligation, covenant and agreement contained herein or contained in the Affordable Housing Agreement and that certain Regulatory Agreement 16022 Sago Road entered into by and between Trustor and Beneficiary and recorded on an even date with this Deed of Trust (the "Regulatory Agreement"). The Affordable Housing Agreement, the Note and the Regulatory Agreement (collectively, "Secured Obligations") and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof, however evidenced.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR
COVENANTS AND AGREES:

1. That Trustor shall perform its obligations as set forth in the Secured Obligations at the time and in the manner respectively provided therein;
2. That Trustor shall not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed;

3. That the Secured Obligations are incorporated in and made a part of this Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable. This Deed of Trust shall cover, and the property subject hereto shall include, all property now or hereafter affixed or attached to or incorporated upon the Subject Property in, to or under which Trustor now has or hereafter acquires any right, title or interest, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Subject Property. To the extent any of the property subject to this Deed of Trust consists of rights in action or personal property covered by the UCC, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the Secured Obligations. In addition, for the purpose of securing the Secured Obligations, Trustor hereby grants to Beneficiary, as secured party, a security interest in all of the property described herein in, to, or under which Trustor now has or hereafter acquires any right, title or interest, whether present, future or contingent, including, but not limited to, all equipment, inventory, accounts, general intangibles, instruments, documents and chattel paper, as those terms are defined in the UCC, and all other personal property of any kind (including, without limitation, money and rights to the payment of money), whether now existing or hereafter created, that are now or at any time hereafter (i) in the possession or control of Beneficiary in any capacity; (ii) erected upon, attached to or appurtenant to the Subject Property; (iii) located or used on the Subject Property or identified for use on the Subject Property (whether stored on the Subject Property or elsewhere); or (iv) used in connection with, arising from, related to, or associated with the Subject Property or any of the personal property described herein, the construction of any improvements on the Subject Property, the ownership, development, maintenance, management or operation of the Subject Property, the use or enjoyment of the Subject Property or the operation of any business conducted thereon, including, without limitation, all such property described as the Trust Estate hereinabove. The security interests granted in this Paragraph 3 are hereinafter severally and collectively called the "Security Interest". The Security Interest shall be self-operative with respect to the real property described herein but Trustor shall execute and deliver on demand such additional security agreements, financing statements and other instruments as may be requested in order to impose the Security Interest more specifically upon the real and personal property encumbered hereby. The Security Interest, at all times, shall be prior to any other interest in the personal property encumbered hereby. Trustor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Trustor, on demand, shall promptly pay all costs and expenses of filing and recordation, to ensure the continued priority of the Security Interest. Trustor shall not sell, transfer, assign or otherwise dispose of any personal property encumbered hereby without obtaining the prior written consent of Beneficiary, except that the Trustor may, in the ordinary course of business, replace personal property or dispose of personal property that will not be replaced because of its obsolescence. Unless Beneficiary then agrees otherwise in writing, all proceeds from any permitted sale or disposition in excess of that required for full replacement shall be paid to Beneficiary to be applied on the Note subject to the rights of any senior lenders. Although proceeds of personal property are covered hereby, this shall not be construed to mean that Beneficiary consents to any sale of such personal property. Upon its recordation in the real

property records of San Bernardino County, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photostatic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement;

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Secured Obligations;

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements now existing or hereafter erected on the property insured against loss by fire and such other hazards, casualties, and contingencies as may be required by applicable provisions of the Secured Obligations, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies, if requested, shall be deposited with the Beneficiary;

7. To pay before delinquency any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Paragraph 7;

8. As it is provided more specifically in the Secured Obligations, to keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee, being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees;

11. Beneficiary shall have the right to pay all insurance premiums required by the Secured Obligations when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary shall be added to the sums secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure, at the highest rate of interest permitted by law;

13. That the funds to be advanced hereunder are to be used in accordance with applicable provisions of the Secured Obligations; upon the failure of Trustor to do so, after the giving of notice and the expiration of any applicable cure period, Trustor shall be in default hereunder;

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as authorized by Beneficiary and/or as provided in the Secured Obligations and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request prior to foreclosure) record in the Office of the Recorder of San Bernardino County, a surety bond in the amount required by law to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated,

now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

IT IS MUTUALLY AGREED THAT:

16. Trustor confirms that if Trustor should sell, enter into a contract of sale, convey, or in any way transfer all or any interest of Trustor in the Real Property encumbered by this Deed of Trust or suffer Trustor's title or any interest therein to be divested, whether voluntarily or involuntarily, unless the same is a Permitted Transfer as defined in the Affordable Housing Agreement, without the prior written consent of the Beneficiary being first obtained, then Beneficiary shall have the right, at Beneficiary's sole option, to declare all sums payable under the Note secured hereby immediately due and payable in full, irrespective of the maturity date otherwise specified in the Note. No waiver of this right shall be effective unless in writing and signed by the Beneficiary. Consent by the Beneficiary to any one such transaction shall not be deemed a waiver of the right to require such consent to future or successive transactions. Further, upon default under one of the Secured Obligations, and after the giving of notice and the expiration of any applicable cure period provided therein, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be immediately due and payable in full, irrespective of the maturity date otherwise specified in the Note;

17. As provided more specifically in the Secured Obligations, should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of any senior lenders, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefore which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage subject to the rights of any senior lenders. All such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary subject to the rights of any senior lenders;

18. Notwithstanding Sections 16 and 17, in the event that a portion of the Property is taken for a public improvement or pursuant to a condemnation proceeding and the seven (7) Units (as defined in the Affordable Housing Agreement) remain intact and continue to be owned and operated by Trustor in conformance with the Affordable Housing Agreement and the Regulatory Agreement, Beneficiary shall not declare all sums due and payable under the Note, nor shall the Beneficiary be entitled to any compensation, awards and other payments therefore, provided that such compensation, awards and other payments are used for (1) paying principal and interest owed on the Institutional Loan (as defined in the Affordable Housing Agreement), (2) making improvements to the Property that are approved by Beneficiary, in its reasonable discretion, or (3) payment of principal owing under the Note. In the event that Trustor receives such compensation, awards or other payments and fails to expend the funds in conformance with subsections (1) and (2) this section within thirty (30) days of receipt of such funds, Trustor shall be in default under this Deed of Trust.

19. Upon default by Trustor in taking any action or in making any payments provided for herein, or in the Secured Obligations, if Trustor shall fail to perform any covenant or agreement in this Deed of Trust within thirty (30) days after written demand therefore by Beneficiary (or, in the event that more than thirty (30) days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion), after the giving of notice and the expiration of any applicable cure period, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust and all documents evidencing expenditures secured hereby;

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the maximum rate allowed by law; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed

of Trust to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto”;

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall include not only the original Beneficiary hereunder but also any future successor in interest to Beneficiary. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several;

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee;

27. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address set forth in the Deed of Trust;

28. Trustor agrees at any time and from time to time, upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary;

29. Trustor agrees that the obligations secured by this Deed of Trust are made expressly for the purpose of acquiring the Property, completing the construction work necessary to rehabilitate the improvements on the Property, including the dwelling units thereon, all of which will be maintained as affordable housing for Qualified Households (as defined in the Affordable Housing Agreement), as is more specifically provided in the Secured Obligations;

30. As is provided more specifically in the Secured Obligations, the obligations of Trustor thereunder are nonrecourse obligations of the Trustor. The sole recourse of Beneficiary shall be the exercise of its rights against the Property;

31. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance hereunder shall not be deemed to be in default where delays or defaults are due to: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or supplier; acts of the other party; acts or failure to act of the Town or any other public or governmental agency or

entity (except that any act or failure to act of Beneficiary shall not excuse performance by Beneficiary unless such act or failure to act is allowed or required by law); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor;

32. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations;

33. (a) Subject to the extensions of time set forth in Paragraph 31, and subject to the further provisions of this Paragraph 33, failure or delay by Trustor to perform any term or provision respectively required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust;

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default;

(c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies;

(d) If an event of default occurs under the terms of this Deed of Trust, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor written notice of such default. Trustor shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under this Deed of Trust. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within thirty (30) days after the notice of default is first given;

(e) If an event of default occurs under the terms of the Secured Obligations, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor notice of such default. As is provided more specifically in the Secured Obligations, if the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary under the Secured Obligations, or this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently

and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

34. This Deed of Trust shall be subject and subordinate to the terms of that certain extended use agreement executed by the Trustor in connection with the Trustor's allocation of low-income housing tax credits under Section 42 of the Code (the "Extended Use Agreement"). If Beneficiary or its successors or assigns (collectively, the "Subsequent Owner") acquires the Property by foreclosure (or instrument in lieu of foreclosure), then the "extended use period" (as defined in Section 42(h)(6)(D) of the Internal Revenue Code) shall terminate, except for the obligation of the Subsequent Owner to comply with the limitations on evictions, termination of tenancy and increase in rents for the three year period following the Subsequent Owner's acquisition of the Property, as set forth in Section 42(h)(6)(E)(ii) of the Internal Revenue Code.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first set forth above.

