

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

HAPPY TRAILS VILLAS - OWNER PARTICIPATION

Background:

The Town Council previously considered this matter on March 23, 2010 and, after discussion, voted 3-2 to approve the project and direct the Town Attorney to prepare an Owner Participation Agreement for future Town Council consideration. At its June 8, 2010 meeting, the Council voted 3-2 once again to direct staff to prepare an Owner Participation Agreement for it consideration on June 22, 2010.

Happy Trails Villas is a 34-unit condominium project that was never certified for occupancy by the Town. The project was foreclosed on and, ultimately, wound up being owned by the Federal Deposit Insurance Corporation (FDIC). The property is located on a 5.04-acre parcel to the north of Highway 18, between Kiowa Road and Jicarilla Road. The 34 townhouse units require a substantial amount of site work and some final unit interior work. Work on the project ceased nearly 2 1/2 years ago. Although the property is in good condition considering the extent of time it has been vacant, if continued to be left unfinished, it will, potentially, deteriorate and could eventually become an unfortunate blighting influence on the surrounding community. The surrounding community is comprised of well maintained single family residences on one-acre lots. All units in the two-story townhome complex consist of 3 bedrooms, 2.5 bathrooms and 2-car garages, with an average living area of 2,025 square feet. Amenities include a clubhouse, small pool and jacuzzi.

Summary Statement:

AVHTV, the developer, originally proposed to acquire and complete the construction of Happy Trails Villas, with plans to operate it as an affordable rental housing complex, with opportunities for renters to transition into a for-sale home ownership product. However, after listening carefully to concerns voiced through public comments as well as comments from the Town Council, representatives of AVHTV have been working diligently to restructure Happy Trails Villas into a 100% for-sale affordable project.

Recommended Action:

That the Town Council approve the Happy Trails Villas Owner Participation Agreement between the Town of Apple Valley and AVHTV, LP; and authorize the Town Manager to execute the agreement on behalf of the Town and approve any minor non-substantive changes.

Proposed by Economic Development & Housing Division

Item Number _____

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

Happy Trails Villas (continued)
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In an effort to revitalize the neighborhood, and continue to be sensitive to the needs of the community, AVHTV has revised its proposal to acquire the subject property, complete construction and sell all 34 units to owner-occupied home owners. The project will be an affordable mixed income project with low and moderate as well as middle income residents occupying the units.

AVHTV, LP will consist of Barry Ephraim and Frank Williams (Apple Valley Catalytic Housing, LLC) and AOF/Golden State Community Development Corporation, a non-profit Community Development Housing Development Organization (CHDO). HART, the original CHDO has recently been absorbed by Home Strong U.S.A. and is no longer able to maintain its CHDO status. Therefore, it has been necessary to identify another capable CHDO to assist us in our efforts. AOF/Golden State Community Development Corporation is a non-profit organization incorporated since 1999. Its primary mission is to provide quality affordable housing to low and moderate income and first-time home buyers, and to assist in the alleviation of affordable housing shortages within the communities it serves. AOF/Golden State Community Development Corporation has participated in several CHDO activities within the cities of Ontario, Fontana and Alhambra as well as the County of San Bernardino. Most recently, it has met all the requirements to become a Town of Apple Valley certified CHDO.

The total projected cost for completing the 34 unit townhome project is approximately \$5,750,000. A total of \$2.1 million consisting of \$1.5 million of Neighborhood Stabilization (NSP) funds and \$600,000 in Home Investment Partnerships Program (HOME) funds will be used to assist this project in the form of a loan, with the balance of the necessary funds to be provided by the developer in the form of a cash equity infusion as well as a construction loan.

Acquisition and completion of construction of Happy Trails Villas will provide numerous benefits to the community: (1) Completion of the for-sale townhome project will contribute to neighborhood stabilization and prevent it from becoming a potential eyesore in a high profile location; (2) It will provide affordable and high quality ownership housing; (3) It will assist the Town in meeting its RHNA and Housing Element requirements; (4) Since it is an NSP and HOME eligible project, it will make it possible for the Town to expend these funds appropriately within the required time constraints; (5) It will provide jobs for local contractors; and; (6) the Town will receive approximately \$525,000 in permit and development impact fees for this development.

The majority of the concerns voiced by the public pertain to the original proposal to operate Happy Trails as a rental housing complex. The developer, in turn, has responded by developing a viable alternative that repositions this project as an affordable home ownership opportunity, and is seeking support from the Council and surrounding residents of the community.

A copy of the proposed Owner Participation Agreement is provided for your information and review.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

Attention: Town Manager

EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE SECTION 27383

(Space above for Recorder's Use)

OWNER PARTICIPATION AGREEMENT

(HAPPY TRAILS VILLAS)

by and between

TOWN OF APPLE VALLEY,

a California municipal corporation,

and

AVHTV, LP,

a California limited partnership

June 22, 2010 for reference purposes only

ARTICLE 1.
DEFINITIONS; EFFECTIVE DATE; PARTIES.

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

1.1.1 “Affordability Covenant” means a covenant to be recorded against each Unit restricting each Unit as an affordable unit for the Affordability Covenant Term, and subject to the affordability requirements applicable to the specific Unit.

1.1.2 “Affordability Covenant Term” means the period of time beginning on the date the Certificate of Completion for the Project is recorded and ending on the date which is forty five (45) years thereafter.

1.1.3 “Affordable Housing Cost” means, as applicable, a sales price for the Units in compliance with the NSP and with California Health and Safety Code Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development from time to time, or a sales price in compliance with the HOME regulations for the HOME Restricted Units.

1.1.4 “AMI” means the area median income for San Bernardino County, California adjusted for family size appropriate for the Unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, and California Health and Safety Code Section 50093.

1.1.5 “Agreement” means this Owner Participation Agreement (Happy Trails Villas).

1.1.6 “AOF/Golden State” means AOF/Golden State Community Development Corporation, a California nonprofit corporation organized as a Community Housing Development Organization.

1.1.7 “CC&R’s” means the Covenants, Conditions and Restrictions that the Owner shall record against the Property concurrent with processing a Subdivision Map for the Property. The Owner shall ensure that the CC&Rs shall be subordinate to the Regulatory Agreement and the Affordability Covenants.

1.1.8 “Certificate of Completion” means the Town’s written certification acknowledging that the Project is complete and in compliance with the terms and conditions of this Agreement, in substantially the form attached as Exhibit D.

1.1.9 “CDBG” means HUD’s Community Development Block Grant program, 24 CFR Part 570, as it may be amended from time to time.

1.1.10 “CHDO Funds” means the portion of the Town’s HOME Grant that is comprised of the fifteen percent (15%) set-aside of the Town’s HOME Funds that must be provided to a

qualifying Community-Based Housing Development Organization (CHDO) or a partnership of which a qualifying CHDO is the sole general partner with effective control of the project.

1.1.11 “**Construction Loan**” means and refers to a loan in the amount of Two Million, Seven Hundred Fifty Thousand Dollars (\$2,750,000.00) obtained by the Owner from an institutional Lender or other Lender making such loans in the normal course of its business to finance part of the Project Costs.

1.1.12 “**County**” means San Bernardino County, California.

1.1.13 “**CRL**” or “**Community Redevelopment Law**” means the California Community Redevelopment Law, California Health & Safety Code Section 33000, *et seq.*, as it may be amended from time to time.

1.1.14 “**Developer Fee**” means the developer fee as shown in the Project Budget.

1.1.15 “**Effective Date**” shall have the meaning set forth in Section 1.2 of this Agreement.

1.1.16 “**Event of Default**” shall have the meaning set forth in Section 5.1 of this Agreement.

1.1.17 “**Equity Investment**” shall have the meaning set forth in Section 3.2.1 of this Agreement.

1.1.18 “**HOME**” means and refers to Title II of the National Affordable Housing Act of 1990 (Home Investment Partnerships Act).

1.1.19 “**HOME Funds**” means and refers to those funds received by the Town in accordance with the HOME program.

1.1.20 “**HOME Low and Moderate Income Units**” means those Units to be owned and occupied by Qualified Households considered “low and moderate income” households in accordance with the terms of the HOME regulations, and as further described herein.

1.1.21 “**HOA**” means and refers to a homeowner’s association for the Project, to be established under the CC&R’s.

1.1.22 “**HUD**” means the United States Department of Housing and Urban Development.

1.1.23 “**Lender**” means and refers to a mortgagee or a beneficiary of a Lien and shall include its successors and assigns.

1.1.24 “**Lien**” means and refers to any mortgage, deed of trust or other security instrument encumbering the Owner’s fee interest in the Property and/or Project, other than the Town Loan, or any part thereof.

1.1.25 “**NSP**” or “**Neighborhood Stabilization Program**” means the federal Neighborhood Stabilization Program authorized under Title III of Division B of the Housing and Economic Recovery Act, 2008.

1.1.26 “**Owner**” means AVHTV, LP, a California limited partnership comprised of the following members: AOF/Golden State and Apple Valley Catalytic Housing, LLC, a California limited liability company.

1.1.27 “**Personal Guarantee**” means the personal guarantee of Barry Ephraim, an individual, to pay any outstanding portion of the Construction Loan remaining unpaid at the end of the Construction Loan term, and to hold such debt, on terms acceptable to the Town, until all Units of the Project have been sold.

1.1.28 “**Project**” means the acquisition and completion of a mixed income housing development on the Property. The Project shall consist of a total of thirty four (34) Units all of which shall be available to Qualified Households at Affordable Housing Costs for a period of not less than forty five (45) years, as further proscribed in this Agreement and the Regulatory Agreement. The Project, as that term is used herein, shall include completion of construction, resolution of remaining development issues, formation and management of a homeowner’s association, oversight of the Unit sales for the mixed income housing development on the Property.

1.1.29 “**Project Budget**” means the schedule of sources and uses of funds pursuant to which the Project is to be completed as set forth in the attached Exhibit F.

1.1.30 “**Project Costs**” means the total cost of completing the Project and funding certain reserves, consistent with the Project Budget and this Agreement.

1.1.31 “**Property**” means that certain real property, commonly known as Happy Trails Villas, generally located at Highway 18 and Kiowa Road in the Town. The Property is legally described on the attached Exhibit A-1 and depicted on the Site Map attached as Exhibit A-2. The Owner is presently in a conditional escrow to acquire fee title to the Property.

1.1.32 “**Qualified Household**” shall mean and refer to persons and families that: (1) reside in the Unit; and (2) whose annual income, at the time of purchase of the Unit, does not exceed the maximum annual income permitted for the subject Unit as follows:

(a) HOME Low and Moderate Income Units. Eighteen (18) of the Units shall be HOME Low and Moderate Income Units reserved for “low and moderate income” Qualified Households, as defined pursuant to the HOME regulations, to be available at an Affordable Housing Cost for “low and moderate income” households, as determined pursuant to HOME regulations. Persons and families purchasing these eighteen (18) Units shall have an annual income that does not exceed eighty percent (80%) of AMI, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

(b) CRL Low Income Units. Eight (8) of the Units shall be reserved for “low income” Qualified Households, as defined pursuant to Section 50079.5 of the CRL, to be available at an Affordable Housing Cost for “low income” households, as determined pursuant to CRL Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development from time to time. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed eighty percent (80%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

(c) Moderate Income Units. Eight (8) of the Units shall be reserved for “moderate-income” Qualified Households, as defined pursuant to Section 50093 of the CRL, to be available at an Affordable Housing Cost for “moderate income” households, as determined pursuant to CRL Section 50052.5. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed one hundred and twenty percent (120%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

Unless otherwise prohibited by law or regulation, including the HOME or NSP regulations, Qualified Households, as that term is used in this Agreement, shall include no less than two (2) person households at the time of purchase of a Unit.

1.1.33 “**Redevelopment Plan**” means the redevelopment plan for the Project Area as adopted by the Town Council pursuant to the CRL, as it may have been, or may be from time to time hereafter, amended.

1.1.34 “**Regulatory Agreement**” means the instrument entitled “Regulatory Agreement and Declaration of Restrictive Covenants,” substantially in the form attached as Exhibit E.

1.1.35 “**Schedule of Performance**” means the schedule of required actions to be undertaken by the Owner to complete the Project as set forth in Exhibit C attached to this Agreement.

1.1.36 “**Scope of Development**” means the description of required actions to be undertaken by the Owner to complete the Project as set forth in Exhibit B attached to this Agreement.

1.1.37 “**Subdivision Map**” means and refers to a condominium map or subdivision map, as applicable, creating individual assessor parcel numbers and legal descriptions for each Unit, in accordance with all requirements of the Town and California law for processing and approval of such a map and subdivision of property.

1.1.38 “**Substantial Amendment**” means the Town’s NSP Action Plan substantial amendment, required by the NSP regulations, which was approved by HUD on or about December 29, 2008.

1.1.39 “**Town**” refers to the Town of Apple Valley, California.

1.1.40 “**Town Acquisition Loan**” means that portion of the Town Loan comprised of the Town NSP Loan and Ninety Five Thousand, Twenty Dollars and Fifty Six Cents (\$95,920.56) of the Town HOME Loan, excluding any CHDO Funds, to be used to fund the acquisition of the Property.

1.1.41 “Town Deed of Trust” means a no lower than second recorded priority position deed of trust in favor of the Town, in the form attached to this Agreement, securing Owner’s obligations under the Town Promissory Note.

1.1.42 “Town HOME Loan” means a loan, in the not to exceed a total amount of Five Hundred Ninety One Thousand, Seven Hundred Five Dollars and Fifty One Cents (\$591,705.51) of HOME Funds, including Four Hundred Ninety Five Thousand, Seven Hundred Eighty Four Dollars and Ninety Five Cent (\$495,784.95) in CHDO Funds, to be provided by the Town to the Owner, as further specified herein, to assist with a portion of the acquisition costs of the Property, and with certain costs related to Project development.

1.1.43 “Town Loan” refers to, collectively, the Town HOME Loan and the Town NSP Loan to be provided by Town for the Project.

1.1.44 “Town Loan Documents” mean the following documents evidencing the Town Loan and required as consideration for the Town to make the Town Loan: (i) the Town Promissory Note, (ii) the Town Deed of Trust.

1.1.45 “Town NSP Loan” means a loan, in the not to exceed amount of One Million, Five Hundred Eight Thousand, Two Hundred Ninety Four Dollars and Forty Nine Cents (\$1,508,294.49) of NSP funds, to be provided by the Town to the Owner to assist with a portion of the acquisition costs of the Property.

1.1.46 “Town Promissory Note” means the instrument entitled “Town Promissory Note” evidencing the Owner’s obligation to repay the Town Loan in the form attached to this Agreement.

1.1.47 “Units” mean the thirty-four (34) residential units in the Project, all of which shall be restricted to Qualified Households, as set forth in this Agreement, and that Qualified Households shall own and occupy pursuant to this Agreement. All of the Units shall remain affordable to Qualified Households at Affordable Housing Costs for a period of not less than forty-five (45) years.

1.2 Effective Date of Agreement. This Agreement is dated June 22, 2010 for reference purposes only. This Agreement will not become effective until the date (“Effective Date”) on which all of the following are true:

(a) This Agreement has been approved and executed by the appropriate authorities of the Owner and delivered to the Town;

(b) Following all legally required notices and hearings, this Agreement has been approved by the Town’s governing board and the Town Council (acting as the Town’s legislative body) and delivered to the Owner; and

(c) This Agreement has been executed by the appropriate authorities of the Town and delivered to the Owner.

If this Agreement has been approved by the Owner and delivered to the Town as provided in (i) above, but the Town fails to approve or deliver this Agreement as described in (ii) and (iii) above by June 30, 2010, then this Agreement shall not become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect. This Agreement may be recorded by the Town against the Property at any time following the Effective Date.

1.3 Parties to Agreement.

1.3.1 The Town. The Town is the Town of Apple Valley, a municipal corporation, and any nominee, assignee of or successor to its rights, powers and responsibilities. The address of the Town is 14955 Dale Evans Parkway, Apple Valley, CA 92307 Attention: Town Manager; telephone (760) 240-7000 Ext. 7051; facsimile (760) 961-6242; with copies to Best Best & Krieger LLP, 3500 Porsche Way, Suite 200, Ontario, California 91764 Attention: John Brown, Town Counsel; facsimile (909) 483-6645.

