

ATTACHMENT C: Form of Regulatory Agreement

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

County of Napa  
County Administration Building  
1195 Third Street, Suite 310  
Napa, CA 94559  
Attention: Housing and Intergovernmental Affairs Director

No fee for recording pursuant to  
Government Code Section 27383

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**COUNTY CONVEYANCE AGREEMENT REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**Napa Pipe**

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of \_\_\_\_\_, by and between the County of Napa, a political subdivision of the State of California ("COUNTY"), and MidPen Housing Corporation, a California nonprofit public benefit corporation ("DEVELOPER"), with reference to the following facts.

**RECITALS**

A. The COUNTY and DEVELOPER have entered into a Conveyance Agreement ("Conveyance Agreement"), pursuant to which the COUNTY has agreed to convey to the Developer certain Property more particularly described in Exhibit A attached hereto (the "Property"). The DEVELOPER intends to construct an approximately \_\_\_\_\_ unit housing development on the Property, of which the COUNTY will restrict \_\_\_\_\_ units as affordable to households earning between \_\_\_% and 60% of area median income as determined by the United States Department of Housing and Urban Development for a \_\_\_\_\_ year period (the "Development", as further defined below in Section 1.1(j)). This Agreement, in conjunction with any other regulatory agreements between the DEVELOPER and providers of the Approved Financing, will ensure the Development's continuing affordability. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Conveyance Agreement.

B. On \_\_\_\_\_, the COUNTY's Board of Supervisors (the "Board") adopted Resolution \_\_\_\_\_, authorizing the Conveyance Agreement with the DEVELOPER on certain terms and conditions and authorizing the Chair of the Board (the "Chair") to execute all necessary documents to effect the regulatory requirements as approved by County Counsel and further authorizing the Chair to sign all necessary related transaction documents as required for ongoing future maintenance and monitoring responsibilities as approved by County Counsel.

THEREFORE, the COUNTY and the DEVELOPER hereby agree as follows.

## **ARTICLE 1 DEFINITIONS**

### **1.1     Definitions.**

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a)     "Actual Household Size" is the actual number of persons in the applicable household.

(b)     "Agreement" is this Regulatory Agreement and Declaration of Restrictive Covenants.

(c)     "Area Median Income" or "AMI" is the area the median income for households in Napa County, as established and periodically amended by HUD pursuant to Section 8 of the United States Housing Act of 1937, with adjustments for Actual Household Size or Assumed Household Size as specified in this Agreement.

(d)     "Assumed Household Size" shall have the meaning set forth in Section 2.2(c) below.

(e)     "Board" is defined in Recital B.

(f)     "Chair" is defined in Recital B.

(g)     "City" is the City of Napa, a municipal corporation.

(h)     "COUNTY" is as defined in the first paragraph of this Agreement.

(i)     "DEVELOPER" is as defined in the first paragraph of this Agreement.

(j)     "Development" is the Property and the approximately \_\_\_\_\_ rental housing units to be located on the Property as described in Recital A, as well as any additional improvements, and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(k)     "HUD" is the United States Department of Housing and Urban Development.

(l)     "Low Income Household" shall mean a household with an annual income which does not exceed sixty percent (60%) of Area Median Income, adjusted for Actual Household Size.

(m)     "Low Income Rent" shall mean the maximum allowable rent for a Low Income Unit pursuant to Section 2.2(b) below.

(n)     "Low Income Unit" shall mean the Units which, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.

(o)     "Property" is defined in Recital A.

(p) "Rent" is the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the DEVELOPER which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the DEVELOPER, and paid by the Tenant.

(q) "Tenant" is a household legally occupying a Unit pursuant to a valid lease with DEVELOPER.

(r) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the \_\_\_\_\_ anniversary of the date of issuance of the last certificate of occupancy or equivalent certification for the Units. *[minimum 40-year term]*

(s) "Unit" is one of the approximately \_\_\_\_\_ rental housing units constructed on the Property.

(t) "Very Low Income Household" shall mean a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for Actual Household Size.