TRUSTOR:

FAMILY ASSISTANCE PROGRAM, a California non-profit corporation

By:

Its:

EXHIBIT A TO
DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)
16022 SAGO ROAD

Legal Description of Subject Property

The lands referred to herein below are situated in the Town of Apple Valley, County of San Bernardino, State of California, and are described as follows: APN 0441-101-13 (16022 Sago Road, Apple Valley, CA 92307)

**EXHIBIT H
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

Regulatory Agreement

[Attached behind this cover page]

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

Town of Apple Valley
Attn: Town Clerk
14955 Dale Evans Parkway
Apple Valley, CA 92307

APN 0441-101-13

Exempt from Recording Fees Per Govt. Code §27383

**REGULATORY AGREEMENT
16022 SAGO ROAD**

by and between

**TOWN OF APPLE VALLEY
a California municipal corporation**

and

**FAMILY ASSISTANCE PROGRAM,
a California non-profit public benefit corporation**

[Dated as of _____ for reference purposes only]

This REGULATORY AGREEMENT (16022 Sago Road) (“**Regulatory Agreement**”) is made and entered into as of April 30, 2013 by and between THE TOWN OF APPLE VALLEY, a

California municipal corporation (“**Town**”) and FAMILY ASSISTANCE PROGRAM, a California non-profit public benefit corporation (“**Developer**”).

RECITALS

A. Pursuant to Title III of Division B of HERA (Public Law 110-289, 122 Stat. 2650), the United States Government created a program known as the Neighborhood Stabilization Program (“**NSP 1**”) to make funding available for certain qualified uses in order to assist state and local governments with emergency assistance for the redevelopment of abandoned and foreclosed upon homes and residential properties, which funds are subject to the U.S. Department of Housing and Urban Development’s (“**HUD**”) “Notice of allocations, waivers granted, alternative requirements applied, and statutory program requirements” for the NSP in the Federal Register, Volume 73, No. 194, Docket No. FR-5255-N-01, published on October 6, 2008 and subsequently revised on June 11, 2009 pursuant to HUD’s “Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees under the Housing and Economic Recovery Act, 2008; Revisions to Neighborhood Stabilization Program (NSP) and Technical Corrections” in the Federal Register, Volume 74, No. 117, Docket No. FR-5255-N-02.

B. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (75 FR 64322), the Federal government provided additional funding for the Neighborhood Stabilization Program, commonly referred to as “**NSP 3**”, to be awarded by HUD to mitigate the negative impact of the nation's economic decline and housing market collapse and to stabilize and revitalize communities.

C. Town, and Developer entered into that certain Affordable Housing Agreement 16022 Sago Road dated as of April 30, 2013 (“**Agreement**”), which provides for, among other things, a NSP Loan in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (“**NSP Loan**”) from NSP 3 funds to assist in the acquisition and Rehabilitation of the Units.

D. The terms of the Agreement require that certain covenants and affordability restrictions remain in full force and effect on the Units for a term commencing on the date of recordation of this Regulatory Agreement and continuing for fifteen (15) years following the recordation of Certificate of Completion as defined herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, DEVELOPER AND TOWN DO HEREBY COVENANT AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS AS FOLLOWS:

1. Definitions of Certain Terms. **AS USED IN THIS REGULATORY AGREEMENT, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE MEANING AS PROVIDED IN THE RECITALS OR IN THIS SECTION 1, UNLESS THE SPECIFIC CONTEXT OF USAGE OF A PARTICULAR WORD OR TERM MAY OTHERWISE REQUIRE. ALL INITIALLY CAPITALIZED TERMS USED AND NOT OTHERWISE DEFINED IN THE RECITALS OR IN THIS SECTION SHALL HAVE THE MEANING**

ASCRIBED TO SUCH TERM BY THE AGREEMENT.

1.1. Affordable Rent. A rental cost equal to the lesser of (i) the fair market rent for existing housing for comparable units in the San Bernardino-Riverside-Ontario MSA as established by HUD under 24 CFR 888.111; or (ii) a rent that does not exceed 30 percent (30%) of the adjusted income of a household whose annual income equals fifty percent (50%) of the Federal Poverty Guidelines, with adjustments for household size in the applicable unit.

1.2. Automobile Liability Insurance. Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all Developer-owned vehicles used by Developer regarding the Project, with minimum limits for bodily injury and property damage of One Million Dollars (\$1,000,000), provided that if Developer does not own or lease vehicles for purposes of this Agreement, no automobile insurance Developer shall be required to secure automobile insurance pursuant to this section. Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Town, which approval shall not be unreasonably withheld.

1.3. Certificate of Completion. The written certification of Town, in substantially the form of Exhibit D attached to the Affordable Housing Agreement, certifying that the Rehabilitation Work has been completed in compliance with the terms and conditions of this Agreement.

1.4. Federal Poverty Guidelines. The federal poverty guidelines as established annually by the United States Department of Health & Human Services and published from time to time in the Federal Register.

1.5. HOME Program. The affordable housing assistance program implemented by HUD pursuant to the HOME Investment Partnerships Act as set forth at Title II of the Cranston-Gonzales National Housing Act, 42 U.S.C. §12701, et seq., as amended from time to time; the regulations promulgated at 24 C.F.R. Part 92, et seq.; all other applicable federal and state statutes, rules, and regulations; such additional regulations, orders, rulings, interpretations, and directives for implementation of the HOME Investment Partnership Act as may be promulgated or issued by HUD from time to time; and such policies and procedures of HUD pertaining to the HOME Investment Partnerships Act.

1.6. Liability Insurance. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in, or about the Property, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.7. Project. The operation of a multi-family rental housing project which shall

include not less than four (4) rental units which shall be rented as affordable housing to Qualified Households at Affordable Rents, and all related on- and off-site improvements.

1.8. Property Insurance. Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County of San Bernardino, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County of San Bernardino at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; an “increased cost of construction” endorsement; and an endorsement covering demolition and cost of debris removal, all subject to policy sublimits. Property Insurance shall also include rental or business interruption insurance in an amount, at least, equal to the average annual gross income from the Project for the preceding three (3) calendar years and providing for a 12-month extended period of indemnity.

1.9. Qualified Households. An individual and/or families whose incomes do not exceed fifty percent (50%) of the Federal Poverty Guidelines, with adjustments for household size.

1.10. Term. The period of time following the date of recordation of this Agreement, and ending on the fifteenth (15th) anniversary of recordation of the Certificate of Completion.

1.11. Units. The four (4) multifamily residential units located on the Property, which shall be restricted by Developer for rental to and occupancy by Qualified Households as an Affordable Rent in accordance with the terms and conditions of the Agreement and this Regulatory Agreement.

1.12. Workers Compensation Insurance. Workers compensation insurance complying with the provisions of California law and an employer’s liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of Developer.

2. Acknowledgment of Developer. **DEVELOPER HEREBY ACKNOWLEDGES THAT THIS REGULATORY AGREEMENT IMPOSES CERTAIN RESTRICTIONS ON THE USE AND OCCUPANCY OF THE PROJECT AND THE PROPERTY DURING THE TERM OF THIS REGULATORY AGREEMENT. DEVELOPER ACKNOWLEDGES AND UNDERSTANDS THAT THE RESTRICTIONS SHALL BE APPLICABLE TO THE PROJECT AND THE PROPERTY FOR THE TERM HEREOF, COMMENCING ON THE DATE OF RECORDATION OF THIS AGREEMENT.**

Initials of Authorized
Developer Representative

3. Covenants and Obligations of Developer.

3.1. Occupancy. Developer covenants that the Units shall at all times during the Term of this Regulatory Agreement be occupied or held vacant and available for rent at an Affordable Rent to a Qualified Household.