The Town represents and warrants to the Owner that, to the Town's actual current knowledge:

(a) The Town is a municipal corporation, duly organized and existing as such under the laws of the state of California;

(b) The Town has taken all actions required by law to approve the execution of this Agreement;

(c) The Town's entry into this Agreement and the performance of the Town's obligations under this Agreement do not violate any contract, agreement or other legal obligation of the Town;

(d) The Town's entry into this Agreement and the performance of the Town's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which the Town is subject;

(e) There are no known pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the Town's obligations under this Agreement;

(f) The Town has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by the Town is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement; and

(g) The individual executing this Agreement is authorized to execute this Agreement on behalf of the Town.

The representations and warranties set forth above are material consideration to the Owner and the Town acknowledges that the Owner is relying upon the representations set forth above in undertaking the Owner's obligations set forth in this Agreement. The term "Town's actual current knowledge" means, and is limited to, the actual current knowledge of the Town's Town Manager as of the date of the making of the representation or warranty, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the Town and its nominees, successors and assigns.

The Owner.

1.3.2 The Owner is AVHTV, LP, a California limited partnership. The address of AVHTV, LP, for purposes of this Agreement is _____.

The Owner represents and warrants to the Town that, to the Owner's actual current knowledge:

(a) The Owner is a duly formed California limited partnership in good standing and lawfully entitled to do business in the State of California;

(b) The individuals executing this Agreement are authorized to execute this Agreement on behalf of the Owner;

(c) The Owner has taken all actions required by law to approve the execution of this Agreement;

(d) The Owner's entry into this Agreement and the performance of the Owner's obligations under this Agreement do not violate any contract, agreement or other legal obligation of the Owner;

(e) The Owner's entry into this Agreement and the performance of the Owner's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which the Owner is subject;

(f) There are no known pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the Owner's obligations under this Agreement; and

(g) The Owner has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by the Owner is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement.

The representations and warranties set forth in this Agreement are material consideration to the Town and the Owner acknowledges that the Town is relying upon the representations set forth above in undertaking the Town's obligations set forth above. The term "Owner's actual current knowledge" means, and is limited to, the actual current knowledge of _____, as of the date of the making of the representation or warranty without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the Owner and its permitted nominees, successors and assigns. Wherever the term "Owner" is used in this Agreement or therein, such term shall include any permitted nominee, assignee or successor of the Owner.

The qualifications and identity of the Owner are of particular concern to the Town, and it is because of such qualifications and identity that the Town has entered into this Agreement with the

Owner. No voluntary or involuntary successor-in-interest of the Owner shall acquire any rights or powers under this Agreement except as expressly set forth in this Agreement. The Owner may not assign or transfer all or any part of this Agreement or the Property without the prior written approval of the Town, which may be given or withheld as provided in herein.

ARTICLE 2.
RECITALS ABOUT THE NEIGHBORHOOD STABILIZATION PROGRAM; HOME AND PROJECT.

2.1 The Neighborhood Stabilization Program. On July 30, 2008, the “Housing and Economic Recovery Act of 2008” (“HERA”), H.R. 3221, 110th Cong., 2d Sess. (2008), was signed into law. HERA is comprehensive housing legislation, the purpose of which is, among other things, to strengthen and modernize the regulation of the housing government-sponsored enterprises, assist hundreds of thousands of families save their homes from foreclosure, and create affordable housing opportunities. NSP, created under HERA, appropriated \$3.92 billion for emergency assistance for the redevelopment of abandoned and foreclosed upon homes and residential properties.

On October 6, 2008, HUD published a notice of NSP regulations and allocations of NSP funds (“Notice”). According to the Notice, NSP funds are to be considered a special allocation of Community Development Block Grant (“CDBG”) funds and subject to CDBG regulations, 24 CFR Part 570, unless as specifically stated in the Notice. Pursuant to the Notice, the Town received an allocation of NSP funds in the amount of Three Million Sixty-Four Thousand Eight Hundred Thirty-Six Dollars (\$3,064,836). The Town’s NSP spending plans, formally known as the “Substantial Amendment,” was approved by HUD on or about December 29, 2008.

2.2 The Property and the Project. The former owner of the Property had commenced construction of a 34-Unit condominium development. Construction on the 34-Unit condominium development was interrupted midway and the former owner’s lender, Security Pacific Bank, commenced a foreclosure action against the former owner on or about June 3, 2008. On November 7, 2008, Security Pacific Bank, Los Angeles, CA was closed by the California Department of Financial Institutions and, subsequently, the Federal Deposit Insurance Corporation (“FDIC”) was named Receiver.

The Owner is presently in a conditional escrow to acquire fee title to the Property for a purchase price of One Million Eight Hundred Thousand Dollars (\$1,800,000). The Owner represents that the Property purchase price represents a discount from the current market appraised value of the Property, as of the date of close of escrow and taking into account the current condition of the Property, as required by the NSP regulations.

The Owner has submitted to the Town a proposal for the Project and estimates the cost of undertaking the completion of the Project, including acquisition of the Property and all related Project expenses, to be Five Million, Seven Hundred Fifty Thousand Dollars (\$5,750,000.00).

The Owner is requesting the Town’s financial assistance, in the form of the Town Loan, with the acquisition of the Property and undertaking of the Project. Thus, the Owner desires to enter into this Owner Participation Agreement with the Town pursuant to which the Town will assist the Owner with the acquisition costs of the Property, subject to the terms and conditions contained herein, and with redevelopment of the Project, all in exchange for the recordation of the Regulatory Agreement, the Affordability Covenants, and the maintenance of the Units, as further set forth herein.

2.2.1 HOME Funds. The Project shall be funded, in part, with HOME Funds. The HOME Funds shall be utilized for the development of the Project. In return for receipt of the HOME Funds, the Owner shall restrict eighteen (18) of the Units within the Project as HOME Low and Moderate Income Units. The Owner shall comply with the HOME program requirements as set forth in Exhibit G attached to this Agreement and incorporated herein by this reference. All eighteen (18) of the Units shall be available for Qualified Households with incomes at or below eighty percent (80%) of AMI, and shall be sold at an Affordable Housing Cost for the HOME Low and Moderate Income Units, as set forth in the HOME regulations.

In order to qualify for receipt of the CHDO Funds, to be provided as part of the Town Loan, AOF/Golden State shall, prior to receipt of any CHDO Funds, be, and at all times thereafter during the term of this Agreement remain, the sole general partner of the Owner with effective control of the Project.

2.3 Understanding of Parties Regarding Units. The Project, as defined in this Agreement and the Regulatory Agreement, is currently required to include Units to be available to Qualified Households as follows:

(a) HOME Low and Moderate Income Units. Eighteen (18) of the Units shall be HOME Low and Moderate Income Units reserved for “low and moderate income” Qualified Households, as defined pursuant to the HOME regulations, to be available at an Affordable Housing Cost for “low and moderate income” households, as determined pursuant to HOME regulations. Persons and families purchasing these eighteen (18) Units shall have an annual income that does not exceed eighty percent (80%) of AMI, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

(b) CRL Low Income Units. Eight (8) of the Units shall be reserved for “low” income Qualified Households, as defined pursuant to Section 50079.5 of the CRL, to be available at an Affordable Housing Cost for “low” income households, as determined pursuant to CRL Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development from time to time. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed eighty percent (80%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

(c) Moderate Income Units. Eight (8) of the Units shall be reserved for “moderate-income” Qualified Households, as defined pursuant to Section 50093 of the CRL, to be available at an Affordable Housing Cost for “moderate income” households, as determined pursuant to CRL Section 50052.5. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed one hundred and twenty percent (120%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

2.4 Purpose of this Agreement. This Agreement and the Exhibits attached to this Agreement implement the Substantial Amendment and provide the Town Loan to the Owner to assist the Owner with the acquisition of the Property and completion of the Project. The provision of the Town Loan, and the covenants and benefits to be received by the Town in return, are in the best interest of the Town and the health, safety, morals and welfare of its taxpayers and residents and is in accordance with public purposes set forth in the NSP regulations contained in the Notice, the HOME regulations, and federal, state and local law and regulations. Implementation of this Agreement and the Regulatory Agreement will further the goals and objectives of the Substantial Amendment by providing funding for the acquisition and construction of the foreclosed upon, partially completed, multi-family residential property at a purchase price that is at least one percent (1%) below the current appraised price for the Property, as of the date of the close of escrow, supplying affordable housing in the Town, contributing to the stabilization of the neighborhood in which the Project sits, strengthening the Town's land use and social structure, and alleviating economic and physical blight within the Town.

**ARTICLE 3.
PROJECT FINANCING; TOWN ASSISTANCE.**

3.1 Project Budget. The total Project Costs are set forth in the Project Budget, which is attached to this Agreement as Exhibit F. The Project Budget shall be subject to change from time to time, subject to prior written approval by the Town. The Town shall not unreasonably withhold approval if: (i) the combined amount of all sources of funds available remains sufficient to pay all anticipated Project Costs; (ii) the proposed amendment to the Project Budget does not materially and adversely affect the Owner's ability to complete the acquisition and development of the Property pursuant to this Agreement as determined by the Town in its reasonably exercised discretion; and (iii) the Owner promptly provides written notice of any such proposed amendment to the Town. The Owner shall not be required to seek Town approval for any changes that, cumulatively, do not exceed fifteen percent (15%) of any Project Budget line item.

3.2 Sources of Funding.

3.2.1 Owner Equity Investment. The Owner shall provide an equity investment to be used towards the purchase and development of the Property in the amount of Two Hundred Thousand Dollars (\$200,000.00) ("**Equity Investment**"). The Owner shall evidence the availability of the Equity Investment in readily available funds prior to the close of escrow.

3.2.2 Construction Loan. During development of the Project on the Property, a portion of the cost of development and rehabilitation shall be funded by a conventional Construction Loan, to be made by an institutional Lender acceptable to Town in the amount of approximately Two Million, Seven Hundred Fifty Thousand Dollars (\$2,750,000.00). The terms and provisions of the Construction Loan shall be similar to ordinary and customary provisions of Lenders on loans similar to the Construction Loan, including acceptable clauses for term extensions beyond the initial Construction Loan term. Documentation for the Construction Loan shall be subject to the review and approval of the Town, which shall not be unreasonably withheld or delayed. The Construction Loan shall provide for normal and customary disbursement controls, the payment of normal and customary fees and expenses for a Construction Loan of similar size and purpose, and for the payment of other expenses contained in the Project Budget. The Town's Executive Director shall approve or disapprove the terms and provisions and documentation for the Construction Loan within five (5) business days of receipt of such documentation. If the Town shall disapprove any such financing or Construction Loan documents, it shall do so by written notice to the Owner stating reasons for such disapproval. In such event, the Owner shall promptly

obtain and submit to the Town new or revised Construction Loan documents, as appropriate. The Town shall approve or disapprove of such new or revised Construction Loan documents in the same manner and within the same times established in this section for the approval or disapproval of the Construction Loan documents as initially submitted to the Town. The proceeds of the Construction Loan shall be used to defray the costs of developing and rehabilitating the Project on the Property, as specified in the Project Budget.

3.2.3 Town Loan.

(a) Town Acquisition Loan. Subject to the satisfaction of the conditions precedent set forth in Section 3.4, the Town hereby agrees to provide the Town Acquisition Loan, which shall be comprised of One Million, Five Hundred Eight Thousand, Two Hundred Ninety Four Dollars and Forty Nine Cents (\$1,508,294.49) of the Town NSP Loan and Ninety Five Thousand, Nine Hundred Twenty Dollars and Fifty Six Cents (\$95,920.56) of the Town HOME Loan, excluding any CHDO Funds, for a total sum of: One Million Six Hundred Four Thousand Two Hundred Fifteen Dollars and Five Cents (\$1,604,215.05). The Town Acquisition Loan shall be evidenced by the Town Promissory Note and secured by the Town Deed of Trust. The Town Acquisition Loan shall be used for the acquisition of the Property, and for no other purpose.

(b) Remainder of Town HOME Loan. Subject to the satisfaction of the conditions precedent set forth in Section 3.4, the Town hereby agrees to provide the remainder of the Town HOME Loan to the Owner, which shall be a loan of CHDO Funds in the amount of Four Hundred Ninety Five Thousand Seven Hundred Eighty Four Dollars and Ninety Five Cents (\$495,784.95). Prior to any distribution of the remainder of the Town HOME Loan, the Town Promissory Note and the Town Deed of Trust shall be amended to include the total amount of the Town Loan. The Town HOME Loan provided hereunder shall be used for allowable costs related to the development of the Project, and for no other purpose.

(c) Town Loan – Terms of Reconveyance. The Parties agree that the Town Loan, which shall include the Acquisition Loan and the remainder of the Town HOME Loan, shall be subject to incremental conditional forgiveness, in equal proportionate shares as determined based on the total number of Units, upon the sale of a Unit, provided that no Event of Default has occurred as defined under the Town Loan Documents, and provided that the share of the Town Loan to be forgiven shall be treated as a silent second granted by the Town to the purchaser of the Unit, and memorialized pursuant to a deed of trust in favor of the Town to be executed by the purchaser and recorded against said Unit (“Silent Second Deed of Trust”). The Silent Second Deed of Trust shall be subordinate to the first mortgage financing on the Unit, and shall provide that the deed may be assigned to subsequent Qualified Households purchasing the subject Unit. Upon sale of a Unit and recordation of the required Silent Second Deed of Trust, Owner will be released from the Town Loan in the amount specified in the relevant Silent Second Deed of Trust. The Town shall, upon request, provide to the Owner a partial reconveyance of the Town Loan in the amount specified in the foregoing sentence.

(d) Agreement to Reconsider Terms of Town Loan Reconveyance. In such case that the Owner provides evidence to the Town, in form and substance acceptable to the Town, that the requirement to record a Silent Second Deed of Trust is substantially interfering with the ability of Qualified Households to obtain financing to purchase the Units, the Parties shall reconsider this requirement and the terms for reconveyance of the Town Loan. The Executive Director shall have the authority to amend this Agreement, the Promissory Note and the Town Deed of Trust on behalf of the Town to reflect agreed upon changes to Section 3.2.3(c).

3.2.4 Permanent Loan. If the Parties agree that a Permanent Loan shall be obtained for the Project, such loan shall be obtained on the best terms then commercially available, and shall be subject to the approval of the Town. The net proceeds of any approved Permanent Loan shall be used to pay off the Construction Loan. The Town may withhold approval of the Permanent Loan in its sole discretion.

3.3 Disbursement of Town Loan. Upon satisfaction of the conditions precedent to the disbursement of the Town Loan as set forth in Section 3.4, the Town shall disburse the Town Loan, or portions thereof, to the Owner, on a reimbursement basis or as a deposit into an escrow account for purchase of the Property, as provided in the Schedule of Performance. The Town Loan shall be provided only for the costs attributable to the acquisition and Project development costs in accordance with the Schedule of Performance.

3.4 Conditions Precedent to Disbursement of Town Loan. The disbursement of the Town Loan shall be subject to the satisfaction of all of the conditions precedent set forth in this Section 3.4, as determined in the reasonable discretion of the Town's Town Manager, or his or her designee.

3.4.1 Title to Property. The Owner shall evidence that, upon close of escrow, the Owner shall have good and marketable fee title to the Property, and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than (i) liens for current real property taxes and assessments not yet due and payable, and (ii) deeds of trust, mortgages or other encumbrances approved by the Town. Title in conformance with this Section 3.4.1 shall be evidenced by the Owner providing the Town, at the Owner's sole cost and expense, a commitment to issue a policy of title insurance from a title company mutually agreeable to the Parties.

3.4.2 Town Lender's Policy. The Owner shall obtain a commitment from a title company mutually agreeable to the Parties to issue an ALTA lender's policy of title insurance, with coverage in the maximum original principal amount of the Town Acquisition Loan showing title to the Property vested in the Owner and insuring the priority of this Agreement, the Regulatory Agreement and the Town Deed of Trust with respect to the Property as only subordinate to a permitted security instrument securing repayment of the Construction Loan and liens imposed by law.