(u) "Very Low Income Rent" shall mean the maximum allowable Rent for a Very Low Income Unit pursuant to Section 2.2(a) below.

(v) "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1 below, are required to be occupied by Very Low Income Households.

## 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property  
EXHIBIT B: Affordability Schedule

## **ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS**

### 2.1 Occupancy Requirements.

The Units listed in the "County Restricted Units" column of the Affordability Schedule (the "Affordability Schedule", attached as Exhibit B hereto) shall be occupied by Tenants meeting the income requirements listed in the Affordability Schedule and summarized as follows:

(a) Very Low Income Units. \_\_\_\_\_ of the Units in the Development, shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(b) Low Income Units. \_\_\_\_\_ Units in the Development, shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

## 2.2 Allowable Rent.

(a) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(b) Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Low Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size.

(c) Assumed Household Size. In calculating the allowable Rent for the Units, the following Assumed Household Sizes shall be utilized (except that if any federal statutes or regulations require use of alternate household size assumptions in calculating rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided below):

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	1.5
Two	3
Three	4.5

(d) COUNTY Approval of Rents. Initial rents for all Units shall be approved by the COUNTY prior to occupancy. All rent increases shall also be subject to COUNTY approval. The COUNTY shall provide the DEVELOPER with a schedule of maximum permissible rents for the Units annually. The DEVELOPER shall not charge any fee other than Rent to any Tenant of Units for any housing or other services provided by DEVELOPER.

(e) In the event that income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) months, the COUNTY shall provide the DEVELOPER with other income and Rent determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

## 2.3 Increased Income of Tenants.

(a) Increase from Very Low Income to at or below Low Income. If, upon recertification of a Tenant's income, the DEVELOPER determines that a former Very Low Income Household's income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant; and

(2) The DEVELOPER shall rent the next available Unit to a Very Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2(a), as applicable.

(b) Increase from Very Low and Low Income to at or below One Hundred Twenty Percent (120%) of Area Median Income. If, upon recertification of a Tenant's income, the DEVELOPER determines that a former Very Low Income Household or Low Income Household's income has increased and exceeds the qualifying income for a Low Income Household, but does not exceed one hundred twenty percent (120%) of Area Median Income adjusted for Actual Household Size, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant; and

(2) The DEVELOPER shall rent the next available Unit to a Very Low Income Household or Low Income Household as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or 2.2(b), as applicable.

(c) Non-Qualifying Household. If, upon recertification of a Tenant's income, the DEVELOPER determines that a Tenant has an Adjusted Income exceeding one hundred twenty percent (120%) of Area Median Income, adjusted for Actual Household Size, such Tenant shall be permitted to continue to occupy the Unit and such Tenant's Rent may be increased to one-twelfth of thirty percent (30%) of the household's actual income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant, and the DEVELOPER shall rent the next available Unit to a Very Low Income Household or Low Income Household as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or 2.2(b), as applicable.

## 2.4 Termination of Occupancy.

Upon termination of occupancy of an Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household or Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., Very Low Income Unit or Low Income Unit) shall be redetermined. In any event, DEVELOPER shall maintain the occupancy requirements set forth in Section 2.1 above, except as may be modified by Section 2.3.

## 2.5 Section 8 Voucher and Certificate Holders.

The DEVELOPER will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing certificate program or the Housing Choice Voucher Program under Section 8 of the United States Housing Act, or its successor. The DEVELOPER shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied

to all other prospective Tenants, nor shall the DEVELOPER apply or permit the application of management policies or lease provisions with respect to the Units which have the effect of precluding occupancy of Units by such prospective Tenants.

## 2.6 Lease Provisions.

The DEVELOPER shall use a form of Tenant lease approved by the COUNTY for the Units. The form of Tenant lease shall also comply with all requirements of any financing, and shall, among other matters:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the DEVELOPER to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Units in accordance with the standards set forth in this Agreement, or (2) to qualify as an Very Low Income Household or Low Income Household, as the case may be, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;

(b) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the DEVELOPER and the Tenant, however the Rent may not be raised more often than once every twelve (12) months after such initial year. The DEVELOPER will provide each Tenant with at least sixty (60) days' written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above;

(c) prohibit subleasing of the Unit, contain nondiscrimination provisions, and include the Tenant's obligation to inform the DEVELOPER of any need for maintenance or repair;

(d) include reasonable rules of conduct consistent with California law; and

(e) allow termination of the tenancy only for good cause, including serious or repeated violation of the terms and conditions of the rental agreement, violations of applicable federal, state, or local law; or other good cause.