3.2. Rent Covenant. Developer covenants that no Qualified Household shall pay an amount in excess of the Affordable Rent.

3.3. Proof of Qualification. Certification of a Qualified Household's income shall be made by Developer at the time of initial occupancy of a Unit and upon each renewal of a Qualified Household's lease. All such information described in this Section 33 shall only be obtained by Developer after obtaining the Qualified Household's written consent for the release of such information to Developer. Developer shall obtain, prior to initial occupancy and upon each lease renewal and, thereafter, maintain on file, income certifications from each Qualified Household renting any of the Units in the Project in the form attached as Attachment No. 2. Developer shall make a good faith effort to verify that the income information provided by an applicant (or occupying Qualified Household) in an income certification is accurate by taking one or more of the following steps as a part of the verification process:

3.3.1. Obtain an income tax return for the most recent tax year;

3.3.2. Obtain banking statements for the three (3) most recent months;

3.3.3. Obtain an income verification form from the applicant's current employer and/or obtain three (3) most recent paystubs;

3.3.4. Obtain an income verification form from the United States Social Security Administration and/or the State of California Department of Social Services, if the applicant receives assistance from either of such agencies; or

3.3.5. if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

3.4. Recertification of Income. On the anniversary of the occupancy of each Unit, Developer shall recertify the household income of the Qualified Household occupying the Unit. Copies of tenant income certifications shall be made available to Town upon request. In the event the recertification demonstrates that such household's income exceeds the income at which such household would qualify, the rules established for the HOME Program for over-income households will apply in determining the rent to be charged to that over-income household, including the guidance provided by HOME in Chapter 6, "Rental Housing Activities," in "Building HOME," a HOME Program Primer which provides an overview of the HOME Program, which may be amended from time to time. Developer shall ensure appropriate language is included in the lease requiring tenant to provide income information annually and acknowledge that should its income increase, its lease may be increased to the allowable HOME rent levels.

3.5. Inspection. Developer and all Qualified Households shall permit Town to conduct inspections of the Property and the Project from time-to-time for purposes of verifying compliance with this Regulatory Agreement, upon ten (10) calendar days prior written notice to Developer.

3.6. Records and Audits. Records shall be established and maintained by Developer relating to the use and occupancy of the Property and the Project for affordable rental housing use purposes, as authorized herein. Developer shall be responsible for establishing and maintaining such records during the Term of this Regulatory Agreement.

3.6.1. Commencing on the June 30 following the first (1st) anniversary of the date of recordation of the Certificate of Completion, and on each June 30 thereafter during the Term, Developer shall submit a report to Town, in the form attached as Attachment No. 3 (“Annual Report”). The Annual Report shall include, for each Unit in the Project, the rent, income and household size of the Qualified Household occupying the Unit. The Annual Report shall also state the date the tenancy commenced for each Unit and such other information as Town may be required by law to obtain; provided, however, that Town shall take reasonable steps to maintain the confidential nature of the information contained in any Annual Report to the extent permitted by law. Developer shall provide any additional information reasonably requested by Town including, without limitation, Project-related income and expense accounting information.

3.6.2. Town shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to any Unit; provided, however, that Town shall take reasonable steps to maintain the confidential nature of such information. Developer shall maintain complete, accurate and current records pertaining to the Units, the Property and the Project, and shall permit any duly authorized representative of Town (during business hours and upon not less than seventy-two (72) hours notice) to inspect such records, including records pertaining to income and household size of Qualified Households; provided, however, that Town shall take reasonable steps to maintain the confidential nature of information relating to any specific household.

3.7. Covenant of Developer With Respect to the Lease of Units in the Project. Developer, for itself, its successors and assigns, hereby covenants and agrees that, in connection with the lease of Units to Qualified Households during the Term, it shall comply with the following requirements:

3.7.1. The lease between Developer and the Qualified Household shall be for a term of one (1) year, unless by mutual agreement between Developer and the Qualified Household, but in such a case for not less than six (6) months.

3.7.2. The lease shall not contain any of the following provisions:

(a) an agreement by the Qualified Household to be sued, to admit guilt or to entry of a judgment in favor of Developer in a lawsuit brought in connection with the lease;

(b) an agreement by the Qualified Household that Developer may take, hold or sell personal property of household members, without notice to the Qualified Household

and a court decision on the rights of the parties, other than an agreement by the tenant concerning disposition of personal property remaining in the Unit after the Qualified Household has moved out of the Unit;

(c) an agreement by the Qualified Household not to hold Developer or its agents legally responsible for any action or failure to act, whether intentional or negligent;

(d) an agreement by the Qualified Household that Developer may institute a lawsuit without notice to the Qualified Household;

(e) an agreement by the Qualified Household that Developer may evict the Qualified Household without instituting a civil court proceeding in which the Qualified Household has the opportunity to present a defense, or before a court decision on the rights of the parties;

(f) an agreement by the Qualified Household to waive any right to a trial by jury;

(g) an agreement by the Qualified Household to waive the Qualified Household's right to appeal, or to otherwise challenge a court decision in connection with the lease;

(h) an agreement by the Qualified Household to pay attorney's fees or other legal costs, even if the Qualified Household wins in a court proceeding by Developer against the Qualified Household; provided, however, the Qualified Household may be obligated to pay costs in the event it loses such a legal action.

3.8. Termination of Tenancy. Developer shall not terminate the tenancy or refuse to renew the lease of a Qualified Household, except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Developer shall, in connection with a termination of a tenancy or a refusal to renew a lease, serve written notice upon the Qualified Household specifying the grounds for the action, at least thirty (30) calendar days before the termination of the tenancy.

3.9. Tenant Policies. Developer shall adopt written tenant selection policies and criteria that:

3.9.1. are consistent with the purpose of providing housing for individuals who qualify as Qualified Households;

3.9.2. are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;

3.9.3. give reasonable consideration to the housing needs of individuals who occupy substandard housing (including individuals that are homeless or living in a shelter for homeless individuals); individuals that are paying more than fifty percent (50%) of their annual income for rent; or individuals that are involuntarily displaced; and

3.9.4. give prompt written notification to any rejected applicant of the grounds for rejection.

3.10. Non-Discrimination. All Units shall be available at an Affordable Rent for occupancy on a continuous basis to Qualified Households within the Family Assistance Program. Developer shall give preference to battered women enrolled in the Family Assistance Program in renting the Units. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, age, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit. Neither Developer nor any person claiming under or through Developer, shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of any Unit, the Project or the Property. All deeds, leases or contracts made or entered into by Developer as to the Units, the Project or the Property or any portion thereof, shall contain covenants prohibiting discrimination, as prescribed by this Regulatory Agreement. The Town and Developer acknowledge and agree that the foregoing shall not preclude the Developer from taking such steps necessary and appropriate to implement the preference program referenced in this paragraph.

3.11. Compliance with Federal Laws. Developer acknowledges and agrees that because the NSP Loan consists of funding provided by the Federal Government, specifically, NSP 1, and NSP 3, Developer shall be required to comply with applicable federal requirements.

3.12. Equal Housing Notice. provide for a statement in all advertisements, notices and signs for the availability of Affordable Units for lease or rent to the effect that the Owner is an equal housing opportunity provider, and include an equal housing opportunity logotype in all notices, signs and advertisements in print media for the Affordable Units.

4. Development and Management of the Project.

4.1. Management of Project. Developer shall be responsible for management of the Project including, without limitation, the selection of Qualified Households, certification and recertification of household size, income and the age of the head of household of all Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Town shall have no responsibility for the management or operation of the Project or the Property. Developer shall not delegate or assign responsibility for management of the Project to a third party without the written consent of the Town, which may be granted or withheld in the Town's sole and absolute discretion. Unless any proposed management agent is approved in writing by Town within thirty (30) days of Developer's request for approval, the management agent shall be deemed disapproved. The Town hereby approves Advanced Property Services, LLC, as the initial property manager.