3.4.3 Insurance. The Owner shall obtain such insurance and provide to the Town the endorsements required by Section 4.12.

3.4.4 Evidence of Filing. The Owner shall provide the Town with a certified copy evidencing filing of the Owner's certificate of limited partnership with the California Secretary of State of, and shall provide such other documentation reasonably requested by the Town evidencing formation of the limited partnership, as such entity is described in this Agreement.

3.4.5 Personal Guarantee. A personal guarantee, in form and substance acceptable to Barry Ephraim, an individual, and the Town, shall be executed by the foregoing parties evidencing the personal obligation of Barry Ephraim to pay any outstanding portion of the Construction Loan that remains unpaid at the end of the term of said loan, and any approved extensions thereof ("Personal Guarantee"). As a condition to the Town's execution of the Personal Guarantee, Barry Ephraim shall provide evidence to the Town of financial capacity, in form and substance acceptable to the Town, evidencing the availability of funds sufficient to secure the Personal Guarantee.

3.4.6 Recordation. This Agreement, the Regulatory Agreement and the Town Loan Documents shall be recorded against the Property.

3.4.7 Construction Loan Commitment. The Owner delivers to the Town, in form and substance acceptable to the Town, an unconditional and irrevocable letter of commitment from the Construction Loan lender to the Owner in the amount of the Construction Loan, as specified in this Agreement.

3.4.8 Equity Investment. The Owner delivers to the Town, in form and substance acceptable to the Town, evidence of available funds in the amount of the Equity Investment and committed to the Project.

3.4.9 No Default. The Owner shall be in compliance with all of the terms, covenants, and conditions set forth in this Agreement and there shall exist no condition, event or act which would constitute an Event of Default under this Agreement or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

3.4.10 Representations and Warranties. All representations and warranties of the Owner contained in this Agreement shall be true and correct in all material respects as of the date of the disbursement of the Town Loan, or any portion thereof.

3.4.11 Condition Precedent to Disbursement of CHDO Funds. Notwithstanding any other provision of this Agreement, the portion of the Town HOME Loan comprised of CHDO Funds is expressly conditioned on AOF/Golden State evidencing to the Town its role as sole general partner of the Owner with effective control of the Project and the Property.

3.5 No Other Town Financial Assistance. The Town does not, currently, have adequate funds available to pay for the costs to construct or operate the Project in excess of the Town Loan. The Town Loan represents the total funding to be provided by the Town for the Project pursuant to the terms of this Agreement, and the Town shall not contribute any other financial assistance to the construction or operation of the Project other than the Town Loan.

3.6 Suspension of Town's Obligations. The Town's obligation to make any payments of the Town Loan shall be suspended upon the occurrence of an Event of Default under this Agreement, and may result in the discharge of any further obligation of the Town to make such payment.

3.7 Developer Fee. The Owner agrees that the Owner shall not be entitled to the Developer Fee prior to the following: (i) a Certificate of Completion has been issued for the Project, or the Project has been deemed complete pursuant to the provisions set forth in Section 4.16 of this Agreement; (ii) the Construction Loan has been paid in full; (iii) all other material outstanding financial obligations of Owner related to the Project construction have been paid in full. Following satisfaction of the foregoing, the Developer Fee may be paid, in incremental shares, based on the total number of Units in the Project. The Developer Fee shall be in an amount consistent with the HOME regulations, and with the NSP requirements.

3.8 Requests for Disbursement of Town Loan. The Owner may submit a written request to the Town for payment of all or part of the Town Loan (a "Payment Request"). A Payment Request shall

include a request for payment, a description of the work completed, material supplied and/or cost incurred, and receipts or invoices to substantiate the Payment Request.

**ARTICLE 4.
DEVELOPMENT OF THE
PROJECT ON THE PROPERTY.**

4.1 Obligations Regarding Scope of Development; Schedule of Performance. The Owner shall perform its obligations with respect to the Project in accordance with this Agreement, including, without implied limitation, the Scope of Development and Schedule of Performance attached as Exhibit B and Exhibit C, respectively, and any additional plans provided by the Owner and approved by the Town pursuant to this Agreement.

4.2 Recordation of Map; CC&Rs; Affordability Covenant.

4.2.1 The Owner shall prepare and submit the Subdivision Map to the Town for its approval, in accordance with the Schedule of Performance and all requirements of the Town and California law for the processing and approval of such a map. In conjunction therewith, the Owner shall prepare, for the Town's prior review and approval, CC&Rs to be recorded against the Property. The CC&R's shall include, but not be limited to: the establishment of an HOA; the right of the Town to approve the HOA management; maintenance covenants; maintenance fees sufficient to provide for maintenance of any common areas of the Project and to pay for any HOA management, provided that such fees are within the affordability requirements set forth herein and the Regulatory Agreement, and the right of the Town to enforce certain terms of the CC&Rs pertaining to maintenance.

4.2.2 The Town and the Owner shall agree upon the terms of an Affordability Covenant to be recorded against each Unit, specifying the affordability restrictions applicable to the relevant Unit. The Affordability Covenant shall contain substantially the terms contained in the Regulatory Agreement, but shall also include more specific information regarding the specific affordability requirements pertaining to the Unit, as well as any other provisions agreed upon by the Parties. The Affordability Covenant shall be recorded prior to recordation of the CC&Rs, and shall not be subordinated to any financing for the purchase of the Units.

4.3 Plans for Completion of Construction. The parties to this Agreement acknowledge and agree that the prior developer of the Property completed a large portion of the development, and that the "Project", as defined herein, shall consist of the Owner completing construction in accordance with the current conditions of approval for the development (CUP 2006-007), which conditions are on file with the Town and incorporated herein by reference, subject to such changes as may be required by the Town, as determined by the Town's Department of Engineering, and agreed upon by the Parties, to address relocation of drainage intakes. The Owner shall prepare and submit to the Town all additional plans required for completion of the Project, if any, within the time set forth in the Schedule of Performance, for the Town's review pursuant to Section 4.4 of this Agreement. All such plans and related documents shall be consistent with the Scope of Development and the conditions of approval, as may be amended upon approval of the Town's Economic and Community Development Department.

The Town's staff and the Owner shall hold regular progress meetings to coordinate the preparation and submission of any required plans and related documents necessary for completion of the Project. The Town's staff and the Owner shall communicate and consult informally as frequently as is necessary to assure that the formal submittal of any documents to the Town receives prompt consideration.

4.4 Town Approval of Changes to Plans. The Town shall have the right of review and approval of any changes to the previously approved plans, drawings and related documents (collectively "Plans") for the Project. The Town shall review and may approve, in its reasonable discretion, any proposed changes to the Plans within twenty (20) business days of its receipt of a proposed change. Any disapproval shall state in writing the reasons for disapproval and the changes requested by the Town to be made. The Owner, upon receipt of a disapproval, shall revise such proposed changes to the Plans and shall submit them to the Town within twenty (20) business days after receipt of notice of disapproval. The Town shall use reasonable good faith efforts to expedite the Town's processing and review of any changes to the Plans, in a manner consistent with statute, the Town's Municipal Code and this Agreement. Failure by the Town to either approve or disapprove changes to the Plans within the time established in this Section 4.4 shall be deemed an approval. The foregoing notwithstanding, no matter shall be deemed approved unless the request for approval conforms with Section 6.6.

Any changes to the Plans required by the Town shall not operate to extend the time for performance of the Owner's obligations under this Agreement, unless such changes are necessary due to the Town-initiated deviations from the Scope of Development. The Town and the Owner shall confer in good faith regarding appropriate time extensions for the Town-initiated changes.

4.5 Contractor Selection Requirements. The Owner shall comply with the procurement requirements and standards set forth in 24 CFR 85.36, and with any other standards applicable to the NSP funding provided hereunder. In its contractor and subcontractor selection activities, the Owner shall use its best efforts to market the Project work to contractors and subcontractors based in the Town and in the County.

4.6 Governmental Requirements. If any governmental official, city, department or bureau having jurisdiction over the Project or the Property (including, without implied limitation, the Town) requires material revisions or corrections of the Town-approved Plans, the Owner and the Town shall cooperate in efforts to obtain waivers of such requirements or to develop a mutually acceptable set of alternative concept and site plans. With the exception of Section 4.7 below, the Owner shall, at its own expense, secure or cause to be secured, any and all permits, entitlements, or other approvals which may be required by or from the Town or any other governmental Town with jurisdiction over the Project or the Property. In addition, the Owner shall, at its own cost and expense, timely pay to the Town all outstanding development impact fees, permit fees, inspection fees and all other fees related to the Project. The Town shall provide reasonable good faith efforts to expedite the Town's processing of permits and approvals, in a manner consistent with statute, the Town's Municipal Code and this Agreement. The Owner shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor and safety standards.

4.7 Cost of Project. The Owner shall complete, or cause the completion of the Project at the Owner's sole cost and expense. The estimated total Project cost is Five Million, Seven Hundred Fifty Thousand Dollars (\$5,750,000.00). Notwithstanding the foregoing, the proceeds of the Town Loan may be used in accordance with Section 3.1 of this Agreement to reimburse the Owner for the actual costs incurred by the Owner to complete the Project.

4.8 Schedule of Performance. The Owner shall begin and complete all Project construction within the times specified in the Schedule of Performance or such reasonable extension of said dates as may be granted by the Town. In addition to extensions of time provided by express provisions of this Agreement, the Schedule of Performance may be revised from time to time as mutually agreed upon in writing between the Owner and the Town.

From time to time, during the period of Project construction and as reasonably requested by the Town, the Owner shall report to the Town on the progress of Project construction. The reports shall be in such form and detail as may reasonably be required by the Town and shall include construction photographs taken since the last report.

4.9 Grading, Paving and Landscaping Plans. The Owner shall obtain all necessary Town approvals of grading, paving and landscaping plans for the Project.

4.10 Right of Access. For the purpose of assuring compliance with this Agreement, representatives of the Town shall have reasonable right of access to the Property without charge, during business hours. The Town will use good faith efforts to minimize any interference that their entry may have upon the Owner's operations. The Town shall indemnify, defend, and hold harmless the Owner and the Owner's officers, members, employees, and agents from any damage caused or liability arising out of the exercise of this right of access, to the extent such liability and damage are proximately caused by the Town, or its employees, agents or contractors.

4.11 Indemnity. The Owner shall defend, indemnify and hold the Town, and its officers, directors, agents, servants, attorneys, employees and contractors harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) (all of the foregoing collectively, "Liabilities") arising from or as a result of the death of any person or any accidental injury, loss or damage whatsoever caused to any person or to the property of any person and which shall be, or alleged to be, directly or indirectly, caused by any acts done thereon or any errors or omissions of the Owner or its officers, directors, agents, servants, attorneys, employees or contractors in connection with the Project. The Owner shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions directly or indirectly caused by the Town or the Town, or their respective officers, directors, agents, servants, attorneys, employees or contractors. The Town shall not be responsible for any acts, errors or omissions of any person or entity except the Town and its officers, agents, servants, employees or contractors.

The Owner's obligations under this Section 4.11 shall survive the expiration or termination of this Agreement.

4.12 Insurance. Prior to the Town's first disbursement of the Town Loans, the Owner shall furnish or cause to be furnished to the Town duplicate originals and appropriate endorsements to the Owner's commercial general liability and automobile insurance policies in the amounts set forth below, naming the Town as additional insured:

- (a) \$1,000,000 for any one person; and
- (b) \$2,000,000 for any one occurrence; and
- (c) \$1,000,000 for any property damage.

The commercial general liability policy shall include coverage for construction defects to remain in effect for a period of manifestation not less than then (10) years after issuance of a Certificate of Completion for the Project. The policies shall be "occurrence," not "claims made," policies and shall be primary and non-contributing to any insurance that the Town may elect to obtain. Such policies shall

contain a full waiver of subrogation clause. The policies shall be issued by a carrier licensed to do business in California, with a then-current Best's rating of A:VIII or better. Said policies shall provide that they shall not be canceled or reduced in types of coverage or amount of coverage without at least thirty (30) business days' prior written notice to the Town and that such reduction or cancellation shall become effective until at least twenty (20) business days after receipt by the Town of the written notice of this Agreement. The policy amounts set forth above shall not limit or define the extent of the Owner's indemnity liability pursuant to Section 4.11 or any other provision of this Agreement, or arising as a matter of law or at equity.

The Owner shall also furnish or cause to be furnished to the Town evidence satisfactory to the Town that any contractor with whom it has contracted for the performance of work on the Project carries workers' compensation insurance as required by law.

The Owner shall also maintain, or cause its contractor to maintain, all-risk course of construction insurance, insuring the Owner, the Town against all risk (excluding earthquake and terror) of loss or damage to the Project.

Except for the obligation to maintain coverage for construction defects, which shall remain in effect for the period specified in this Section, the obligations set forth in this Section 4.12 shall remain in effect until all Units in the Project have been sold to Qualified Households.

4.13 Construction Defects; Mold; Warranties Provided to Purchasers.

4.13.1 As a condition precedent to the issuance of a Certificate of Completion for the Project, the Owner shall obtain and shall provide to the Town an environmental liability insurance policy, acceptable to the Town, to cover any liability related to mold and mold damage in the amount of Two Million Dollars (\$2,000,000.00) per occurrence, and in the aggregate for a period of manifestation not less than then (10) years after issuance of a Certificate of Completion for the Project. Such policy shall conform to the insurance carrier requirements specified above in Section 4.12.

4.13.2 In addition to the insurance coverage for construction damage required above in Section 4.12, the Owner shall establish a construction defect and Project maintenance reserve escrow account, to be dedicated to the Project and held by an escrow agent acceptable to the Town, and to be funded by the Owner in the total amount of Three Hundred Forty Thousand Dollars, to be paid in proportionate share upon the sale of each Unit (\$340,000.00) ("Escrow Account"). The escrow instructions for the sale of each Unit shall provide that the escrow agent is required, upon the sale of each Unit, to deposit funds in the amount of Ten Thousand Dollars (\$10,000) into the Escrow Account. The Escrow Account shall be subject to terms and conditions approved by the Town. In the Town's discretion, the funds held in escrow may be used for necessary repair/maintenance of the Project in such case that HOA fees are insufficient to cover such costs.

4.13.3 Owner shall provide to each Qualified Household purchasing a Unit a one (1) year home warranty, a two (2) year system warranty and a ten (10) year structural warranty on the Unit. The warranties specified in the foregoing sentence shall be in form and substance acceptable to the Town.

4.14 Prohibition Against Transfer. The Owner may not assign or attempt to assign this Agreement or any right or obligation in this Agreement, or make any total or partial sale, transfer, lease, conveyance or assignment of the Project or Property, or any portion of this Agreement, without prior written approval of the Town, which may be given or withheld in the Town's reasonable discretion. In

determining whether to approve of such a partial sale, transfer, conveyance or assignment of the Project or the Property, or any portion of this Agreement, the Town shall evaluate: (i) the financial ability of the proposed transferee to own and operate the Project, or portion so transferred, and to meet the Owner's obligations under this Agreement; (ii) whether the proposed transferee meets all requirements related to the funding sources of the Town Loan; and (iii) the fitness and experience of the proposed transferee to own and operate the Project or portion so transferred.

No unpermitted sale, transfer, conveyance or assignment of this Agreement or all or any portion of the Project or the Property shall be deemed to relieve the Owner or any other party from any obligation under this Agreement, nor shall any such unpermitted sale, transfer, conveyance or assignment transfer any rights in this Agreement, the Project or the Property.

4.15 Permitted Encumbrances. The Owner shall not, at any time prior to the recordation of a Certificate of Completion, grant or permit any mortgage, deed of trust, sale and leaseback or any other form of conveyance or encumbrance in connection with the financing or development of the Property ("Lien") other than a Permitted Encumbrance, as hereinafter defined.

For purposes of this Agreement, a "Permitted Encumbrance" is any mortgage, deed of trust or other real property security instrument or encumbrance approved by the Town to secure the payment or satisfaction of any debt or other obligation incurred pursuant to this Agreement.