## 2.7 Security Deposits

Any security deposits collected by DEVELOPER or DEVELOPER's agent shall be kept separate and apart from all other funds in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program and shall be held and disbursed in accordance with California law. The balance in the trust account shall at all times equal or exceed the aggregate of all outstanding obligations, plus accrued interest thereon.

### **ARTICLE 3 INCOME CERTIFICATION AND REPORTING**

#### **3.1     Tenant Selection Plan.**

(a)     Marketing Plan. Ninety (90) days before leasing the Development, the DEVELOPER shall provide the COUNTY, for its review and approval, the DEVELOPER's written tenant selection and affirmative marketing plan consistent with subsection (b) below. Upon receipt of the marketing plan, the COUNTY shall promptly review the marketing plan and shall approve or disapprove it within thirty (30) days after submission. If the marketing plan is not approved, the DEVELOPER shall submit a revised marketing plan within thirty (30) days. The DEVELOPER's marketing materials shall identify the COUNTY as a source of funding for the Units.

(b)     Local Worker Preference. To the extent consistent with the requirements of other funding sources and state and federal law, households with a member who is employed within fifteen (15) miles of the Development and households with a member who is employed in Napa County shall be given preference for occupancy of the Units.

#### **3.2     Income Certification.**

The DEVELOPER will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications for each Tenant renting any of the Units. DEVELOPER shall make a good faith effort to verify that the income statement provided by an applicant or Tenant is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (c) obtain the three (3) most current savings and checking account bank statements; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be made available to the COUNTY upon request.

#### **3.3     Annual Report to COUNTY.**

(a)     The DEVELOPER shall provide any information reasonably requested by the COUNTY in connection with the Development. In particular, the DEVELOPER shall provide the COUNTY with annual reports required by the Regulatory Agreement, including but not limited to reports regarding the Development's rent and occupancy levels, as well as the annual operating budget. Without limitation, the DEVELOPER shall provide the COUNTY no later than the sixtieth (60<sup>th</sup>) day after the close of each calendar year following the Effective Date, hardcopies and PDF copies of the following documents:

- (1)     evidence of payment of property taxes or property tax exemption for the Development, as applicable;
- (2)     audited financial statements for the Development;

(3) an occupancy report including: (i) the verified income of each tenant or household, (ii) the number of tenants in each household; (iii) the current rents charged each tenant or household and whether these rents include utilities, (iv) the date tenancy commenced for each Unit, and (v) the percentage of Units occupied by farmworker households, persons employed within ten (10) miles of the Development, and persons employed within Napa County;

(4) certifications of eligibility for all Tenants of Units at the time of initial occupancy and upon the yearly anniversary of their continuing tenancies. Such certification shall include verified income statements. DEVELOPER shall retain in the Tenant's file all verifications of Tenant's income (tax returns, W-2 forms, paycheck stubs, etc.);

(5) a management report detailing the activities of the management agent;

(6) audited financial statements for the DEVELOPER'S general partner(s), limited partner(s), and, if applicable, sponsor;

(7) A list of any substantial physical defects in the Units, including a description of any major repair or maintenance work undertaken or needed in the previous year and measures taken to maintain the Units in a safe and sanitary condition in accordance with applicable codes;

(8) the operating reserve balance;

(9) the replacement reserve balance;

(10) the proposed annual operating budget for the subsequent fiscal year; and

(11) the proposed annual replacement budget for the subsequent fiscal year.

(b) Within fifteen (15) days after receipt of a written request, DEVELOPER shall provide any other information or completed forms requested by the COUNTY to ensure compliance with this Agreement.