4.2. Insurance.

4.2.1. Required Insurance. Developer shall maintain, to protect Town Parties against all insurable Claims resulting from the actions of Developer in connection with this

Regulatory Agreement, the Property and the Project, at the sole cost and expense of Developer during the Term hereof the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance to the extent required by this Regulatory Agreement; (c) Property Insurance; and (d) Workers Compensation Insurance. Developer shall require all subcontractors to maintain the same insurance required of Developer set forth in this Section 4.2 prior to performing any work on the Property or the Project.

4.2.2. Policy Requirements and Endorsements. All insurance policies required by this Regulatory Agreement shall contain (by endorsement or otherwise) the following provisions:

(a) *Insured.* Developer's Liability Insurance and Automobile Liability Insurance policies shall name Town Parties as "additional insured." Developer's Property Insurance policy shall name Town as a "loss payee." The coverage afforded to Town Parties shall be at least as broad as that afforded to Developer regarding the Property and the Project and may not contain any terms, conditions, exclusions, or limitations applicable to Town Parties that do not apply to Developer.

(b) *Primary Coverage.* Any insurance or self-insurance maintained by Town Parties shall be in excess of all insurance required under this Regulatory Agreement and shall not contribute to any insurance required under this Regulatory Agreement.

(c) *Contractual Liability.* Developer's Liability Insurance policy shall contain contractual liability coverage for Developer's indemnity obligations under this Regulatory Agreement. Developer's obtaining or failure to obtain such contractual liability coverage shall not relieve Developer from nor satisfy any indemnity obligation of Developer under this Regulatory Agreement.

(d) *Deliveries to Town.* Developer shall deliver to Town evidence of all insurance policies required by this Regulatory Agreement. No later than three (3) days before any insurance required by this Regulatory Agreement expires, is cancelled or its liability limits are reduced or exhausted, Developer shall deliver to Town evidence of Developer's maintenance of all insurance this Regulatory Agreement requires. Each insurance policy required by this Regulatory Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to Town by certified mail, return receipt requested; provided, however, that thirty (30) days advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to Town Parties pursuant to this Regulatory Agreement.

(e) *Waiver of Certain Claims.* Developer shall cause each insurance carrier providing insurance coverage under this Regulatory Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to Town Parties, if not already in the policy. To the extent that Developer obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any Claims for

damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this Agreement...

(f) *No Claims Made Coverage.* None of the insurance coverage required under this Regulatory Agreement may be written on a claims-made basis.

4.2.3. Fully Paid and Non-Assessable. All insurance obtained and maintained by Developer pursuant to this Section 4.2 shall be fully paid for and non-assessable. However, such insurance policies may be subject to insurer audits.

4.2.4. Town Option to Obtain Coverage. During the continuance of a Default arising from the failure of Developer to carry any insurance required by this Regulatory Agreement, Town may, at its sole option, purchase any such required insurance coverage and Town shall be entitled to immediate payment from Developer of any premiums and associated reasonable costs paid by Town for such insurance coverage. Any amount becoming due and payable to Town under this Section 4.2.4 that is not paid within fifteen (15) calendar days after written demand from Town for payment of such amount, within an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the maximum interest rate allowed by applicable law, whichever is less. Any election by Town to purchase or not to purchase insurance otherwise required by the terms of this Regulatory Agreement to be carried by Developer shall not relieve Developer of its obligation to obtain and maintain any insurance coverage required by this Regulatory Agreement.

4.2.5. Separation of Insured. Developer's Liability Insurance and Automobile Liability Insurance policies shall provide for separation of insured for Developer and the Town Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Regulatory Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

4.2.6. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions under insurance policies required by this Regulatory Agreement shall be declared to and approved by Town. Developer shall pay all such deductibles or self-insured retentions regarding Town Parties or, alternatively, the insurer under each insurance policy required by this Section 4.2 shall eliminate such deductibles or self-insured retentions with respect to Town Parties.

4.2.7. No Separate Insurance. Developer shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Regulatory Agreement, unless Town is made an additional insured thereon, as required by this Regulatory Agreement.

4.2.8. Insurance Independent of Indemnification. The insurance requirements of this Regulatory Agreement are independent of Developer indemnification and other obligations under this Regulatory Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify Developer's indemnification or other obligations or to limit Developer's liability under this Regulatory Agreement, whether within, outside, or in excess of such

coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude Town from taking such other actions as are available to it under any other provision of this Regulatory Agreement or otherwise at law or in equity.

4.2.9. Nature of Insurance. The policies of insurance required by this Regulatory Agreement shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “XI” (exception may be made for the California Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in California. Developer may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Regulatory Agreement; and (ii) such policy otherwise complies with this Regulatory Agreement.

5. Maintenance of the Project. **DEVELOPER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY COVENANTS AND AGREES THAT THE EXTERIOR AREAS OF THE PROJECT WHICH ARE SUBJECT TO PUBLIC VIEW (E.G.: ALL IMPROVEMENTS, PAVING, WALKWAYS, LANDSCAPING, AND ORNAMENTATION) SHALL BE MAINTAINED IN GOOD REPAIR AND IN A NEAT, CLEAN AND ORDERLY CONDITION, ORDINARY WEAR AND TEAR EXCEPTED. IN THE EVENT THAT AT ANY TIME DURING THE TERM, THERE IS AN OCCURRENCE OF AN ADVERSE CONDITION ON ANY AREA OF THE PROJECT WHICH IS SUBJECT TO PUBLIC VIEW IN CONTRAVENTION OF THE GENERAL MAINTENANCE STANDARD DESCRIBED ABOVE (“MAINTENANCE DEFICIENCY”), THEN TOWN SHALL NOTIFY DEVELOPER IN WRITING OF THE MAINTENANCE DEFICIENCY AND GIVE DEVELOPER THIRTY (30) CALENDAR DAYS FROM THE DATE OF SUCH NOTICE TO CURE THE MAINTENANCE DEFICIENCY AS IDENTIFIED IN THE NOTICE. “MAINTENANCE DEFICIENCY” INCLUDES, WITHOUT LIMITATION, THE FOLLOWING INADEQUATE OR NON-CONFORMING PROPERTY MAINTENANCE CONDITIONS AND/OR BREACHES OF RESIDENTIAL PROPERTY USE RESTRICTIONS: (I) FAILURE TO PROPERLY MAINTAIN THE WINDOWS, STRUCTURAL ELEMENTS, AND PAINTED EXTERIOR SURFACE AREAS OF THE UNITS IN A CLEAN AND PRESENTABLE MANNER; (II) FAILURE TO KEEP THE COMMON AREAS OF THE PROJECT FREE OF ACCUMULATED DEBRIS, APPLIANCES, INOPERABLE MOTOR VEHICLES OR MOTOR VEHICLE PARTS, OR FREE OF STORAGE OF LUMBER, BUILDING MATERIALS OR EQUIPMENT NOT REGULARLY IN USE ON THE PROPERTY; (III) FAILURE TO REGULARLY MAINTAIN, REPLACE AND RENEW THE LANDSCAPING IN A REASONABLE CONDITION FREE OF WEED AND DEBRIS; AND (IV) THE USE OF GARAGE AREAS ON THE PROJECT FOR PURPOSES OTHER THAN THE PARKING OF MOTOR VEHICLES AND THE STORAGE OF PERSONAL POSSESSIONS AND MECHANICAL EQUIPMENT OF PERSONS RESIDING IN THE PROJECT.**

5.1. In the event Developer fails to cure or commence to cure the Maintenance Deficiency within the time allowed, Town may thereafter conduct a public hearing following transmittal of written notice thereof to Developer ten (10) calendar days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether Developer has failed to comply with the provision of this Section 5. If, upon the conclusion of a public hearing, Town makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, then Town shall have the right to enter the Project (exterior areas of the Project which are subject to public view only) and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity that Town may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by Town for the abatement of a Maintenance Deficiency as authorized by this Section 5.1 shall become a lien on the Project. If the amount of the lien is not paid within thirty (30) calendar days after written demand for payment by Town to Developer, Town shall have the right to enforce the lien in the manner as provided in Section 5.3.