Nothing in this Agreement shall be deemed to obligate the holder of any Permitted Encumbrance to construct the Project or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to develop the Property or construct the Project thereon except in strict compliance with this Agreement. Any right, title and interest in the Project or the Property, or any portion of this Agreement, acquired by any means by any holder of a Lien, or by such holder's assignees or successors, shall be subject to the terms and provisions of this Agreement and the Exhibits attached to this Agreement.

4.16 Certificate of Completion. Following the written request therefor by the Owner and the completion of Project, excluding minor building punch-list items to be completed by the Owner upon any Unit in the Project, and upon satisfaction of any conditions precedent contained in this Agreement, the Town shall furnish the Owner with a Certificate of Completion for the Project, substantially in the form set forth in Exhibit D, and such Certificate of Completion shall be recorded after the Owner's completion of the Project if requested by the Owner. Notwithstanding any provision set forth herein to the contrary, the completion of Project shall include the completion of: (i) the rehabilitation of all of the Units on the Property and (ii) the rehabilitation and construction of any and all on-site parking, common area landscaping and related improvements necessary to support or which meet the requirements applicable to occupancy of each Unit comprising the Project.

4.16.1 The Town shall not unreasonably withhold the issuance of a Certificate of Completion. A Certificate of Completion shall be, and shall so state, that it is a conclusive determination of satisfactory completion of all of the obligations of this Agreement with respect to the completion of the Project. After the recordation of the Certificate of Completion, any party 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, except that such party shall be bound by any covenants contained in the Regulatory Agreement.

4.16.2 The Certificate of Completion shall be in such form as to permit it to be recorded in the Recorder's Office of San Bernardino County, California.

4.16.3 If the Town refuses or fails to furnish a Certificate of Completion after written request from the Owner, the Town shall, within fifteen (15) calendar days of the written request or within three (3) calendar days after the next regular meeting of the Town, whichever date occurs later, provide to the Owner a written statement setting forth the reasons with respect to the Town's refusal or failure to furnish a Certificate of Completion. The statement shall also contain the Town's opinion of the action the Owner 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 the Owner or other minor building 'punch-list' items, the Town may issue its Certificate of Completion upon the posting of a bond, irrevocable letter of credit or other security, reasonably approved as to form and substance by the Town counsel and obtained by the Owner in an amount representing the fair value of the work not yet completed as reasonably determined by the Town. If the Town shall have failed to provide such written statement within the foregoing period, the Owner shall be deemed conclusively and without further action of the Town to have satisfied the requirements of this Agreement with respect to the development of the Project on the Property as if a Certificate of Completion had been issued therefore.

4.16.4 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Owner to any holder of a lien securing money loaned to finance the development of the Project on the Property, or any part of the Project. A Certificate of Completion shall not be deemed to constitute a notice of completion as referred to in California Civil Code Section 3093.

4.17 Covenants, Conditions and Restrictions. In consideration of the terms of this Agreement, including the provision of the Town Loan in accordance with Section 3.2.2 of this Agreement, the Owner agrees for itself, and its successors and assigns to comply with all the covenants, conditions and restrictions set forth in this Section 4.17 and the Regulatory Agreement in connection with the use, operation and maintenance of the Project and the Property.

4.17.1 Nondiscrimination Covenant. The Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project and the Property, or any part of this Agreement, that during the forty five (45) year affordability period, there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project and the Property, nor shall the Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project and the Property. The Owner shall, in perpetuity, refrain from restricting the rental, sale or lease of the Project and the Property on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) **In Deeds.** "The grantee in this Agreement covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land in this Agreement conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land in this Agreement conveyed. The foregoing covenants shall run with the land."

(b) **In Leases.** “The lessee in this Agreement covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land in this Agreement leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land in this Agreement leased.”

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

4.17.2 Owner's Covenant to Undertake and Complete the Project. The Owner covenants and agrees for itself and all voluntary and involuntary successors in interest to the Property, to undertake and complete the Project pursuant to the terms and conditions of this Agreement. The covenant of this Section 4.17.2 shall run with the land of the Property and bind successive owners of the Property for the benefit of the Town and shall be enforceable solely by the Town, in its sole and absolute discretion, until the issuance of a Certificate of Completion for the Project.

4.17.3 Use Covenant.

(a) As more specifically provided in the Regulatory Agreement, the Owner covenants and agrees for itself, its assigns and all voluntary and involuntary successors in interest to the Property or any part of this Agreement, that the Owner shall, for the term set forth in the Regulatory Agreement, maintain all (34) Units of the Project solely and exclusively to provide housing for Qualified Households at Affordable Housing Costs. All of the Units are to be occupied as three bedroom Units. The Owner further agrees that the Property shall, in perpetuity, be put to no use other than those uses specified in the Town’s General Plan and zoning ordinances as the same may be amended from time to time. Nothing in this Section 4.17.3 shall limit, expand, modify or otherwise affect any right of the Owner to continue any legal nonconforming use upon the Property following changes in the Town’s General Plan or zoning ordinances.

(b) The covenants respecting uses and occupancy of each of the thirty four (34) Units shall remain in effect for the Affordability Covenant Term of each such Unit, and shall run with the land and shall constitute equitable servitudes thereon, and shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Town, its successors and assigns and the Redevelopment Agency of the Town of Apple Valley.

4.17.4 Enforcement of Covenants. The covenants set forth in Sections 4.17.1 through 4.17.3 touch and concern the Property, and every part of this Agreement, and constitute covenants and equitable servitudes running with the Property and every part of this Agreement, which may be enforced by the Town or the Town (as an intended third party beneficiary), regardless of whether the Town or the Town currently or continue to own an interest in any property within the Project Area.

The Owner irrevocably stipulates and agrees that breach of any of the covenants set forth in Sections 4.17.1 through 4.17.3 will result in great and irreparable damage to the Town, will violate the public policy and the purposes of the NSP and the HOME regulations, as applicable, and will result in damages to the Town which are either impracticable or extremely difficult to quantify. Accordingly, upon the breach of any covenant set forth in Sections 4.17.1 through 4.17.3, the Town may institute an action for mandatory or prohibitive injunctive relief against such breach.

4.17.5 Relocation Costs and Benefits. [Not Applicable.]

4.18 Prevailing Wages. The Owner is aware of the requirements of applicable state and federal Prevailing Wage Laws, including California Labor Code Sections 1720, et seq., and the Davis-Bacon Act, which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects and the Owner agrees to fully comply with such Prevailing Wage Laws. The parties acknowledge and agree that the Project is a “public works” project subject to the Prevailing Wage Laws. The Owner shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

4.19 Marketing. The Owner agrees to market the Project and make the Units available to Town residents in accordance with the marketing and local preference program attached hereto as Exhibit H and incorporated herein by reference, in accordance with the Town’s affirmative action marketing guidelines to be provided to Owner by Town prior to completion of the Project, and in accordance with applicable state and federal laws. In the case of any conflict between the attached Exhibit H and applicable state or federal laws and the affirmative action marketing guidelines to be provided by Town, the state or federal laws and the affirmative action marketing guidelines shall govern.

**ARTICLE 5.
DAMAGES AND REMEDIES.**

5.1 Event of Default. Each of the following shall constitute an “Event of Default” under this Agreement:

5.1.1 Failure by a Party to comply with and observe any of the conditions, terms, or covenants set forth in this Agreement, the Town Loan Documents and failure to cure (or commence to cure, if applicable) as provided in this Agreement, the Town Loan Documents.

5.1.2 Any representation or warranty contained in this Agreement or in any application, financial statement, invoice, certificate, or report submitted by one to the other Party that proves to have been intentionally incorrect in any material respect when made.

5.2 Rights and Remedies Not Exclusive. Unless prohibited by law or otherwise provided by a specific term of this Agreement, the rights and remedies of the Town and the Owner under this Agreement are nonexclusive, and all remedies under this Agreement may be exercised individually or cumulatively. In addition to those remedies expressly granted in this Agreement, the Parties shall also have the right to seek all other available legal and equitable remedies, including, without implied limitation, general and consequential damages, unless otherwise expressly provided to the contrary in this Agreement.

5.3 Notice and Opportunity to Cure. If either Party to this Agreement believes that the other Party has failed to perform any obligation of that Party in accordance with the terms of this Agreement or the Town Loan Documents (“Default”), the Party alleging the Default shall provide written notice (“Default Notice”) to the other Party, setting forth the nature of the alleged Default. Unless otherwise provided by a specific term of this Agreement, the Party claimed to be in Default shall have thirty (30) business days after its receipt of the Default Notice to completely cure such Default or, if such Default cannot reasonably be cured within such thirty (30) business day period, to commence the cure of such Default within the thirty (30) business day period and diligently prosecute the cure to completion thereafter.

If the Party alleged to be in Default fails to cure, or to commence to cure (if applicable), as provided in the preceding paragraph and in the Town Loan Documents, the Party alleging the Default may exercise such rights and remedies as provided for in this Agreement and the Town Loan Documents upon an Event of Default.

5.4 Termination. In addition to all other rights and remedies granted to the Parties under this Agreement, the Town Loan Documents and the Regulatory Agreement or available to the Parties in equity or at law, the Town may, prior to disbursement of the Town Loan, terminate this Agreement, the Town Loan Documents and the Regulatory Agreement, and all of its obligations under this Agreement without cost or liability upon the Owner’s Event of Default if such default is not cured as provided herein.

ARTICLE 6. GENERAL TERMS.

6.1 Notices and Demands. All notices or other communications required or permitted between the Town and the Owner under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to Parties at the addresses provided in Section 1.3, subject to the right of either Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second (2nd) business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopier or courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the Party to whom the notice is given.

6.2 Nonliability of Town or Town Officials and Employees. No board member, official, contractor, consultant, attorney or employee of the Town or the Town shall be personally liable to the Owner, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Project or the Property, in the event of any default or breach by the Town, or for any amount which may become due to the Owner or to its successors or assignees, or on any obligations arising under this Agreement.

6.3 Conflict of Interests. No board member, official, contractor, consultant, attorney or employee of the Town or the Town shall have any personal interest, direct or indirect, in this Agreement nor shall any such board member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested. The Owner represents and warrants to the

Town that it has not received any other form of consideration in connection with this Agreement other than the consideration expressly provided in this Agreement.

6.4 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the Town's and the Owner's obligations under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance under this Agreement shall be extended where delays or defaults are due to war; terrorism; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; referenda; acts of governmental authorities (except that the failure of the Town to act as required under this Agreement shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notifies the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the construction or operation of the Project.

ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE OWNER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES.

Owner's Initials

6.5 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party to this Agreement against another Party under this Agreement by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement or the Property, then, in that event, the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' and expert's fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' and expert's fees (collectively, "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 6.5, Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section 6.5 shall survive any termination of this Agreement.

6.6 Submission of Documents and Other Actions for Approval. Except where such approval is expressly reserved to the sole discretion of the approving Party, all approvals required under this Agreement by either Party shall not be unreasonably withheld or delayed.

Any requests for approval of documents submitted to the Town shall contain the following all capitalized heading in no less than twelve (12) point bold type on the first page of the request:

ATTENTION TOWN MANAGER:

THIS IS A REQUEST FOR TOWN APPROVAL OF THE ATTACHED DOCUMENT. PLEASE REVIEW THE MATERIAL AND APPROVE OR DISAPPROVE IT IN WRITING WITHIN THE TIME ESTABLISHED THEREFOR IN THE AGREEMENT OR SCHEDULE OF PERFORMANCE. FAILURE TO DISAPPROVE WITHIN THE ALLOTTED TIME MAY BE DEEMED AN APPROVAL.

6.7 Amendments to this Agreement. The Owner and the Town agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties to this Agreement, lending institutions, bond counsel or financial consultants. Except as otherwise specifically set forth herein, any amendments to this Agreement must be in writing and signed by the appropriate authorities of both the Town and the Owner. The Town's Town Manager is authorized on behalf of the Town to approve and execute minor amendments to this Agreement, including, but not limited to, the granting of extensions of time to the Owner.

6.8 Jurisdiction and Venue. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate federal district or state court in the County of San Bernardino, California. Each Party to this Agreement irrevocably consents to the personal jurisdiction of that court. The Town and the Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the Town and the Owner, due to the fact that either the Town or the Town is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the Owner and the Town specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. The Owner acknowledges that the provisions of this Section 6.8 are material consideration to the Town for its entry into this Agreement, in that the Town will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

6.9 Interpretation. The Town and the Owner acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that each Party has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties.

6.10 Counterpart Originals; Integration. This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Agreement, and its Exhibits, represent the entire understanding of the Parties and supersedes all negotiations and previous agreements, whether oral or written, between the Parties with respect to all or any part of the subject matter of this Agreement.

6.11 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any right or power under this Agreement at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

6.12 Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their successors and assigns. Except as 4.14, upon the permitted sale, transfer or conveyance by an owner of the Property of its interest therein, such owner shall thereupon be relieved of its obligations under this Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations under this Agreement which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible for the performance of all of the duties and obligations of the Owner under this Agreement.

6.13 No Third Party Beneficiaries. The performance of the Town's and the Owner's respective obligations under this Agreement are not intended to benefit any party other than the Town or the Owner, except as expressly provided otherwise in this Agreement. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise in this Agreement.

6.14 No Effect on Eminent Domain Authority. Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the Town's and the Town's eminent domain powers with respect to the Property or the Project, or any other property owned by the Owner.

6.15 Tax Effects. The Owner acknowledges that the benefits to be received by the Owner under this Agreement may be taxable or have tax consequences pursuant to one or more provisions of the United States Internal Revenue Code or California Revenue & Taxation Code. The Owner acknowledges that neither the Town nor the Town has made any representations to the Owner concerning the effect, if any, of such consequences and the Owner acknowledges that it has retained independent tax advice from advisors of its own choosing. The Owner shall be responsible for all tax consequences resulting from Owner's entry into this Agreement or from any benefits which the Owner may receive pursuant to the provisions of this Agreement.

6.16 Inspection of Books and Records; Yearly Audited Financial Statements. Upon reasonable advance notice and during normal business hours, the Town may, at all reasonable times, inspect the books and records of the Owner pertaining to the Property and the Project as pertinent to the purposes of this Agreement and the Town Loan Documents.

6.16.1 Annual Financial Statements. The Owner shall, on an annual basis, provide the Town with certified audited financial statements. The certified audited financial statements shall be provided to the Town without need of request therefor by the Town and immediately after they have been prepared and certified for distribution by the Owner's accounting firm. Commencing from and after construction of the Project is completed, the certified financial statements must be prepared by reputable, licensed certified public accountants. The certified audited financial statements must contain sufficient information to allow the Town to determine whether the Owner has complied with its obligations and responsibilities under this Agreement and the Town Loan Documents. Without limiting the generality of the foregoing, the certified audited financial statements must provide, at a minimum, a description of the sources and uses of funds for the Project.

6.16.2 Financial Audit. In addition to the yearly certified audited financial statements, the Town, may, at any time, at its sole cost and expense, conduct or have conducted on its behalf, a financial audit of all the Owner's books, records, ledgers and documents concerning the Property

and the Project. The Owner shall cooperate with the Town's auditors and shall provide such information as the auditors may reasonably request and the Owner shall direct its auditors to do the same.

[Signatures on Following Pages]

SIGNATURE PAGE TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

“TOWN”

TOWN OF APPLE VALLEY , a California municipal
corporation

By: _____
Town Manager

ATTEST:

By: _____
Town Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
Town Counsel

SIGNATURE PAGE TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

“OWNER”

AVHTV, LP,
a California limited partnership

By:

AOF/Golden State Community Development
Corporation, a California nonprofit corporation

Its: General Partner

By: _____

Title: _____

NOTARY ACKNOWLEDGMENT
(California All-Purpose Acknowledgment)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On _____, before me, _____, notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

ATTACHED TO: OWNER PARTICIPATION AGREEMENT
 (HAPPY TRAILS VILLAS)

NOTARY ACKNOWLEDGMENT
(California All-Purpose Acknowledgment)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On _____, before me, _____, notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

ATTACHED TO: OWNER PARTICIPATION AGREEMENT
 (HAPPY TRAILS VILLAS)

EXHIBIT A-1 TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Legal Description of Property

The Property referred to in the Agreement is in the State of California, County of San Bernardino, and is described as follows:

Real property in the unincorporated area of the County of San Bernardino, State of California, described as follows:

LOT 161, TRACT NO. 2915, APPLE VALLEY RANCHOS UNIT NO. 2, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 39 OF MAPS, PAGES 69, 70 AND 71, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERAL RIGHTS AS RESERVED IN VARIOUS DEEDS OF RECORDS COVERING LOTS 126 TO 502 OF TRACT 2915, BOOK 39 PAGES 69 TO 71, INCLUSIVE, RECORDS OF SAID COUNTY, AS RESERVED IN DEED RECORDED JUNE 27, 2005 AS INSTRUMENT NO. 454763 OFFICIAL RECORDS.