(c) Substitution of Monitoring and Compliance Reports Prepared for Other Financing Programs. If similar reports on some or all of the Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section by the COUNTY, with respect to the portion of the requirements of this Section covered by such reports, provided that copies are provided on an annual basis to the COUNTY with an owner certification addressed to the COUNTY certifying that the DEVELOPER has complied with this Agreement.

### 3.4 Additional Information.

The DEVELOPER shall provide any additional information reasonably requested by the COUNTY. The COUNTY shall have the right to examine and make copies of all books, records or other documents of the DEVELOPER which pertain to the Units.



### 3.5 Records.

(a) The DEVELOPER shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the COUNTY to inspect records, including but not limited to records pertaining to income and household size of Tenants and Rent charged Tenants, upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Units shall at all times be kept separate and identifiable from any other business of the DEVELOPER and shall be maintained as required by the COUNTY, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the COUNTY. The DEVELOPER shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

(b) The COUNTY shall notify DEVELOPER of any records it deems insufficient. DEVELOPER shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the COUNTY in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then DEVELOPER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency within thirty (30) days, or as otherwise agreed by COUNTY if a longer time period is reasonably required.

### 3.6 On-site Inspection.

The COUNTY shall have the right to perform on-site inspections of the Development, including the Units, as is reasonably required to ensure compliance with this Agreement, but in any case at least once per year. The DEVELOPER agrees to cooperate in such inspection(s). If COUNTY desires to inspect the interior of the Units, COUNTY shall give DEVELOPER sufficient notice to allow DEVELOPER to give seventy-two (72) hours' notice to Tenants.

## **ARTICLE 4 OPERATION OF THE DEVELOPMENT**

### 4.1 Residential Use.

The Property and the Units shall be used only for residential purposes consistent with this Agreement, and the Units shall be operated and maintained as residences for the Term of this Agreement. No part of the Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

### 4.2 Taxes and Assessments

DEVELOPER shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that DEVELOPER shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event DEVELOPER exercises its right to contest any tax, assessment, or charge against it, DEVELOPER, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.3 Compliance with COUNTY Underwriting Guidelines.

The DEVELOPER shall develop and operate the Development in compliance with the COUNTY's Multifamily Rental Housing Transaction Underwriting Guidelines.

**ARTICLE 5  
PROPERTY MANAGEMENT AND MAINTENANCE**

5.1 Management Responsibilities.

The DEVELOPER is responsible for all management functions with respect to the Units, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The COUNTY shall have no responsibility over management of the Units. The DEVELOPER shall retain a professional property management company approved by the COUNTY in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required at all times.

5.2 Management.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to the COUNTY, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The DEVELOPER shall submit for the COUNTY's approval the identity of any proposed Management Agent. The DEVELOPER shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the COUNTY to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the COUNTY shall approve the proposed Management Agent by notifying the DEVELOPER in writing. Unless the proposed Management Agent is disapproved by the COUNTY within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The COUNTY hereby approves NVCH as the initial Management Agent.

5.3 Performance Review.

The COUNTY reserves the right to conduct an annual (or more frequently, if deemed necessary by the COUNTY) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the COUNTY to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The DEVELOPER shall cooperate with the COUNTY in such reviews.

5.4 Replacement of Management Agent.

If, as a result of a periodic review, the COUNTY determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the

material requirements and standards of this Agreement, the COUNTY shall deliver notice to DEVELOPER of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by DEVELOPER of such written notice, COUNTY staff and the DEVELOPER shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, COUNTY staff recommends in writing the replacement of the Management Agent, DEVELOPER shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the COUNTY pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by DEVELOPER shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute Default under this Agreement, and the COUNTY may enforce this provision through legal proceedings as specified in Section 6.7 below.

#### 5.5 Approval of Management Policies.

The DEVELOPER shall submit its written management policies with respect to the Units to the COUNTY for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

#### 5.6 Property Maintenance.

(a) The DEVELOPER agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

(1) Landscaping. The DEVELOPER agrees to have landscape maintenance performed every other week, including replacement of dead or diseased plants with comparable plants. DEVELOPER agrees to adequately water the landscaping on the Property. No improperly maintained landscaping on the Property shall be visible from public streets and/or rights of way.