5.2. Graffiti which is visible from any public right-of-way which is adjacent or contiguous to the Project shall be removed by Developer from any exterior surface of a structure or improvement on the Project by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water as appropriate. In the event that graffiti is placed on the Project (exterior areas only) and such graffiti is visible from an adjacent or contiguous public right-of-way and thereafter such graffiti is not removed within seventy-two (72) hours following the time of its application, or Developer's actual knowledge of its existence, whichever occurs later; then in such event and without notice to Developer, Town shall have the right to enter the Project and remove the graffiti. Notwithstanding any provision of Section 5.1 to the contrary, any sum expended by Town for the removal of graffiti from the Project as authorized by this Section 5.2 shall become a lien on the Project. If the amount of the lien is not paid within thirty (30) calendar days after written demand for payment by Town to Developer, Town shall have the right to enforce its lien in the manner as provided in Section 5.3.

5.3. The parties hereto further mutually understand and agree that the rights conferred upon Town under this Section 5 expressly include the power to establish and enforce a lien or other encumbrance against the Property in the manner provided under California Civil Code Sections 2924, 2924b and 2924c in the amount as reasonably necessary to restore the Project to the maintenance standards required under this Section 5, including attorneys fees and costs of Town associated with the abatement of the Maintenance Deficiency or removal of graffiti and the collection of the costs of Town in connection with such action. In any legal proceeding for enforcing such a lien against the Project, the prevailing party shall be entitled to recover its attorneys' fees and costs of suit. The provisions of this Section 5 shall be a covenant running with the land for the Term and shall be enforceable by Town in its discretion, cumulative with any other rights or powers granted by Town under applicable law. Nothing in the foregoing provisions of this Section 5 shall be deemed to preclude Developer from making any alterations, additions, or other changes to any structure or improvement or landscaping on the Project, provided that such changes comply with the zoning and development regulations of the Town and other applicable law.

5.4. Capital Replacement Reserve Account. Developer shall establish an account for the payment of repair and replacement of capital items (“**Capital Replacement Reserve Account**”) in an initial amount of Five Thousand Dollars (\$5,000). Each Fiscal Year thereafter, Developer shall deposit into the Capital Reserve Replacement Account an additional amount of at least Five Hundred Dollars (\$500) per Unit per year.

5.4.1. Capital Repairs and Replacements. Capital repairs and replacements shall include, but not be limited to, the following: wet and dry utilities; roof repair and replacement as necessary; repair and replacement of boilers and the major operating components thereof; stucco repair and replacement; exterior painting; replacement of carpeting and vinyl or other hard surface flooring; replacement of drapes; replacement of dishwashers and garbage disposals; and repair and replacement of heating, ventilating and air conditioning systems, equipment and components, installation of solar panels. All of the foregoing and other similar expenditures on the Project shall be considered to be qualifying capital repair and replacement expenses. Interior painting, repair or replacement of other interior appliances and servicing, repair or replacement of interior hardware shall not be considered to be a capital repair, but shall be ordinary operating expenses for the Project. Developer shall withdraw funds from the Capital Replacement Reserve Account to pay such capital repair and replacement expenses as Developer may deem necessary for the purposes of meeting the maintenance and replacement obligations described herein.

5.4.2. Insured Depository. The Capital Replacement Reserve Account shall be maintained in a depository insured by an agency of the federal government.

5.4.3. Documentation. Annually, or more frequently at Town’s request, Developer shall document the level of capital repairs and replacements for the preceding period. Developer shall maintain and shall provide as requested documentation showing the quantity and price of items purchased, price of materials and the cost of contracted labor or other services incurred in connection with such capital repair and replacement, and such other items as Town may reasonably request.

5.4.4. Withdrawals from Reserve Account. On an annual basis, Developer shall notify Town of the anticipated cash requirements which will need to be withdrawn from the Capital Replacement Reserve Account. Amounts so budgeted and approved by Town may be withdrawn by Developer from the indicated Capital Replacement Reserve Account without further Town approval. Other withdrawals for unbudgeted, unanticipated or emergency Project expenditures may be withdrawn by Developer without prior Town approval, but Developer shall notify Town in writing within ten (10) calendar days after withdrawal. All amounts so withdrawn by Developer shall be expended on the Project and in accordance with this Regulatory Agreement. Withdrawals in excess of Twenty-Five Thousand Dollars in any one calendar year shall be pre-approved by Town in its reasonable discretion, subject to the rights of any senior lenders or the investor limited partner of the Developer.

5.4.5. Interest Earned on Funds in the Capital Replacement Reserve Account. Any interest or other earnings from sums deposited into the Capital Replacement Reserve Account shall be retained in and added to the balance in said account.

5.4.6. Displacement of Residents and Relocation. Developer shall make best

efforts to conduct capital repairs and replacements and ordinary repair and maintenance (collectively, “**Repairs**”) in good faith and in a manner that does not result in the displacement of any of the residents of the Units. If any of Developer’s actions to conduct Repairs result in displacement of any of the Units’ residents, Developer shall notify the Town in writing, prior to conducting such Repairs, of the identities of the residents to be displaced, the Units they will be displaced from, and the estimated length of time such residents shall be displaced. If the displacement of the residents triggers relocation obligations, Developer shall be responsible, at its sole cost and expense, for any and all such relocation obligations and related expenses. Developer shall comply with all applicable federal, state and local laws, rules and regulations regarding such relocation obligations and related expenses, including any relocation requirements set forth by the Town. Developer shall defend, indemnify and hold the Town, its officers, employees, agents, attorneys, and contractors harmless from and against all liability for any relocation obligations and related expenses attributable to any Repairs.

6. Covenants to Run With the Land. **DEVELOPER AND TOWN HEREBY DECLARE THEIR SPECIFIC INTENT THAT THE COVENANTS, RESERVATIONS AND RESTRICTIONS SET FORTH HEREIN ARE PART OF A PLAN FOR THE PROMOTION AND PRESERVATION OF AFFORDABLE HOUSING WITHIN THE TERRITORIAL JURISDICTION OF THE TOWN AND THAT EACH SHALL BE DEEMED COVENANTS RUNNING WITH THE LAND AND SHALL PASS TO AND BE BINDING UPON THE PROPERTY AND EACH SUCCESSOR-IN-INTEREST OF DEVELOPER IN THE PROPERTY FOR THE TERM. DEVELOPER HEREBY EXPRESSLY ASSUMES THE DUTY AND OBLIGATION TO PERFORM EACH OF THE COVENANTS AND TO HONOR EACH OF THE RESERVATIONS AND RESTRICTIONS SET FORTH IN THIS REGULATORY AGREEMENT. EACH AND EVERY CONTRACT, DEED OR OTHER INSTRUMENT HEREAFTER EXECUTED COVERING OR CONVEYING THE PROPERTY OR ANY INTEREST THEREIN SHALL CONCLUSIVELY BE HELD TO HAVE BEEN EXECUTED, DELIVERED AND ACCEPTED SUBJECT TO SUCH COVENANTS, RESERVATIONS, AND RESTRICTIONS, REGARDLESS OF WHETHER SUCH COVENANTS, RESERVATIONS AND RESTRICTIONS ARE SET FORTH IN SUCH CONTRACT, DEED OR OTHER INSTRUMENT.**

7. Burden and Benefit. **THE TOWN AND DEVELOPER HEREBY DECLARE THEIR UNDERSTANDING AND INTENT THAT THE BURDEN OF THE COVENANTS SET FORTH HEREIN TOUCH AND CONCERN THE LAND IN THAT DEVELOPER’S LEGAL INTEREST IN THE PROPERTY IS AFFECTED BY THE AFFORDABLE DWELLING USE AND OCCUPANCY COVENANTS HEREUNDER. THE TOWN AND DEVELOPER HEREBY FURTHER DECLARE THEIR UNDERSTANDING AND INTENT THAT THE BENEFIT OF SUCH COVENANTS TOUCH AND CONCERN THE LAND BY ENHANCING AND INCREASING THE ENJOYMENT AND USE OF THE PROPERTY BY THE INTENDED BENEFICIARIES OF SUCH COVENANTS, RESERVATIONS AND RESTRICTIONS, AND BY FURTHERING THE AFFORDABLE HOUSING GOALS AND OBJECTIVES OF THE TOWN AND IN ORDER TO MAKE THE PROPERTY AVAILABLE FOR ACQUISITION BY DEVELOPER.**

8. Defaults.

8.1. Events of Default. The occurrence of any of the following is a default and shall constitute a material breach of this Regulatory Agreement and, if not corrected, cured or remedied in the time period set forth in Section 8.2, shall constitute an “**Event of Default**” hereunder:

8.1.1. failure of Developer or any person under its direction or control to comply with or perform when due any material term, obligation, covenant or condition contained in this Regulatory Agreement;

8.1.2. any warranty, representation or statement made or furnished to Town by Developer under this Regulatory Agreement that is false or misleading in any material respect either now or at the time made or furnished;

8.1.3. the dissolution or termination of the existence of Developer as an ongoing business, insolvency, appointment of a receiver for any part of the property of Developer, any assignment for the benefit of creditors, any type of creditor workout or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer; or

8.1.4. a default pursuant to the Agreement.