APN: 3112-463-01

EXHIBIT A-2 TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Site Map of Property

[Attached behind this page]

EXHIBIT B TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Scope of Development

Owner shall cause to be developed and completed the thirty four (34) rental unit Project pursuant to the previously approved conditions of approval for the development (CUP 2006-007).

EXHIBIT C TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Schedule of Performance

1. Close of Escrow	No later than June 30, 2010
2. Tract Map and Formation of HOA	Completed no later than 90 days from the date of close of escrow
3. Submission of Grading and Drainage Plan	No later than 30 days from the date of close of escrow
4. Commence Construction	No later than 90 days from the date of approval of the Grading and Drainage Plan
5. Commence Pre-Sales	No later than 90 days from the date of commencement of construction
6. Complete Construction	No later than 150 days from the commencement of construction.

EXHIBIT D TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Certificate of Completion

[Attached behind this page]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

Attention: Town Manager

EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE SECTION 27383

(Space above for Recorder's Use)

CERTIFICATE OF COMPLETION
(Happy Trails Villas)

I, _____, Town Manager of the Town of Apple Valley ("Town"), certify as follows:

By its Resolution No. _____, adopted and approved _____, the Town resolved as follows:

Section 1. The thirty-four (34) unit multi-family rental development, of which all thirty-four (34) units are required to be restricted at Affordable Housing Costs ("Project"), was required to be acquired and rehabilitated in accordance with that certain Owner Participation Agreement (Happy Trails Villas) ("Agreement") dated as of June 22, 2010, between the Town and by AVHTV, LP, a California limited partnership ("Owner") on that certain real property consisting of the Project and the Property ("Property"), described on the attached Exhibit A, has been completed in accordance with the provisions of the Agreement. The Agreement was recorded with the County Recorder as document number _____.

Section 2. Pursuant to Section 4.16 of the Agreement, this Certificate of Completion is a conclusive determination of the satisfactory completion of the Owner's obligations under the Agreement with respect to the completion of the Project, including all buildings, parking improvements, landscaping and related improvements necessary to support the Project and its use and occupancy upon the Property; provided, however, that the Town may enforce any covenants and obligations surviving this Certificate of Completion in accordance with the terms and conditions of the 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, CA 92307 during regular business hours.

[Signatures on following page.]

SIGNATURE PAGE TO
CERTIFICATE OF COMPLETION
(Happy Trails Villas)

DATED AND ISSUED this ____ day of _____, _____.

TOWN:

TOWN OF APPLE VALLEY , a California municipal
corporation

By: _____
Town Manager

ATTEST:

By: _____
Town Clerk

EXHIBIT A TO
CERTIFICATE OF COMPLETION

Legal Description of Property

The Property referred to in the Agreement is in the State of California, County of San Bernardino, and is described as follows:

Real property in the unincorporated area of the County of San Bernardino, State of California, described as follows:

LOT 161, TRACT NO. 2915, APPLE VALLEY RANCHOS UNIT NO. 2, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 39 OF MAPS, PAGES 69, 70 AND 71, RECORDS OF SAID COUNTY.
EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERAL RIGHTS AS RESERVED IN VARIOUS DEEDS OF RECORDS COVERING LOTS 126 TO 502 OF TRACT 2915, BOOK 39 PAGES 69 TO 71, INCLUSIVE, RECORDS OF SAID COUNTY, AS RESERVED IN DEED RECORDED JUNE 27, 2005 AS INSTRUMENT NO. 454763 OFFICIAL RECORDS.

APN: 3112-463-01

EXHIBIT E TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Regulatory Agreement and Declaration of Restrictive Covenants

[Attached behind this page]

EXHIBIT F TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Project Budget

Purchase	\$52,941	\$1,800,000
Local Fees	\$15,442	\$525,029
PNA	\$735	\$25,000
A&E&Supervision	\$3,824	\$130,000
Construction	\$42,647	\$1,465,177
Utilities	\$1,000	\$34,000
Property Taxes	\$1,618	\$55,000
Security	\$1,382	\$47,000
Marketing	\$1,324	\$45,000
Homeowner		
Association	\$5,000	\$170,000
Insurance	\$4,412	\$150,000
Legal Costs	\$1,765	\$60,000
FHA		
Approval/Counseling	\$1,029	\$35,000
Loan Costs	\$6,618	\$225,000
Contingency	\$5,882	\$283,794
Developer Fee	\$20,588	\$700,000
Total Cost	\$166,207	\$5,750,000

Costs Paid Through Sell Out
Escrow

Brokerage	\$7,880	\$267,924
FHA Closing Costs	\$5,253	\$178,616
Title and Escrow		
Costs	\$1,313	\$44,654
Warranty - 210/1		
Year	\$2,000	\$68,000
Reserves	\$16,447	\$559,194

EXHIBIT G TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

HOME Regulations

HOME Program Requirements

1. Fiscal Limitations of HOME Program Imposed on the Town by HUD. The United States of America through the Secretary of HUD, may in the future direct the Town of Apple Valley (“Town”) to reduce the amount of available HOME Funds, or other HUD funds of the Town that are or may be available for the Town Loan, or repayment of the HOME Funds. Accordingly, the Town reserves the right to unilaterally revise this Agreement to comply with federal government or HUD actions affecting HUD or the HOME Funds available to the Town to provide the Town Loan to the Owner. Also, if HUD directs the Town to reduce the amount of HOME Funds that are or may be available for the Town Loan, the Town may suspend any and all disbursements of the Town Loan to the Owner. The Owner consents to any such unilateral revisions to this Agreement or suspensions of disbursements of the Town Loan as may hereafter be directed by HUD.

2. Compliance By the Owner with the HOME Program and Activity Regulations. The Owner shall comply with the HOME Program and activity regulations of HUD and the Town; provided, however, that notwithstanding the provisions of 24 CFR Part 85.43(b), upon the occurrence of an Event of Default by the Owner, the Owner shall be deemed to have waived any right to a hearing, appeal or other administrative proceeding with the Town as may otherwise be available under 24 CFR Part 85.43(b) with respect to any matter arising under this Agreement. The Town may exercise its rights and remedies upon such Event of Default as provided in this Agreement. Any breach or default by the Owner of the HOME Program regulations with respect to any matter arising under the Agreement shall be deemed to be an Event of Default.

3. Federal Labor Standards Provisions. The Owner and each of its contractors and all subcontractors engaged under contracts in excess of One Thousand Dollars (\$1,000) for the construction, alteration, and/or repair of the Project shall comply with State of California Labor Code Sections 1720, et seq., and HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the State of California Department of Industrial Relations under Title 8 California Code of Regulations Sections 16000, et seq., and Department of Labor under 29 CFR Parts 3, 5 and Section 5.5(a), governing the payment of wages and the ratio of apprentices and trainees to journeymen. Owner shall comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provision of Contract Work Hours and Safety Standards Act, the Copland ‘Anti-Kickback’ Act (40 U.S.C. 276a-276a5; 40 U.S.C. 327 and 40 U.S.C. 776c and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Owner shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Town for review upon request. If wage rates higher than those required under such regulations are imposed by the State of California, nothing in this Agreement shall relieve the Owner of its

obligation to require payment by its contractors and subcontractors of such higher wage rates. The Owner shall cause or require to be inserted in full, in all contracts relating to the construction of the Project and all such other contracts subject to such regulations, the 'Federal Labor Standards Provisions' clause. The Owner shall comply with the procedures set out in HUD Handbook 1344.1, 'Federal Labor Standards Compliance in Housing and Community Development Programs', as amended, which is incorporated into this Agreement by this reference, as if set forth in full.

4. Use of Debarred, Suspended or Ineligible Contractors or Subrecipients. Assistance provided under the Agreement shall not be used directly or indirectly to employ, award contracts, or otherwise engage the services of, or fund any contract or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

5. Nondiscrimination Requirements. The Owner is subject to all applicable requirements of the following Acts, promulgations and regulations with respect to its activities under this Agreement:

5.1 Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the regulations issued pursuant thereto (24 CFR Subtitle A, Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. Where the federal financial assistance is to provide or is in the form of personal property or real property interest or structures thereon, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, via the instrument effecting any disposition by the applicant or transferee, in the case of a subsequent transfer, of such real property, structures or improvements thereon, or interest therein, to require a covenant running with the land assuring nondiscrimination for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the applicant retains ownership or possession of the property, whichever is longer. Under this assurance the United States shall have the right to seek its judicial enforcement. The Owner is required to take all measures necessary to effectuate this Title in the manner set forth in Section 1.5 of the above-mentioned regulation.

5.2 Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and requiring action to affirmatively further fair housing in the sale, lease or rental of housing, the financing of housing, and the provision of brokerage services within the jurisdiction of the Town.

5.3 Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR Part 570.602), which provide that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from

participation in, be denied the benefit of, or be subjected to discrimination under, any program or activity funded in whole or in part with Title I funds.

5.4 Executive Order 11063, as amended, and the regulations issued pursuant thereto (24 CFR Part 107) which require that all actions necessary and appropriate be taken to prevent discrimination because of race, color, creed, or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the federal government, or provided with federal assistance by HUD, and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to grants insured, guaranteed or purchased by HUD.

6 Equal Employment Opportunity. During the course of the planning, design, and construction of the Project, and during subsequent operation of the Project, the Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Owner shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such affirmative action shall pertain to, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and the selection for training, including apprenticeship. The Owner shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Town and/or HUD setting forth the provisions of this nondiscrimination clause. The Owner shall state, through such nondiscrimination clause, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. Except as otherwise provided for in Parts II, III and IV of Executive Order 11246, dated September 24, 1965, as amended, and in attendant Code of Federal Regulation provisions, the Owner shall require to be included in each contract entered into by the Owner and modification thereof, if not included in the original contract, the 'Equal Opportunity' clause contained in Section 202 of Executive Order 11246 (48 CFR 52.222-26). The Owner agrees that it shall assist and cooperate actively with the Town, HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Town, HUD and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Town and HUD in the discharge of their primary responsibilities for securing compliance. The Owner agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

7. Federal Law. The Owner shall conform to the Act (and any amendments to it), federal regulations and guidelines now existing or hereafter enacted pursuant to the Act, terms of the HOME Program Agreement between HUD and the Town now or hereafter in effect, and

regulations now or hereafter enacted by Town to facilitate its administration of the HOME Program, and any other statute regulation or guideline applicable to the HOME Program. Owner shall become familiar with the appropriate statutes, regulations and guidelines governing the HOME Program.

8. Funds for Religious Purpose. No federal funds may be expended for the design, construction, operation, or maintenance of any facility to be used for sectarian instruction or as a place for religious worship, except in situations where such use is incidental and does not favor one religious group over another.

9. Prohibited Interest of Officials and Employees. No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from it. No member, officer or employee of Town, or its designees or agents, no member of Town or any other public official who exercises any functions or responsibilities with respect to federal funds or any other assistance program during his tenure, or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Agreement. The Owner shall incorporate or cause to be incorporated, a provision prohibiting such interest in all contracts or subcontracts, relating in any manner to this Agreement. Additionally, no officer, agent, consultant, or employee of the Owner may live in the Project, except as set forth in 24 CFR 92.356(f).

10. Rehabilitation Act of 1973 and Americans with Disabilities Act. This Agreement is subject to the provisions of Section 503 and 504 of the Rehabilitation Act of 1973 (PL 930112), 29 USC 706, and attendant regulations at 24 CFR, Part 8, which provide that no otherwise qualified, disabled individual shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance. This Agreement is also subject to The Americans with Disabilities Act of 1990 (amended), 42 USC 12101, et seq. The Owner shall cause or require to be inserted in full, in all contracts subject to such regulations, the clause, or any modification thereof, set forth in Exhibit A, attached hereto.

11. Non-Discrimination Because of Age. This Agreement is subject to the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94-135) and attendant Code of Federal Regulations at 48 CFR, Part 22, Subpart 22.9. That Act sets forth that, except as otherwise provided, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

12. 'Section 3' Training, Employment, and Business Opportunities. This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u) as amended, HUD regulations issued pursuant thereto at 24 CFR 135, and any applicable rules and orders of HUD issued thereunder. The Owner shall cause or require to be inserted in full in all contracts and subcontracts for work financed, in whole or in part, with assistance provided under this Agreement the Section 3 clause, or any modification thereof, set forth in Exhibit B, attached.

13. Women- and Minority-Owned Business Enterprises. The Owner agrees to abide by the requirements of Executive Orders 11625, 12432 and 12138, the HUD regulations issued pursuant thereto at 41 CFR Part 24, 41 CFR Subpart 1-1.13, and any applicable rules and orders of HUD. The foregoing require the maximum practicable opportunity to participate, in contracts funded in whole or in part with federal funds, be provided to women- and minority-owned business enterprises, as subcontractors and suppliers to contractors performing work, or rendering services as prime contractors or subcontractors, under federally-funded procurement contracts. The Owner shall cause or require to be inserted in full in all contracts in amounts which may exceed \$10,000 (except for contracts for services which are personal in nature) the Utilization of Minority Business Enterprises clause, or any modification thereof, set forth in Exhibit C, attached.

14. Affirmative Action for the Vietnam-Era Veterans. The Owner shall comply with 48 CFR, Chapter 1, Subpart 22.13 and shall take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based on disability or veteran's status in all employment practices such as employment, upgrading, demotion, transfer, recruitment, advertising, layoff, or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Owner shall cause or require to be inserted in full in all contracts or agreements of Ten Thousand Dollars (\$10,000) or more relating to this Agreement the 'Affirmative Action for Special Disabled and the Vietnam Veterans Provisions' clause, or any modification thereof, set forth in Exhibit D, attached.

15. Lead-Based Paint. This Agreement is subject to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821, et seq.) and its implementing regulations at 24 CFR Part 35.

16. Environmental Considerations. The Town and the Owner desire to assure that the policies of the National Environmental Policy Act of 1969 (NEPA), as amended, and the California Environmental Quality Act of 1970 (CEQA), as amended, are most effectively implemented, Town shall comply with HUD Environmental Review Procedures (24 CFR Part 58) leading to certification of release of funds for particular projects, and the CEQA review procedures (Title 14, Section 15000 et seq. of the California Administrative Code) in connection with the Project.

17. Clean Water and Air. This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., Executive Order 11738, dated September 10, 1973, and the regulations of the Environmental Protection Agency at 40 CFR Part 15, as amended.

18. The Owner shall cause or require to be inserted in full in all contracts and subcontracts with respect to any nonexempt (exceed \$100,000, or involve a facility the subject of a conviction under the Clean Air Act, or the Federal Waste Pollution Control Act, and listed by the Environmental Protection Agency, or not otherwise exempt) transaction, the clause set out in 48 CFR 52.223-2.

19. The Owner shall also cause or require to be inserted in full the certification set forth in 48 CFR 52.223-1, in each solicitation and resulting contract and contracts it awards without a solicitation.

20. The Owner shall not use any funds under this Agreement for a facility which has a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

21. Housing Requirements. At all times prior to the Owner's conveyance of the Property, or any portion thereof, to third party(ies), the Owner shall comply with all applicable provisions of federal regulations for the residential units within the Project (all units must comply with federal regulations whether or not funded with federal subsidies) including, but not limited to, the following:

(a) Housing Quality Standards as defined by 24 CFR 882.109, local code requirements, local zoning ordinances and the Model Energy Code referred to in 24 CFR 92.251.

(b) The affordability requirements for a period of forty-five (45) years after the Certificate Date. Owner shall also comply with the affordability requirements of 24 CFR 92.252 for a period of twenty (20) years after the Certificate Date, a HOME program requirement.

22. Documentation and Record Keeping.

22.1 Records to be Maintained. The Owner shall maintain all records required by the federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this Agreement. Such records include, but are not limited to:

- (a) Records providing a full description of each activity undertaken;
- (b) Records demonstrating that each activity undertaken meets one of the National Objectives of the Section 108 program;
- (c) Records required to determine the eligibility of activities;
- (d) Records documenting compliance with fair housing and equal opportunity components of the Section 108 program;
- (e) Financial records as required by 24 CFR Part 570.50;
- (f) Other records necessary to document compliance with Subpart K of 24 CFR 570; and
- (g) Records establishing the availability of 'covered positions' to low and moderate income Town of Apple Valley residents.

22.2 Record Retention. As a condition of receiving federal financial assistance under this Agreement, the Owner shall comply with 24 CFR 85.42, “Retention and Access Requirements for Records.” Any agreement between the Owner and/or its independent auditor shall provide for access, during normal business hours, to the independent auditor’s work papers, by federal, state, and Town auditors, or their authorized agents. The Town’s independent auditor shall retain, for review purposes, audit work papers for five (5) years from date of audit completion, or until three (3) years after all audit-related issues are resolved, whichever occurs later. The Town shall maintain all records related to this Agreement for five (5) years from the Certificate Date.

22.3 Financial-Management System. The Owner shall maintain a financial-management system which complies with 24 CFR 85.20, “Standards for financial management systems,” except paragraph (a) thereof.

22.4 Payment Procedure. The Owner shall comply with the methods and procedures for payment outlined in 24 CFR 85.21, “Payment.”

22.5 Procurement and Allowable Costs. The Owner shall comply with the requirements and standards of 24 CFR 85.36, “Procurement” [except paragraph (a)], and 24 CFR 85.22, “Allowable Costs.”

22.6 Subawards and Monitoring. The Owner shall comply with the standards and requirements of 24 CFR 85.35, “Subawards to Debarred and Suspended Parties”; and 24 CFR 85.40, “Monitoring and Reporting Program Performance” [except paragraphs (b) through (d) and paragraph (f)]. The Town has the right, but not the obligation, to monitor and supervise the administration and implementation of the Project to ensure compliance with the requirements of federal laws and regulations as they now exist or hereinafter amended.

22.7 Enforcement. The Owner shall comply with the standards and requirements of 24 CFR 85.43, “Enforcement,” and 24 CFR 85.44, “Termination for Convenience.”

22.8 Collections. The Owner shall comply with the standards and requirements of 24 CFR 85.52, “Collection of Amounts Due.”

23. Disallowances and Adjustments. The Owner shall account to Town for any and all federal funds expended by the Owner, or its officer, employee, agent, or representative, whether or not such officer, employee, agent or representative was acting within the scope of his or her employment. The Owner shall repay Town, on demand, the full amount of any improperly expended funds, and shall comply with requirements of 24 CFR 85.51, “Later Disallowances and Adjustment.” Town may retain any funds of the Owner in the Town’s possession to liquidate (in whole or in part) the debt resulting from any such improper expenditure.

24. Town Withholding of Funds. The Town may withhold funds from the Owner if the Owner is not complying with: the federal statutes or regulations relating to federal funds regulations thereunder, the terms of the HOME program from the federal government to the Town of Apple Valley relating to use of federal funds, the terms of this Agreement, or any other

statute or regulation applicable to this Agreement. Should the Town become subject to any penalties because failure by the Owner, or their its agent, to comply with all applicable federal, state, and local laws and regulations, the Owner shall be solely liable for any such penalties and shall fully reimburse the Town for any payments made or funding lost as a result.

25. Political Activity. The Owner shall expend no Federal Funds to finance any political activity in contravention of the Hatch Act (Chapter 15 of Title 5 of the United States Code).

26. Lobbying. The Owner certifies, to the best of its knowledge and belief, no Federally-appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

26.1 If funds, other than federally-appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Owner shall complete and submit, in accordance with its instructions, Standard Form-LLL, "Disclosure Form to Report Lobbying."

27. Reversion of Assets. The Owner shall comply with federal property management regulations and standards in accordance with 24 CFR 570.503 "Reversion of Assets" and 24 CFR Part 84.

EXHIBIT A
To
HOME Program Requirements

Americans with Disabilities Act of 1990

HOME program contractors and subcontractors agree to abide by the requirements of the Americans with Disabilities Act of 1990, Public Law 101-336, and any regulations issued pursuant thereto, which prohibits, at Title I thereof, discrimination by any employer, employment agency, or labor organization against any qualified individual with a disability in regard to any term, condition, or privilege of employment; makes applicable, at Title II thereof, the prohibition against discrimination on the basis of disability to all programs, activities and services provided or made available by state and local agencies or instrumentalities or agencies thereof, or by public entities that provide public transportation; prohibits, at Title III thereof, disabilities discrimination by privately operated public accommodations and in public transportation services provided by private entities; and which, at titles IV and V thereof, makes further provision against discrimination against disabled persons.

EXHIBIT B
TO
HOME Program Requirements

Section 3 Clause

TRAINING EMPLOYMENT AND BUSINESS OPPORTUNITY

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 Clause):

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

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

C. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

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

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require

employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

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

EXHIBIT C
TO
HOME Program Requirements

**UTILIZATION OF WOMEN AND
MINORITY BUSINESS ENTERPRISES**

(a) It is the policy of the Town of Apple Valley that women and minority owned business enterprises shall have the maximum practicable opportunity to participate in the performance of Town of Apple Valley contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontractors to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "Minority or Women's Business Enterprise" means a business, at least 51% of which is owned by minority group members or women; in the case of publicly-owned businesses, at least 51% of the stock is owned by minority group members or women. For the purpose of this definition, minority group members are Hispanic/Latino, Black/African American, Asian, American Indian or Alaska Native, and Native Hawaiian or Other Pacific Islander. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

EXHIBIT D
TO
HOME Program Requirements

**AFFIRMATIVE ACTION FOR DISABLED VETERANS AND
VETERANS OF THE VIETNAM ERA
48 CFR 52.222-35 - April 1998**

(A) Definitions.

As used in this clause -- All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands. Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "Recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who --

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(B) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as -- (i) Employment; (ii) Upgrading; (iii) Demotion or transfer; (iv) Recruitment; (v) Advertising; (vi) Layoff or termination; (vii) Rates of pay or other forms of compensation; and (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(C) Listing openings.

(1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is [[Page 138]] required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(D) Applicability.

This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(E) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam Era.

(F) Noncompliance.

If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(G) Subcontracts.

The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

Alternate I (APR 1984). As prescribed in 22.1308(a)(2), add the following as a preamble to the clause: Notice: The following term(s) of this clause are waived for this contract: [List term(s)]. [48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990; 63 FR 9059, Feb. 23, 1998]

EXHIBIT H TO
OWNER PARTICIPATION AGREEMENT
(HAPPY TRAILS VILLAS)

Marketing Program

1. Prominent Visibility on Highway 18
2. Viral Advertising through Town, School District, Chamber of Commerce, and Churches
3. Coverage in Local Newspapers, Radio, and Television
4. Viral Advertising through local restaurants, business, and perhaps real estate brokers
5. Short Term Lease of a Billboard on Interstate-15
6. Announcements at Local Credit Unions and Banks
7. Building Industry Association Coverage

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

Attention: Town Manager

EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE SECTION 27383

Exempt from Recording fee
pursuant to Gov't Code § 27383

(Space above for Recorder's use)

**REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE CONDITIONS,
COVENANTS AND RESTRICTIONS**

by and between the

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

and

**AVHTV, LP,
a California limited partnership**

[Dated as of June 22, 2010 for reference purposes only]

21-60

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS FOR OWNER-OCCUPIED PROPERTY (“Regulatory Agreement”) is dated as of June 22, 2010, for reference purposes only, and is by and between (i) the TOWN OF APPLE VALLEY (“Town”), a municipal corporation; and (ii) AVHTV, LP, a California limited partnership.

RECITALS

A. The Town and the Owner have entered into that certain agreement entitled: “Owner Participation Agreement (Happy Trails Villas) (“Agreement”) dated as of June 22, 2010.

B. Pursuant to the Agreement, the Owner will acquire and complete construction of a thirty-four (34) unit (“Units”) condominium or townhome project commonly known as the Happy Trails Villas (“Project”), of which all thirty four (34) Units shall be available at an affordable sales price. The Project shall be constructed on that real property (“Property”) legally described on the attached Exhibit A and commonly known as Happy Trails Villas, generally located at Highway 18 and Kiowa Road within the Town of Apple Valley, California.

C. The Owner is willing to enter into this Regulatory Agreement to assure the Town of the Restricted Units for the purposes of increasing and improving the community’s supply of very low-, low- and moderate-income housing.

D. Under the provisions of the Neighborhood Stabilization Program authorized under Title III of Division B of the Housing and Economic Recovery Act, 2008, the Town is required to use NSP funds as emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties for the benefit of individuals and families whose income does not exceed 120 percent of AMI.

E. Under the provisions of the Home Investment Partnerships Program (“HOME”) of the U.S. Department of Housing and Urban Development (“HUD”), 24 CFR Part 92, the Town administers HOME funds received by the Town to be used for the purposes of producing affordable housing, or as otherwise approved by HUD.

F. The Owner has requested that the Town provide NSP and HOME funds, in the form of grants, to assist in the acquisition and development of the Project.

G. The Owner has agreed that, in return for financial assistance from the Town, the Owner shall acquire, rehabilitate, and sell the Restricted Units, to qualified individuals and households of low and moderate income.

H. As a condition to the willingness of the Town to provide such financial assistance to the Town for the benefit of the Owner and the Project, the Owner has agreed to make available for sale all thirty-four (34) Units within the Project to individuals whose income does not exceed the maximum income allowable for the subject Unit, as follows:

HOME Low and Moderate Income Units. Eighteen (18) of the Units shall be HOME Low and Moderate Income Units reserved for “low and moderate income” Qualified Households, as defined pursuant to the HOME regulations, to be available at an Affordable Housing Cost for “low and moderate income” households, as determined pursuant to HOME regulations. Persons and families purchasing these eighteen (18) Units shall have an annual income that does not exceed eighty percent (80%) of AMI, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

CRL Low Income Units. Eight (8) of the Units shall be reserved for “low income” Qualified Households, as defined pursuant to Section 50079.5 of the CRL, to be available at an Affordable Housing Cost for “low income” households, as determined pursuant to CRL Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development from time to time. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed eighty percent (80%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

Moderate Income Units. Eight (8) of the Units shall be reserved for “moderate-income” Qualified Households, as defined pursuant to Section 50093 of the CRL, to be available at an Affordable Housing Cost for “moderate income” households, as determined pursuant to CRL Section 50052.5. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed one hundred and twenty percent (120%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

The Units shall be affordable to Qualified Households at an Affordable Sales Price for a period of not less than forty five (45) years.

To facilitate the same, the Owner is willing to enter into certain restrictions upon the ownership and operation of the Project which will bind the Project and the Owner, its successors and assigns, for the entire term of this Regulatory Agreement. The purpose of this Regulatory Agreement is to create such easements, conditions, covenants, restrictions, liens, servitudes, and charges in favor of the Town upon and subject to which the Project shall be occupied, owned, maintained, held, sold, and conveyed. The provisions of this Regulatory Agreement shall run with the Property, and shall inure to and bind any successors-in-interest of the Owner. Each of the provisions of this Regulatory Agreement is imposed upon the Project as mutual and reciprocal equitable servitudes in favor of each and every other portion of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth in this Regulatory Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Owner hereby agree as follows:

DEFINITIONS AND INTERPRETATION

6.17 Definitions. Capitalized terms used herein shall have the following meanings unless the context in which they are used clearly requires otherwise.

6.17.1 “Adjusted Family Income” means the anticipated total annual income (adjusted for family size) of each individual or family residing or treated as residing in the unit as calculated in accordance with Treasury Regulation 1.167(k) - 3(b)(3) under the United States Internal Revenue Code, as adjusted, based upon family size in accordance with the household income adjustment factors adjusted and amended from time to time, pursuant to Section 8 of the United States Housing Act of 1937, as amended, and calculated pursuant to the income qualification criteria attached hereto as Exhibit B of this Regulatory Agreement.

6.17.2 “Affordable Housing Cost” means, as applicable, a sales price for the Units in compliance with the NSP and with California Health and Safety Code Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development from time to time, or a sales price in compliance with the HOME Program requirements for the HOME Restricted Units.

6.17.3 “HUD Median Income” shall mean the median income adjusted by actual household size as published annually by HUD for San Bernardino County.

6.17.4 “Moderate-Income Occupant” means a household earning no more than one hundred twenty percent (120%) of the median income for a household of the size of a qualified purchaser household living in San Bernardino County as set forth in the regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, or its successor statute.

6.17.5 “Property” is the owner-occupied, residential units located within the Town of Apple Valley (as described in Exhibit A), together with structures, improvements, equipment, fixtures, and other personal property owned by the Owner and located on or used in connection with all such improvements and all functionally related and subordinated facilities.

6.17.6 “Qualified Household” shall mean and refer to persons and families that: (1) reside in the Unit; and (2) whose annual income, at the time of purchase of the Unit, does not exceed the maximum annual income permitted for the subject Unit as follows:

HOME Low Income Units. Eight (8) of the Units shall be HOME Low Income Units reserved for low income Qualified Households, as defined pursuant to the HOME regulations, to be available at an Affordable Housing Cost for low income households, as determined pursuant to HOME regulations. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed eighty percent (80%) of AMI, adjusted for family size in accordance with adjustment factors

adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

CRL Low Income Units. Eight (8) of the Units shall be reserved for low income Qualified Households, as defined pursuant to Section 50079.5 of the CRL, to be available at an Affordable Housing Cost for low income households, as determined pursuant to CRL Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development from time to time. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed eighty percent (80%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

Moderate Income Units. Eighteen (18) of the Units shall be reserved for moderate-income Qualified Households, as defined pursuant to Section 50093 of the CRL, to be available at an Affordable Housing Cost for moderate income households, as determined pursuant to CRL Section 50052.5. Persons and families purchasing these eight (18) Units shall have an annual income that does not exceed one hundred and twenty percent (120%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

Unless otherwise prohibited by law or regulation, including the HOME or NSP regulations, Qualified Households, as that term is used in this Agreement, shall include no less than two (2) person households at the time of purchase of a Unit.

6.17.7 “Related Agreements” shall mean that certain 2010 Owner Participation Agreement (Happy Trails Villas) dated as June 22, 2010 between Owner and Town and all such other agreements referenced therein and in connection therewith.

6.17.8 “Project” shall mean the multi-unit residential housing project element to be constructed on the Property pursuant to the Agreement and maintained on the Property for the full term of this Regulatory Agreement.

6.17.9 “Unit” or “Units” means a Unit or Units that are subject to the occupancy restrictions set forth in this Regulatory Agreement.

6.17.10 “Successor-in-Interest” shall mean and refer to the person, family or household who may acquire the Property and/or any Unit from the Owner or a Qualified Household, at any time during the term of this Regulatory Agreement by purchase, assignment, transfer or otherwise. The Successor-in-Interest shall have an income level for the twelve (12) months prior to the date on which the Successor-in-Interest acquires the Property which does not exceed the maximum Adjusted Family Income for a Qualified Household for that Unit. Upon acquisition of the Property, the Successor-in-Interest shall be bound by each of the covenants, conditions and restrictions of the Regulatory Agreement.

6.17.11 “Town” shall mean the Town of Apple Valley.

6.17.12 “Town Assistance” shall mean the Town Loan granted to Owner by Town to restrict the Units to Qualified Households as set forth in this Regulatory Agreement.

6.17.13 “Unit” means one residential dwelling unit within the Project.