8.2. Notice of Default. Town shall give written notice of default to Developer, in accordance with Section 15, stating that such notice is a “Notice of Default”, specifying the default complained of by Town and requiring the default to be remedied within thirty (30) calendar days of the date of the Notice of Default. Except as required to protect against further material damage, Town may not institute legal proceedings against Developer until thirty (30) calendar days after providing the Notice of Default. Failure or delay in giving a Notice of Default shall not constitute a waiver of any default, nor shall it change the time of occurrence of the default. If the default specified in the Notice of Default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and if Developer initiates corrective action within said thirty (30) calendar day period and diligently works to effect a cure as soon as possible, then Developer may have such additional time as authorized in writing by Town as reasonably necessary to complete the cure of the default prior to exercise of any other remedy for the occurrence of an Event of Default. Such authorization for additional time to cure shall not be unreasonably withheld. If Developer fails to take corrective action relating to a default within thirty (30) calendar days following the date of Notice of Default (or to complete the cure within the additional as may be authorized by Town), an Event of Default shall be deemed to have occurred.

8.3. Inaction Not a Waiver of Default. Any failure or delays by Town in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Town in asserting any of its rights and remedies shall not deprive Town of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9. Remedies. **UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, TOWN SHALL, IN ADDITION TO THE REMEDIAL PROVISIONS OF SECTION 5 AS**

RELATED TO A MAINTENANCE DEFICIENCY AT THE PROPERTY, BE ENTITLED TO SEEK ANY APPROPRIATE REMEDY OR DAMAGES BY INITIATING LEGAL PROCEEDINGS AS FOLLOWS: (I) BY MANDAMUS OR OTHER SUIT, ACTION OR PROCEEDING AT LAW OR IN EQUITY, TO REQUIRE DEVELOPER TO PERFORM ITS OBLIGATIONS AND COVENANTS HEREUNDER, OR ENJOIN ANY ACTS OR THINGS WHICH MAY BE UNLAWFUL OR IN VIOLATION OF THE RIGHTS OF TOWN; OR (II) BY OTHER ACTION AT LAW OR IN EQUITY AS NECESSARY OR CONVENIENT TO ENFORCE THE OBLIGATIONS, COVENANTS AND AGREEMENTS OF DEVELOPER TO TOWN.

9.1. Rights and Remedies are Cumulative. The rights and remedies of Town as set forth in this Section 9 are cumulative and the exercise by Town of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Developer.

9.2. Enforcement by Third Parties. No third party shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of Town or to compel Town to enforce any provision of this Regulatory Agreement against Developer or the Project.

10. Governing Law. **THIS REGULATORY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE FEDERAL LAWS, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES.**

11. Amendment. **THIS REGULATORY AGREEMENT MAY BE AMENDED AFTER ITS RECORDATION ONLY BY A WRITTEN INSTRUMENT EXECUTED BY BOTH DEVELOPER AND TOWN.**

12. Attorney's Fees. **IN THE EVENT THAT A PARTY TO THIS REGULATORY AGREEMENT BRINGS AN ACTION TO ENFORCE ANY CONDITION OR COVENANT, REPRESENTATION OR WARRANTY IN THIS REGULATORY AGREEMENT OR OTHERWISE ARISING OUT OF THIS REGULATORY AGREEMENT, THE PREVAILING PARTY IN SUCH ACTION SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY REASONABLE ATTORNEYS' FEES TO BE FIXED BY THE COURT IN WHICH A JUDGMENT IS ENTERED, AS WELL AS THE COSTS OF SUCH SUIT. FOR THE PURPOSES OF THIS SECTION 12, THE WORDS "REASONABLE ATTORNEYS' FEES," IN THE CASE OF TOWN, SHALL INCLUDE THE SALARIES, COSTS AND OVERHEAD OF THE TOWN ATTORNEY AS WELL AS ANY OTHER LEGAL COUNSEL HIRED BY THE TOWN IN SUCH ACTION, AS ALLOCATED ON AN HOURLY BASIS.**

13. Severability. **IF ANY PROVISION OF THIS REGULATORY AGREEMENT SHALL BE DECLARED INVALID, INOPERATIVE OR UNENFORCEABLE BY A FINAL JUDGMENT OR DECREE OF A COURT OF COMPETENT JURISDICTION SUCH INVALIDITY OR UNENFORCEABILITY OF SUCH PROVISION SHALL NOT AFFECT THE REMAINING PARTS OF THIS REGULATORY AGREEMENT WHICH ARE HEREBY DECLARED BY THE PARTIES TO BE SEVERABLE FROM ANY OTHER PART WHICH IS FOUND BY A COURT TO BE INVALID OR**

UNDER THIS REGULATORY AGREEMENT BY ANY PERSON, CORPORATION OR ANY OTHER ENTITY, SHALL BE MADE OR BE VALID AGAINST THE TOWN OR DEVELOPER.

18. Prohibition Against Transfer.

18.1. Except as expressly provided in the Agreement, Developer shall not, without prior written approval of Town, which may not be unreasonably withheld, delayed or conditioned: (i) assign or attempt to assign this Regulatory Agreement or any right herein; or (ii) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the Property or the improvements thereon, with the exception of a lease to a Qualified Household as permitted by this Regulatory Agreement, or permit to be placed on any of the Property any unauthorized mortgage, trust deed, deed of trust, encumbrance or lien.

18.2. In the absence of specific written agreement or approval by Town, no unauthorized sale, transfer, conveyance, lease, leaseback or assignment of the Property shall be deemed to relieve Developer or any other party from any obligations under this Regulatory Agreement.

IN WITNESS WHEREOF, Developer and Town have caused this Regulatory Agreement to be signed, acknowledged and attested on their behalf by duly authorized representatives in counterpart original copies which shall upon execution by all of the parties be deemed to be one original document.

[Signatures on following pages]

**SIGNATURE PAGE
TO
REGULATORY AGREEMENT
16022 SAGO ROAD**

TOWN:

TOWN OF APPLE VALLEY, a California
municipal corporation

Dated: _____

By: _____
Frank W. Robinson
Town Manager

ATTEST:

Town Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

Town Attorney

**SIGNATURE PAGE
TO
REGULATORY AGREEMENT
16022 SAGO ROAD**

DEVELOPER:

FAMILY ASSISTANCE PROGRAM, a California non-profit corporation

By:

Its:

ATTACHMENT NO. 1

TO
REGULATORY AGREEMENT
16022 SAGO ROAD

Legal Description of the Property

Real property in the City of Apple Valley, County of San Bernardino, State of California, described as follows:

LOT 512, TRACT 4287, IN THE CITY OF APPLE VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 64 OF MAPS, PAGES 68 TO 72, INCLUSIVE, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER, PROVIDED, HOWEVER, THAT SUCH RESERVED RIGHTS SHALL NOT BE EXERCISED BY MEANS OF ANY ENTRY UPON THE SURFACE OF, IN, UNDER OR ACROSS THE HEREIN DESCRIBED PROPERTY AND THE SUBSURFACE THEREOF TO A DEPTH OF 500 FEET MEASURED IN A VERTICAL DIRECTION FROM THE EARTH A SURFACE OF SAID LAND. THE INTEREST HEREIN SAVED AND EXCEPTED SHALL BE FREE AND CLEAR OF ALL COST FOR EXPLORATION, DRILLING AND MARKETING OF ANY AND ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS BY REASON OF ANY EXPLORATION OR DRILLING FOR SUCH OIL, GAS AND OTHER HYDROCARBONS AND MINERALS SAVED OR PRODUCED BY GRANTEE, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, LESSEES OR ASSIGNS, AND SHALL FURTHER BE FREE OF ANY OTHER EXPENSES IN CONNECTION THEREWITH WITHOUT THE GRANTOR'S PRIOR WRITTEN CONSENT TO ANY SUCH EXPLORATION, DRILLING OR MARKETING THE UNDIVIDED INTEREST HEREIN RESERVED BEING THE SAME UNDIVIDED 1/2 INTEREST REFERRED TO IN PARAGRAPH 3 OF ARTICLE III OF THAT CERTAIN AMENDED DECLARATION OF RESTRICTIONS RECORDED OCTOBER 15, 1956, IN BOOK 4063, PAGE 301, OFFICIAL RECORDS OF SAN BERNARDINO COUNTY.