6.18 Rules of Construction.

6.18.1 The singular form of any word used herein, including the terms defined herein shall include the plural and vice versa. The use herein of a word of any gender shall include correlative words of all genders.

6.18.2 Unless otherwise specified, references to Articles, Sections, and other subdivisions of this Regulatory Agreement are to the designated Articles, Sections, and other subdivisions of this Regulatory Agreement as originally executed. The words “hereof,” “herein,” “hereunder,” and words of similar import shall refer to this Regulatory Agreement as a whole.

6.18.3 All of the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Regulatory Agreement and to sustain the validity hereof.

6.18.4 Headings or titles of the several articles and sections hereof and the table of contents appended to copies hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of the provisions hereof.

ARTICLE 7.

ONGOING PROJECT OBLIGATIONS

7.1 Binding for Term. The provisions of this Regulatory Agreement shall apply to the Project throughout the entire term hereof, for a period of forty-five (45) years, commencing as of the date of recordation of a Certificate of Completion for the Project.

7.2 General Use Restrictions. The Units on the Property will be used only for purposes consistent with this Regulatory Agreement, subject to the affordability and income restrictions set forth herein. In addition to the covenants set forth in Section 14.7 of the Agreement, which are incorporated into this Regulatory Agreement by this reference in their entirety, the following covenants constitute obligations of the Owner and all of its voluntary and involuntary successors, assigns, heirs and transferees, touch and concern the Property and constitute covenants and servitudes running with and upon the Property and Project and every portion thereof.

7.3 Town Assistance. In consideration of this Regulatory Agreement and in order to restrict the Units to Qualified Households, the Town shall provide the Town Assistance pursuant to the terms of the Agreement.

7.4 Owner-Occupied Property. Owner represents, warrants, and covenants that the Property shall contain thirty-four (34) owner-occupied residential units for Qualified Households, as further set forth herein, throughout the term of this Regulatory Agreement. Owner also represents, warrants, and covenants that the Property will be conveyed only to Qualified Households at an Affordable Housing Cost for that Unit. The Owner and any Successor-in-Interest shall not lease any Unit on the Property. Any lease in violation of this Regulatory Agreement is prohibited, and shall be a default under this Regulatory Agreement and any security of the Town recorded against the Property and/or any Unit.

7.5 Specific Enforcement of Affordability Restrictions. Owner hereby agrees that specific enforcement of Owner’s agreement to comply with the allowable housing costs and occupancy

restrictions of this Article 2 is one of the reasons for the Town's assistance to Owner and that, in the event of Owner's breach of such requirements, potential monetary damages to the Town, would be difficult, if not impossible, to evaluate and quantify. Therefore, in addition to any other relief to which the Town may be entitled as a consequence of the breach hereof, Owner agrees to the imposition of the remedy of specific performance against it in the case of any event of default by Owner in complying with the allowable costs, occupancy restrictions or any other provision of this Article 2.

7.6 Restrictions on Sale of Property.

7.6.1 The Owner for itself, its heirs, successors and assigns, hereby covenants and agrees that during the term of this Regulatory Agreement below the Units on the Property shall be reserved for sale, use and occupancy by, and used and occupied by Qualified Households, including as a Successor-In-Interest, at an Affordable Housing Cost, as follows:

HOME Low and Moderate Income Units. Eighteen (18) of the Units shall be HOME Low and Moderate Income Units reserved for "low and moderate income" Qualified Households, as defined pursuant to the HOME regulations, to be available at an Affordable Housing Cost for "low and moderate income" households, as determined pursuant to HOME regulations. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed eighty percent (80%) of AMI, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower families, and calculated pursuant to the income qualification criteria set forth in the attached Exhibit B.

CRL Low Income Units. Eight (8) of the Units shall be reserved for "low income" Qualified Households, as defined pursuant to Section 50079.5 of the CRL, to be available at an Affordable Housing Cost for "low income" households, as determined pursuant to CRL Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development from time to time. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed eighty percent (80%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families, and calculated pursuant to the income qualification criteria set forth in the attached Exhibit B.

Moderate Income Units. Eight (8) of the Units shall be reserved for "moderate-income" Qualified Households, as defined pursuant to Section 50093 of the CRL, to be available at an Affordable Housing Cost for "moderate income" households, as determined pursuant to CRL Section 50052.5. Persons and families purchasing these eight (8) Units shall have an annual income that does not exceed one hundred and twenty percent (120%) of the area median income, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families, and calculated pursuant to the income qualification criteria set forth in the attached Exhibit B.

7.6.2 The Owner, for itself, its heirs, successors and assigns, further covenants and agrees that, during the term of this Regulatory Agreement, Town shall have the right as provided in this Section 2.6.2 to verify that each proposed Successor-In-Interest of the Owner in the Restricted Units on the Property satisfies the income requirements and Affordable Housing Cost limitations as set forth above.

7.6.3 The Owner, for itself, its successors and assigns, hereby covenants and agrees that during the term of this Regulatory Agreement Owner shall not sell, transfer or otherwise dispose of the Property (or any interest therein) or any Unit to a Successor-In-Interest without first giving written notice to Town as provided herein. Owner shall send a written notice to Town as provided in Section 5.1 of the intention of the Owner to sell the Property to a Successor-In-Interest which includes the following true and correct information (“Notice of Intention”):

- (i) name of the proposed Successor-In-Interest (including the identity of all persons in the household of the Successor-In-Interest proposing to occupy the Property;
- (ii) copies of State and federal income tax returns for the Successor-In-Interest for the calendar year preceding the year in which the Notice of Intention to sell the Property is given to Town and any other information required in the attached Exhibit B;
- (iii) resale price of the Property payable by the Successor-In-Interest, including the terms of all purchase money mortgage financing to be assumed, provided or obtained by the Successor-In-Interest, escrow costs and charges, realtor broker fees and all other resale costs or charges payable by either the Owner or the Successor-In-Interest;
- (iv) name, address, and telephone number of the escrow company which shall coordinate the transfer of the Property from the Owner to the Successor-In-Interest;
- (v) appropriate mortgage credit reference for the Successor-In-Interest with a written authorization signed by the Successor-In-Interest authorizing Town to contact each such reference; and
- (vi) such other relevant information as Town may reasonably request.

7.6.4 Within forty (40) days following the receipt of the Notice of Intention, Town shall provide the Owner with either a preliminary confirmation of approval or a preliminary rejection of approval in writing of the income and household occupancy qualifications of the Successor-In-Interest. Town shall not unreasonably withhold approval of any proposed sale of the Property to a Successor-In-Interest who satisfies the Adjusted Family Income and the Affordable Housing Cost requirements for occupancy of the Property and for whom the other information as described in the requirements for the Notice of Intention has been provided to Town. In the event that Town may request additional information relating to the confirmation of the matters described in the Notice of Intention, the Owner shall provide such information to Town as promptly as feasible.

7.6.5 Upon its final confirmation of approval of the Adjusted Family Income and Affordable Housing Cost eligibility of the Successor-In-Interest to acquire the Property, Town shall deliver a written acknowledgment and approval (“Notice of Town Concurrence”) of the resale of the Property to the Successor-In-Interest in recordable form to the escrow holder referenced in Section 2.6.3(iv) below, and thereafter the Successor-In-Interest may acquire the Property subject to the satisfaction of the following conditions:

- (i) the recordation of the Notice of Town Concurrence executed by the Successor-In-Interest and Town at the close of the resale escrow;
- (ii) the escrow holder shall have provided Town with a copy of the customary form of the final escrow closing statement of the Owner and the final escrow closing statement for the Successor-In-Interest; and
- (iii) the other conditions of the resale escrow as established by the Owner and Successor-In-Interest shall have been satisfied.

7.7 Maintenance, Repair, Alterations. The Owner shall maintain and preserve the Project in good condition and repair, and in a prudent and businesslike manner. Except upon the prior written consent of the Town, the Owner shall not remove, demolish or substantially alter any of the improvements on the Project other than to make repairs of a nonstructural nature in the ordinary course of business which shall serve to preserve or increase the value of the Project. The Owner shall complete promptly and in a good and workmanlike manner any improvements which may now or hereinafter be constructed on the Project and promptly restore in like manner any improvement which may be damaged or destroyed thereon from any cause whatsoever and pay when due all claims for labor performed and material finished therefor.

The Owner shall comply with all laws, ordinances, rules, regulations, covenants, conditions, restrictions, and orders of any governmental authority now or hereafter affecting the conduct or operation of the Project and of the Owner’s business on the Project or any part of this Regulatory Agreement or requiring any alteration or improvement to be made thereon.

The Owner shall not commit, suffer, or permit any act to be done in, upon, or to the Project or any part of the Property in violation of any such laws, ordinances, rules, regulations, or orders. The Owner shall not commit or permit any waste or deterioration of the Project and shall keep and maintain abutting grounds, sidewalks, roads, parking, and landscaped areas in good and neat order and repair. The Owner shall not take, or fall to take, any action which if taken, or not so taken, would increase in any way the risk of fire or other hazard occurring to or affecting the Project. The Owner shall do any and all other acts which may be reasonably necessary to preserve or protect the value of the Project.

The Owner hereby agrees that the Town may conduct from time to time through representatives, upon reasonable notice, on-site inspections and observation of: (i) the maintenance and repair of the Project, including a review of all maintenance and repair programs and practices and all reports and records pertaining thereto, including records of expenditures relating thereto; and (ii) such other facilities, practices, and records of the Owner relating to the Units as the Town reasonably deem to be necessary or appropriate in order to monitor the Owner’s compliance with the provisions of this Regulatory Agreement or the Agreement.

7.8 Maintenance Deficiency. In the event that at any time during the term of this Regulatory Agreement 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 Owner in writing of the Maintenance Deficiency and give Owner thirty (30) calendar days from the date of such notice to cure the Maintenance Deficiency as identified in the notice. The words “Maintenance Deficiency” include 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 dwelling 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.

In the event Owner fails to cure or commence to cure the Maintenance Deficiency within the time allowed, the Town shall have the right to enter the Project (exterior areas only) and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity 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 4.3 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 Owner, Town shall have the right to enforce the lien in the manner as provided in this Section.

Graffiti which is visible from any public right-of-way which is adjacent or contiguous to the Project shall be removed by Owner 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; then in such event and without notice to Owner, Town shall have the right to enter the Project and remove the graffiti. Notwithstanding any provision of this Section to the contrary, any sum expended by Town for the removal of graffiti from the Project as authorized by this Section 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 Owner, Town shall have the right to enforce its lien in the manner as provided in this Section.

Subject to the lien of the senior lender for the Project, the parties hereto further mutually understand and agree that the rights conferred upon Town under this Section 4.3 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, 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 shall be a covenant running with the land for the term of this Regulatory Agreement 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 shall be deemed to preclude Owner 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.

ARTICLE 8.

TERM AND RECORDATION

8.1 Term of Regulatory Agreement and Related Agreements. This Regulatory Agreement shall remain in full force and effect for a period of forty-five (45) years from the date of recordation, which shall occur upon issuance of a Certificate of Completion for the Project, unless the Owner and the Town agree, in writing, to sooner terminate or extend this Regulatory Agreement.

8.2 Agreement to Record. Owner agrees that this Regulatory Agreement may be recorded in the real property records of San Bernardino County, California, and in such other places as the Town may reasonably request. This Regulatory Agreement shall be senior to all other liens, charges, or encumbrances upon the Property.

ARTICLE 9.

DEFAULT; REMEDIES

9.1 An Event of Default. Each of the following shall constitute an “Event of Default” by the Owner of this Regulatory Agreement:

9.1.1 Failure by the Owner to duly perform, comply with and observe any of the conditions, terms, or covenants of any agreement with the Town concerning the Property, or of this Regulatory Agreement, if such failure remains uncured thirty (30) days after written notice of such failure from the Town to the Owner in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the Owner fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period or notice requirement is specified under any other section of this Regulatory Agreement, then the specific provision shall control.

9.1.2 Any representation or warranty contained in this Regulatory Agreement or in any application, financial statement, certificate, or report submitted by Owner to the Town proves to have been incorrect in any material respect when made.

9.1.3 The condemnation, seizure, or appropriation of all or, in the opinion of the Town, a substantial part of the Property, except for condemnation initiated by the City or the Town.

9.1.4 The Owner shall have subordinated its interest in this Regulatory Agreement to other loans, mortgages, deeds of trust, and leases, liens and encumbrances that are placed on the Property hereafter, or any part thereof.

9.2 Specific Performance. The Town shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Owner to perform their obligations and covenants under

this Regulatory Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions hereof.

9.3 Action at Law; No Remedy Exclusive. The Town may take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Owner under this Regulatory Agreement or the Related Agreements. No remedy herein conferred upon or reserved by the Town is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Regulatory Agreement or the Related Agreements or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as the Town may deem expedient. In order to entitle the Town to exercise any remedy reserved to it in this Regulatory Agreement or the Related Agreements, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

9.4 Enforcement. Either party may exercise all rights and remedies available to it under California law with respect to any Event of Default of this Regulatory Agreement. Such remedies shall specifically include equitable remedies, including the right to enjoin a violation, as well as legal remedies, including the right to damages and/or reimbursement for expenditures undertaken in order to cure the default.

ARTICLE 10.

GENERAL PROVISIONS

10.1 Notice. All notices (other than telephone notices), certificates or other communications (other than telephone communications) required or permitted hereunder shall be sufficiently given and should be deemed given when personally delivered or when sent by telegram, or when sent by facsimile transmission (if properly confirmed in writing), or seventy-two (72) hours following mailing by registered or certified mail, postage prepaid, or twenty-four hours following transmission of such notice by express mail, Federal Express or similar carriers, addressed as follows:

If to the Town:

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

Attention: Town Manager

It to the Owner:

10.2 Relationship of Parties. Nothing contained in this Regulatory Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent limited or general partnership, or joint venture between the Town and the Owner or the Owner's agents, employees or contractors.

10.3 Non-Liability of City and Town Officials, Employees and Agents. No member, official, employee or agent of the City or the Town shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the Town or for any amount which may become due to the Owner or successor or on any obligation under the terms of this Regulatory Agreement.

10.4 Title of Parts and Sections. Any titles of the parts, sections or subsections of this Regulatory Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

10.5 Applicable Law; Venue. This Regulatory Agreement and the Related Agreements shall be interpreted under and pursuant to the laws of the State of California, without regard to its conflicts of laws principles.

Any action or proceeding pertaining to the interpretation or enforcement of this Regulatory Agreement, or which in any way arise from the existence of this Regulatory Agreement, shall be instituted and prosecuted in the appropriate state court in the County of San Bernardino, California. Owner hereby irrevocably waives, to the maximum legal extent, any statutory or common law rights which it may have to a change of venue to any other court or jurisdiction (including Federal District Court) for any reason whatsoever, including, without limitation, due to the fact that the Town or the City is or may be a party to this Agreement, or due to the fact that questions involving Federal laws or rights may be involved. Without limiting the generality of the foregoing, the Owner hereby irrevocably waives, to the maximum legal extent, any rights which it may have arising under California Code of Civil Procedure Section 394.

10.6 Severability. If any term, provision, covenant or condition of this Regulatory Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

10.7 Attorneys Fees. In the event of the bringing of an arbitration, action or suit by Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Regulatory Agreement or any other dispute between the Parties concerning this Regulatory Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees (collectively, the "Costs") incurred enforcing, perfecting and executing such judgment or award. For purposes of this Section 13.7, Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy

and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 13.7 shall survive any termination of this Regulatory Agreement.

10.8 Binding Upon Successors. This Regulatory Agreement shall be binding upon and inure to the benefit of the permitted heirs, administrators, executors, successors in interest and assigns of each of the parties, except that there shall be no transfer of the Project by the Owner without the prior written consent of the Town. Any reference in this Regulatory Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms hereof or under law.

10.9 Time of the Essence. In all matters under this Regulatory Agreement, time is of the essence.

10.10 Complete Understanding of the Parties. This Regulatory Agreement may be executed in multiple originals, each of which shall be deemed to be an original. This Regulatory Agreement and the attached Exhibits constitute the entire understanding and agreement of the parties with respect to the matters herein discussed, except as otherwise expressly set forth herein.