APN: 0441-101-13-0-000

ATTACHMENT NO. 2
TO
REGULATORY AGREEMENT
16022 SAGO ROAD

Certification of Tenant Eligibility

NOTE TO PROPERTY OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the United States Department of Housing and Urban Development (“HUD”) Regulations (24 CFR 813). You should make certain that this form is at all times up-to-date with the HUD Regulations.

Re: _____, **Apple Valley, California**

I/We, the undersigned, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the property listed above. Listed below are the names of all persons who intend to reside in the unit:

1.	2.	3.	4.	5.
Names of Members of Household	Relationship to Head of Household	Age	Social Security Number	Place of Employment
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Income Computation

6. The total anticipated income, calculated in accordance with the provisions of this Section 6, of all persons over the age of 18 years listed above for the 12-month period beginning the date that I/we plan to move into a unit is \$ _____.

Included in the total anticipated income listed above are:

(a) all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;

(b) the net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);

- (c) interest and dividends (including income from assets excluded below);
- (d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of period receipts, including any lump sum payment for the delayed start of a periodic payment;
- (e) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;
- (f) the maximum amount of public assistance available to the above persons other than the amount of any assistance specifically designated for shelter and utilities;
- (g) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;
- (h) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and
- (i) any earned income tax credit to the extent that it exceeds income tax liability.

Excluded from such anticipated income are:

- (a) casual, sporadic or irregular gifts;
- (b) amounts which are specifically for or in reimbursement of medical expenses;
- (c) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;
- (d) amounts of educational scholarship paid directly to the student of the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, book and equipment. Any amounts of such scholarships, or payments to veterans not used for the above purposes, are to be included in income;
- (e) special pay to a household member who is away from home and exposed to hostile fire;
- (f) relocation payments under Title 11 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (g) foster child care payments;
- (h) the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1977;

(i) payments to volunteers under the Domestic Volunteer Service Act of 1973; payments received under the Alaska Native Claims Settlement Act.

(j) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(k) payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

(l) payments received from the Job Training Partnership Act;

(m) the first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims.

7. Do the persons whose income or contributions are included in item 6 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)? ___ Yes ___ No; or

(b) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value? ___ Yes ___ No

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000? ___ Yes ___ No

(d) If the answer to (c) is yes, state:

(i) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: \$_____; and

(ii) the amount of such income, if any, that was included in item 6 above: \$_____

8.

(a) Are all of the individuals who propose to reside in the unit full-time students*? ___ Yes ___ No

*A full-time student is an individual enrolled as a full-time student during each of five calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, is at least one of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return? ___Yes ___No

9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the property in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner or owns, directly or indirectly, any interest in the ownership. For purposes of this section, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member, and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth herein is true, correct and complete and, based upon information I/we deem reliable and that the statement of total anticipated income contained in Section 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. I/we will assist the Owner in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

12. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the units and will entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for eviction or other appropriate proceedings.

13. I/we acknowledge that all of the individuals who propose to reside in the unit qualify as either a United States citizen, United States non-citizen national or a qualified alien (as that term is defined in 8 U.S.C § 1641, as amended from time to time, or any successor statute).

14. Housing Issuer Statistical Information (Optional--will be used for reporting purposes only):

Marital Status: _____

Race (Head of Household)

White _____ Asian _____ Hispanic _____
African-American _____ Native American _____ Other _____

Physical Disability: Yes _____ No _____

I/we declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, ____ in the County of San Bernardino, California.

Applicant

Applicant

[Signature of all persons over the age of 18 years listed in number 2 above required]

FOR COMPLETION BY PROPERTY OWNER ONLY:

1. Calculation of eligible income:

(a) Enter amount entered for entire household in 6 above: \$_____

(b) (1) If answer to 7(c) above is yes, enter the total amount entered in 7(d)(1), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$_____);

(2) Multiply the amount entered in 7(c) times the current passbook savings rate to determine what the total annual earnings on the amount in 7(c) would be if invested in passbook savings (\$_____), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance

(3) Enter at right the greater of the amount calculated under (1) or (2) above: \$_____;

(c) TOTAL ELIGIBLE INCOME
(Line 1(a) plus line 1(b)(3): \$_____

2. The amount entered in 1(c):

_____ Qualifies the applicant(s) as a Qualified Household.

_____ Does not qualify the applicant(s) as Qualified Household.

3. Apartment unit assigned:

Bedroom Size: _____ Rent: \$_____

4. This apartment unit [was/was not] last occupied for a period of 31 consecutive days by persons whose aggregate anticipated annual income, as certified in the above manner upon their initial occupancy of the apartment unit, qualified them as a Qualified Household.

5. Method used to verify applicant(s) income:

_____ Employer income verification.

_____ Copies of tax returns.

_____ Other (_____)

Manager

The undersigned employee has applied for a rental unit located in a project financed in part by the Town of Apple Valley for persons of very low income. Every income statement of a

prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages _____ Overtime _____ Bonuses _____
Commissions _____

Total current income _____

I hereby certify that the statements above are true and complete to the best of my knowledge.

Signature Date Title

I hereby grant you permission to disclose my income to _____ in order that they may determine my income eligibility for rental of an apartment at [_____].

Signature Date

Please send to: _____

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature Date

ATTACHMENT NO. 3
TO
REGULATORY AGREEMENT
16022 SAGO ROAD

**Certificate of Continuing Program Compliance
For Annual Reporting Period Ending _____**

The undersigned, _____, as the authorized representative of Family Assistance Program, a California non-profit public benefit corporation (“Developer”), has read and is thoroughly familiar with the provisions of the various documents associated with the financial assistance provided by the Town of Apple Valley (“Town”), as established in numerous documents including the Regulatory Agreement, dated as of _____ between Developer and Town.

As of the date of this Certificate, the following percentage of residential units in the project are (i) occupied by Qualified Households (as such term is defined in the Regulatory Agreement) or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Qualified Household vacated such unit, as indicated:

Number of Units occupied by Qualified Households: _____

Number of Vacant Units: _____

Number of Qualified Households who commenced
occupancy during the preceding reporting period: _____

Attached is a separate sheet (“Occupancy Summary”) listing, among other items, the appropriate information for each residential unit in the Project, the occupants of each unit and the rent paid for each unit. The information contained thereon is true and accurate and reasonable and is based on information submitted to the owner and is certified under penalty of perjury by each tenant.

[Signatures on following page]

The undersigned hereby certifies that (1) a review of the activities of Developer during such reporting period and of Developer's performance under the Regulatory Agreement has been made under the supervision of the undersigned; and (2) to the best of the knowledge of the undersigned, based on the review described in clause (1) hereof, Developer is not in default under any of the terms and provisions of the above documents.

Dated: _____

DEVELOPER

Name: _____

Its: _____

Name: _____

Its: _____

OCCUPANCY SUMMARY

Total Number of Units in the Project: _____

Total Units occupied by Qualified Households: _____

Total Units available for rent to Qualified Households: _____

ATTACHED IS THE FOLLOWING INFORMATION:

- A. Resident and rental information on each occupied apartment in the complex.
- B. Certification of Tenant Eligibility for all Qualified Households who have moved into _____, Apple Valley, California, since the filing of the last Occupancy Summary. The same are true and correct to the best of the undersigned's knowledge and belief.

Dated: _____

DEVELOPER

Name: _____

Its: _____

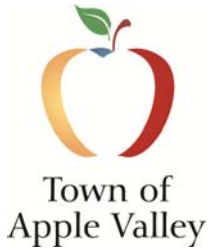
Name: _____

Its: _____

**EXHIBIT I
TO
AFFORDABLE HOUSING AGREEMENT
16022 SAGO ROAD**

Official Action

[Attached behind this cover page]



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** September 25, 2012

From: Lori Lamson **Item No:** _____
Community Development Department

Subject: Amendment #2 to the Five Year Consolidated Plan – 2010-2011
Fourth Year Action Plan to Incorporate Proposed Changes to the
Neighborhood Stabilization Program 3 (NSP 3) Funds

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council approve the proposed amendment to its 2010-2011 Action Plan to incorporate the proposed changes to the Neighborhood Stabilization Program 3; and authorize and direct the Town Manager to execute any necessary contract related documents on behalf of the Town.