10.11 Burden and Benefit. The Town and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concerning the Property, and that Owner's legal interest in the Property is rendered less valuable thereby. The Town and Owner hereby declare their understanding and intent that the covenants, reservations, and restrictions set forth herein directly benefit the land (i) by enhancing and increasing the enjoyment and use of the Property by Qualified Households and (ii) by furthering the public purposes advanced by the City and the Town.

10.12 Third Parties Beneficiaries. The Redevelopment Agency of the Town of Apple Valley shall be an express third party beneficiary of this Regulatory Agreement, and shall have the express authority to exercise the rights of the Town hereunder. Except as set forth in the foregoing sentence, This Regulatory Agreement is intended solely for the benefit of Owner and Town and their respective permitted successors and assigns and no third party shall have any rights or interest(s) in this Regulatory Agreement. Nothing contained herein shall be deemed or construed to create an obligation on the part of the Town to any third party, nor shall any third party have a right to enforce against the Town any right that Owner may have under this Regulatory Agreement.

[Signatures on following pages]

SIGNATURE PAGE TO
REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS
FOR OWNER-OCCUPIED PROPERTY

“TOWN”

TOWN OF APPLE VALLEY , a California municipal
corporation

By: _____
Town Manager

ATTEST:

By: _____
Town Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
Town Counsel

SIGNATURE PAGE TO
REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS
FOR OWNER-OCCUPIED PROPERTY

“OWNER”

AVHTV, LP,
a California limited partnership

AOF/Golden State Community Development
Corporation, a California nonprofit

corporation

Its: General Partner

By: _____

Title: _____

APPLE VALLEY CATALYTIC HOUSING, LLC
a California limited liability company

Its: General Partner

By: _____

Title: _____

By: _____

Its: General Partner

**EXHIBIT A
TO
REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Happy Trails Villas)**

Legal Description of Property

The Property referred to in the Agreement is in the State of California, County of San Bernardino, and is described as follows:

Real property in the unincorporated area of the County of San Bernardino, State of California, described as follows:

LOT 161, TRACT NO. 2915, APPLE VALLEY RANCHOS UNIT NO. 2, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 39 OF MAPS, PAGES 69, 70 AND 71, RECORDS OF SAID COUNTY.
EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERAL RIGHTS AS RESERVED IN VARIOUS DEEDS OF RECORDS COVERING LOTS 126 TO 502 OF TRACT 2915, BOOK 39 PAGES 69 TO 71, INCLUSIVE, RECORDS OF SAID COUNTY, AS RESERVED IN DEED RECORDED JUNE 27, 2005 AS INSTRUMENT NO. 454763 OFFICIAL RECORDS.

APN: 3112-463-01

**EXHIBIT B
TO
REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Happy Trails Villas)**

**Town of Apple Valley
Income Qualification Criteria**

- A. Household gross income shall not exceed eighty percent (80%) of the Area Median Income limits based on family size. The most current income guidelines as published by the Department of Housing and Urban Development (HUD) must be used and are available at: <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/2010/ca.pdf>.
- B. Gross income will be calculated based on annual household income that includes the following criteria:
1. The income for all adult household members over the age of 18 who share the same dwelling unit or share in the ownership of the unit shall be considered in the total family income. Note: Income earned by *part-time* students over the age of 18 will be considered in calculating the total family income. Only the initial \$480 income earned by *full-time* students over the age of 18 will be considered. All amounts in excess of \$480 will not be considered in the total family income. Verification of part-time/full-time student status will be required from the school.
 2. Gross income is the full amount of income before taxes and any payroll deductions. All overtime, bonuses and commissions will be counted.
 3. For self-employed individuals, adjusted gross income is the net income from the operation of a business or profession, as calculated by averaging the net income indicated on their Federal income tax returns for the past three (3) years.
 4. Earned interest, dividends, and other net income of any kind are counted as part of the household gross income.
 5. Social security payments, income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar forms of periodic receipt of income are counted as part of the household gross income.
 6. Payments in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance is included in the computation of gross income. Food stamp value is not included in the income calculation.

7. Periodic and determinable allowances, such as alimony and child support payments will also be included in the computation of gross income.

8. All regular pay, special pay, and allowances of a member of the Armed Forces will be included as gross income.

9. Any other income that must be reported for Federal income tax purposes will be included.

10. Every source of income, taxed or untaxed, must be included in the income computation.

- C. The Applicant(s) will be required to provide signed Federal tax returns for the past three (3) years and verification of current income, as evidenced by copies of the three (3) most recent pay stubs. Third party verification is required.

Allowable Assets

The following will be considered assets in determining income eligibility:

- A. Cash savings, marketable securities, stocks, bonds, and other forms of capital investments other than Individual Retirement Accounts, KEOGH plans, or other retirement vehicles.
- B. Inheritances, cash lump sum insurance payments, settlements for personal property damage already received will be considered household assets.

Credit Standard

Units should be made available only to applicants with fair to good credit. If a bankruptcy and/or a foreclosure exist on an applicant's records, a waiting period of three (3) years may be required prior to approval of the applicant. In addition, the credit record(s) must not show substantial disregard for former or existing obligations.

**EXHIBIT C
TO
2010 OWNER PARTICIPATION AGREEMENT
NOTICE OF AFFORDABILITY RESTRICTIONS**

[Attached behind this cover page]

Recording Requested by
and When Recorded Return to:

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

Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice: Restrictions have been recorded with respect to the property described below (referred to in this Notice as the “Property”) which restrict the price and terms at which the Property may be sold or rented. These restrictions may limit the sales price or rents of the Property to an amount which is less than the fair market value of the Property. These restrictions limit the income of persons and households who are permitted to purchase and rent the Property.

Title of Document Containing Affordable Housing Restrictions:

2010 Owner Participation Agreement (Happy Trails Villas) referred to in this Notice as the “Affordable Housing Restrictions”) and the related Regulatory Agreement.

Parties to Affordable Housing Restrictions:

Town of Apple Valley, a municipal corporation (“Town”), and AVHTV, L.P., a California limited partnership (“Owner” or “Owner”).

The Affordable Housing Restrictions are recorded (*check one*)

- as Document No. _____, official records of San Bernardino County, on _____ ; or
- concurrently with this Notice, official records of San Bernardino County.

Legal Description of Property: _____

Street Address of Property: _____, **Unit No.** _____, _____, California.

Assessor’s Parcel Number of Property: _____

Summary of Affordable Housing Restrictions:

This Document restricts the sales price which may be charged for the sale of the ownership housing unit or units on the Property, as follows: _____.

This Document restricts the income level of the tenant or buyer of the Property, as follows: _____.

Term of Restrictions: 45 years, commencing on the date of recordation of the Regulatory Agreement and terminating on the 45th anniversary thereafter.

This Notice does not contain a full description of the details of all of the terms and conditions of the Affordable Housing Restrictions. You will need to obtain and read the Affordable Housing Restrictions to fully understand the restrictions and requirements which apply to the Property.

This Notice is being recorded and filed in compliance with Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed against the Town and the current Owner of the Property.

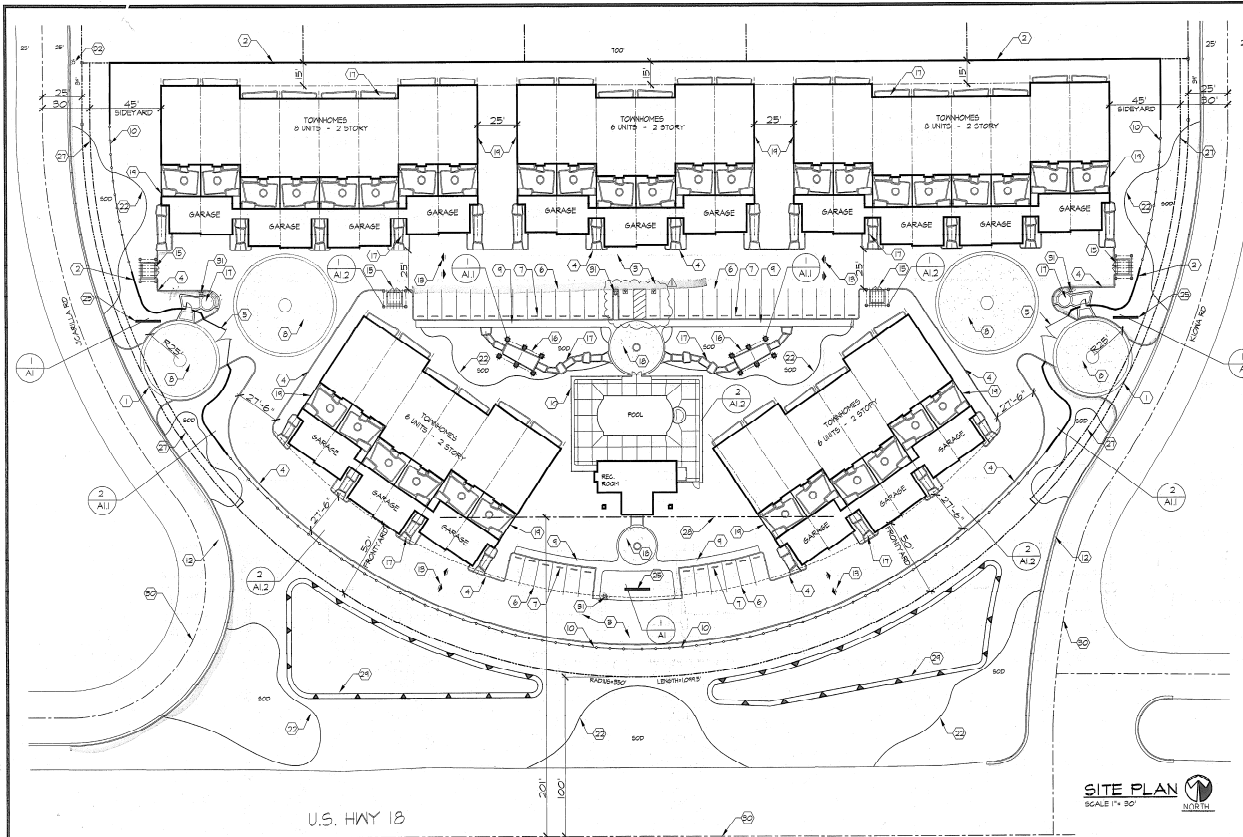
Dated: _____, 2010.

Town of Apple Valley

By: _____
Town Manager

ATTEST:

By: _____
City Clerk



PROJECT DATA
 84 UNIT TOWNHOME DEVELOPMENT
 82888
 HAPPY TRAIL VILLAS, LLC
 521 S. VERNON AVENUE
 GLENORA, CA 91741
 925 493-9119
 PROJECT ARCHITECT
 MICHAEL FORTINOS AIA
 1686 HWY 19 SUITE E
 APPLE VALLEY, CA 92501
 760 242-9500
 SITE ADDRESS
 HAPPY TRAIL
 APPLE VALLEY, CA 92501
 LEGAL DESCRIPTION
 APR. 812-469-01
 42119 IN
 TRACT 2119

ELECTRICITY: SOUTHERN CALIFORNIA EDISON CO.
 12559 HESPERIA ROAD
 VICTORVILLE, CA 92592
 (800) 442-4800

GAS: SOUTHWEST GAS CO.
 5411 MARIPOSA ROAD
 VICTORVILLE, CA 92592
 (760) 244-8250

TELEPHONE: VERIZON
 10568 LA PAZ ROAD
 VICTORVILLE, CA 92592
 (800) 773-9300

WATER: APPLE VALLEY RANCHOS WATER CO.
 2160 OGDEN RD.
 APPLE VALLEY, CA 92501
 760 247-4824

BUILDING DATA:
 USE: RESIDENTIAL
 OCCUPANCY: RESIDENTIAL
 CONSTRUCTION TYPE: CONCRETE
 FIRE SPRINKLING: YES
 BUILDING AREA:
 84 UNITS @ 2025 SF = 169,800 SF
 84 UNITS @ 850 SF = 71,400 SF
 REGISTRATION BLDG. = 1210 SF
 TOTAL BLDG. AREA = 177,210 SF
 BUILDING COVERAGES:
 1. 20 FEET
 2. 20 FEET
 3. 20 FEET
 MAX. HEIGHT:
 20 FEET
 PARKING REQUIRED:
 84 UNITS @ 2.00 SPACES
 168 SPACES
 PARKING PROVIDED:
 85 COVERED SPACES
 168 SPACES

SITE DATA:
 SITE AREA: 0.94 AC 40,842 S.F.
 LANDSCAPE AREA: 109,885 S.F.
 LANDSCAPE COVERAGES:
 1. 47%
 2. 56,888 S.F.
 PAVING AREA:
 2000
 POOL AREA/CONCRETE:
 4282 S.F.
 POOL AREA COVERAGES:
 2%

COMMON OPEN SPACE
 REQUIRED: 21842 S.F. X .30 = 65526 S.F.
 PROVIDED:
 65526 S.F.
 NOTE: FRONT SET BACKS NOT INCLUDED IN CALC. = 71702 S.F.

RECREATIONAL AMENITIES
 REQUIRED:
 84 UNITS X 300 SQ FT = 25,200 SQ FT
 PROVIDED:
 REC. ROOM = 1210 SQ FT
 POOL & DECKS = 5000 SQ FT
 BBQ/PICNIC GRABBOGS = 1000 SQ FT

SITE PLAN NOTES:
 1. 8" GRASS WALL (8" MAX. RETAINING) STUCCO TO MATCH BLDGS.
 2. 4" A.S. PAVING OVER COMPACTED NATIVE SOIL
 3. 8" HIGH CONCRETE CURB PER CITY STANDARD
 4. AUTOMATIC SPRINKLING SYSTEM PER PLAN
 5. 4" X 4" PARKING STALLS, STRIPE PER CITY STANDARD
 6. STAIRS CONCRETE, TYPICAL
 7. STAIRS CONCRETE, TYPICAL
 8. CONCRETE OPERATIONAL, HIGH-SALT FINISH
 9. 2" MIN. OVER MIN. POOL FINISH PER PLAN
 10. NOT USED
 11. LIGHT FIXTURES ARE NOT SHOWN UNLESS SPECIFICALLY NOTED
 12. PAINTED DIRECTIONAL ARROWS
 13. LIGHT FIXTURES PER ELECTRICAL DRAWINGS
 14. 8" HIGH GRASS TRIM ENCLOSED PER TOWN STANDARD
 15. SHADE TRELLIS IN FRONT TABLE (SEE SET) ALL
 16. FINISH FLOOR CONCRETE PAVERS
 17. RECEPTION SIGNAGE AND PRIVATE WALLS PER PLAN
 18. 1/2" PLANTER
 19. 1/2" PLANTER
 20. BRASS AREA
 21. ROCK DETAILING
 22. DRAINAGE COBBLER/ROCK V-DITCH CHANNEL
 23. ENTRY MONUMENT SIGN (SEPARATE PERMIT REQUIRED)
 24. WATER FEATURE
 25. 3" GRISS OF PAVEMENT
 26. NOISE IMPACT LIMIT LINE
 27. RETENTION DRAIN
 28. CENTER LINE OF ROAD
 29. 8" HIGH FENCE PER PLAN
 30. 8" HIGH FENCE PER PLAN



GEN.
POD
 CONTINUOUS ARCHITECTURE
 8800 Van Nuys, Apple Valley, CA 92507 / 760-244-8800 / FAX 760-244-8800

TOWN OF APPLE VALLEY
 APPROVED
 THESE PLANS AND SPECIFICATIONS
 APPROVED FOR THE TOWN OF APPLE VALLEY
 ON THE 15th DAY OF JULY 2016
 BY THE TOWN ENGINEER
 ALL FEES TO BE PAID TO THE TOWN ENGINEER

Happy Trail Villas
 Apple Valley, California
 92501

REVISION	DATE	BY	APP. BY
1	3/21/16	CITY COR.	
2	4/12/16	CITY COR.	
3	7/16/16	CITY COR.	

DRAWN BY: SA
 CHECKED BY:
 APPROVED BY:
 DATE: 11/03/16
 SHEET NO.: AI