SUMMARY:

The Dodd-Frank Wall Street Reform and Consumer Protection Act appropriated \$1 billion in a third round of Neighborhood Stabilization Program funds to all states, along with a number of counties and local communities struggling to reverse the effects of the foreclosure crisis. Funding is targeted as emergency assistance to state and local governments to acquire, redevelop or demolish foreclosed properties. On Wednesday, September, 8, 2010, Town staff received notification from the U.S. Department of Housing and Urban Development (HUD) that the Town of Apple Valley would receive approximately \$1,463,014. In order to receive these funds, the Town prepared an additional action plan for the Neighborhood Stabilization Program 3 (NSP 3) and amended the 2010-2011 in March of 2011. At this time, a second amendment is proposed to incorporate an additional NSP activity in the Action Plan.

CONSOLIDATED PLAN SUMMARY

The Consolidated Plan is a comprehensive five-year strategy (2007-2012) that addresses the use of Federal grant/entitlement funds for the purpose of meeting the goals of providing decent housing, a suitable living environment and expanded economic opportunities, principally for low- and moderate-income persons.

The Consolidated Plan combines the application and reporting requirements for four Federal formula grant programs. It replaces the Comprehensive Housing Affordability Strategy (CHAS) and consolidates applications for the Community Development Block Grant (CDBG), Home Investment Partnerships Act (HOME), Emergency Shelter Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), Neighborhood Stabilization Program 1 (NSP 1) and the most recent addition of the Neighborhood Stabilization Program 3 (NSP 3).

The Consolidated Plan is composed of three parts: 1). The first section of the Consolidated Plan evaluates the Housing and Community Development needs of the Apple Valley/Victorville Consortium. This includes an assessment of housing needs for extremely low, very low, and, low- and moderate-income families, including the needs of homeless individuals and families. In addition, a housing market analysis was completed that includes a review of housing; 2). Based on this information, a five-year strategic plan was developed, which includes priorities for assisting categories of residents by income level, objective statements, proposed programs, as well as accomplishments that are expected to be achieved in the next five years; 3). An annual Action Plan provides a one-year investment plan, which outlines the intended use of resources, descriptions of activities to be undertaken, and the specific objectives and priority needs to be addressed. The proposed amendment to the Consolidated Plan – Fourth Year Action Plan will add an additional activity to the Neighborhood Stabilization Program 3 (NSP 3).

COMMUNITY DEVELOPMENT BLOCK GRANT/ (CDBG)/NEIGHBORHOOD STABILIZATION PROGRAM 3 (NSP 3)

The Federal Housing and Community Development Act of 1974, as amended, provides Federal Community Development Block Grant funds for projects that promote the development of viable, urban communities by providing decent housing and suitable living environments and expanding economic activities, principally for persons of low- and moderate-income. The Dodd-Frank Wall Street Reform and Consumer Protection

Act provides \$1 billion in funds that are generally to be construed as CDBG program funds for CDBG entitlement communities to use for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties.

NEIGHBORHOOD STABILIZATION PROGRAM (NSP) PROJECT FUNDING

Proposed Funding: The Town received \$1,463,014 in Neighborhood Stabilization Program 3 grant funds for FY 2010-2011. Per HUD regulations, jurisdictions are required to expend 50 percent of the grant within two (2) years (3/7/13) and 100 percent of the grant within three (3) years (3/7/14). Furthermore, 25% of the grant allocation or \$365,754 must be set-aside for households at 50% of Area Median Income (AMI) or less. Due to ever-changing market conditions, the Neighborhood Stabilization Program 3 (NSP 3) will continue to need to maintain a level of flexibility by permitting the transfer of funds between eligible activities as well as amending the boundaries of one or more neighborhoods without requiring a substantial amendment. These changes may be made administratively, depending on the location, size and scope of the project(s).

Existing Projects: The current Neighborhood Stabilization Program 3 (NSP 3) activities are outlined below:

Acquisition/New Construction for Multi-Residential Uses	854,000
Acquisition/Rehabilitation for Multi-Residential Uses	357,713
Down Payment Assistance	105,000
Program Administration (10% Cap)	146,301
Program Allocation	\$1,463,014

Proposed Projects: The proposed changes to the Neighborhood Stabilization Program 3 (NSP 3) activities are outlined below:

Acquisition/New Construction for Multi-Residential Uses	300,000
Acquisition/Rehabilitation for Multi-Residential Uses	357,713
Down Payment Assistance	105,000
Acquisition/Rehabilitation for Single Family Uses	554,000
Program Administration (10% Cap)	146,301
Program Allocation	\$1,463,014

By adding an activity for Acquisition/Rehabilitation for Single-Family Uses, the Town will be able to utilize funds to acquire and rehabilitate single-family homes for the purposes of providing affordable home ownership opportunities. In addition, it will expand the NSP scope of services and assist the Town in meeting the NSP deadlines for expenditures.

Based upon the foregoing, staff recommends adoption of the form motion.

Family Assistance Program

15075 7th Street, Victorville, CA 92395
Outreach (760) 843-0701 Fax (760) 843-9551 Hotline (760) 949-4357



September 20, 2012

Joseph Moon
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

RE: Proposal for Transitional Housing Project

Mr. Moon,

Family Assistance Program is excited for the opportunity to partner with the Town of Apple Valley on providing a Transitional Housing Program for families displaced by domestic abuse. This program will be a benefit to these families as well as the surrounding communities. The agency commits to maintaining the property in excellent condition and ensures that there will be no drugs, violence, gang, or anything else that will have a negative impact on the community.

The attached proposal for rehab services is from a licensed general contractor. It includes all necessary repairs to address all issues identified by inspectors from the town. It also includes additional items to make the property look nice such as landscaping and fencing. This is a worst case scenario and is based on having the contractor perform all of the work.

The agency is pursuing alternatives to bring the price down. Since the agency is a 501c3 nonprofit corporation, we qualify for a variety of grants and public service donations. We are pursuing donations from local home improvement stores and other programs. During the rehab of our new youth shelter, we were able to secure over \$45,000 in donations from local businesses. Also, we have many community partners that are looking for opportunities to take on projects. The landscaping at our domestic violence shelter was donated by Southwest Gas. The Victor Valley Soroptomist Club recently began remodeling bedrooms at the domestic violence shelter.

Here is a list of items on the contractor's proposal that we believe can be provided through donations and/or volunteers along with our expected costs:

Item	Contractor's Cost	Donated Costs
R&R Landscape Rock	\$4,125	\$1,200
R&R Evaporative Coolers	\$3,295	\$1,476
Paint new Cabinets	\$1,114	\$0
Total	\$8,534	\$2,676

This results in a savings of \$5,858.

Family Assistance Program envisions a community where each person has a loving, nurturing home life. We provide the tools necessary to create healthy interpersonal relationships, economic empowerment, and stable housing.

Family Assistance Program

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Outreach (760) 843-0701 Fax (760) 843-9551 Hotline (760) 949-4357



Many of the items will be subcontracted. For each of these items, the general contractor will secure from 3 sub-contractors. It is anticipated that this will result in savings also. For example, the main driveway is estimated at \$17,468. We have spoken with 2 concrete contractors that have given estimates in the \$12,000 range. Formal bids will be secured before any work is awarded, but we did not want to begin securing bids until after we received direction from the Town Council.

We believe that the total costs of the rehab of this project will be approximately \$100k. If we are unable to keep to this amount, then some items can be postponed and done after additional funding is secured. It would be best to have the rock landscaping done before opening, but if we are not able to complete all items on the list within budget, we can work with community partners and have this scheduled to be completed in a few months.

The agency will maintain a contingency account of \$5,000 for unexpected repairs to the units.

We look forward to working with the Town of Apple Valley to provide this valuable resource to the community. If you have any further questions regarding the project, please contact me at Darryl@familyassist.org or 760-978-6001.

Thank you,

Darryl Evey
Executive Director

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