(2) Yard Area. No yard areas on the Property shall be left unmaintained, including:

(A) broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(B) packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(C) vehicles parked or stored in other than approved parking areas.

(3) Building. No buildings located on the Property may be left in an unmaintained condition so that any of the following exist:

- (A) violations of state law, uniform codes, or local ordinances;
- (B) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;
- (C) broken windows;
- (D) graffiti (must be removed within 72 hours); and
- (E) conditions constituting hazards and/or inviting trespassers, or malicious mischief.

(4) Sidewalks. The DEVELOPER shall maintain, repair, and replace as necessary all public sidewalks adjacent to the Development.

(5) Fencing. Prior to completion of construction, the DEVELOPER shall maintain the Property in a safe and orderly condition, including by fencing as required to prevent entry by the public.

(b) The COUNTY places prime importance on quality maintenance to protect its investment and to ensure that all COUNTY-assisted affordable housing projects within the COUNTY are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Units will be acceptable to the COUNTY assuming the DEVELOPER agrees to provide all necessary improvements to assure the Units are maintained in good condition. The DEVELOPER shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(c) In the event that the DEVELOPER breaches any of the covenants contained in this Section and such Default continues for a period of ten (10) days after written notice from the COUNTY with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the COUNTY with respect to landscaping and building improvements, then the COUNTY, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the Default. Pursuant to such right of entry, the COUNTY shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the COUNTY and/or costs of such cure, which amount shall be promptly paid by the DEVELOPER to the COUNTY upon demand.

## 5.7 Safety Conditions.

(a) The DEVELOPER acknowledges that the COUNTY places a prime importance on the security of COUNTY assisted projects and the safety of the residents and surrounding community. The DEVELOPER agrees to implement and maintain throughout the Term the following security measures in the Development:

(1) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Development including but not limited to maintaining adequate lighting in parking areas and pathways;

(2) use its best efforts to work with the County Sheriff or City Police Department, as applicable, to implement and operate an effective neighborhood watch program; and

(3) provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

(b) The COUNTY shall have the right to enter on the Property and/or contact the County Sheriff or City Police Department, as applicable, if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

## **ARTICLE 6 MISCELLANEOUS**

### 6.1 Nondiscrimination.

(a) DEVELOPER herein covenants by and for itself, its subcontractors, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, nor denial of the benefits of this Agreement to, any person or group of persons, on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief, nor any unlawful discrimination against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. DEVELOPER shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, DEVELOPER shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to DEVELOPER services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations

of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and DEVELOPER and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) The provisions of paragraph (a) shall further apply to the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Development, and DEVELOPER and any person claiming under or through the DEVELOPER, shall not 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 Development.

(c) Notwithstanding paragraph (a), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(d) The DEVELOPER shall include the provisions contained in this Section in all contracts and subcontracts related to the Development.

## 6.2 Term.

The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of the DEVELOPER, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the COUNTY. The COUNTY conveyed the Property to the DEVELOPER on the condition, and in consideration of, this provision, and would not do so otherwise.

## 6.3 Notice of Expiration of Term.

At least six (6) months prior to the expiration of the Term the DEVELOPER shall provide by first-class mail, postage prepaid, a notice to all Tenants in Units containing (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the local agency, and (d) a statement that a public hearing may be held by the local agency on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The DEVELOPER shall also file a copy of the above-described notice with the County Administrator. In addition, DEVELOPER shall comply with all requirements set forth in California Government Code Sections 65863.10 and 65863.11 or successor provisions and all other requirements of State and federal law.

#### 6.4 Effect of Other Financing Programs.

The Development may be subject to the terms of other governmental subsidy programs. This Agreement and the agreements entered into by the DEVELOPER pursuant to these subsidy programs independently regulate Units in the Development. If any provision of another regulatory agreement is found in conflict or in contradiction with the terms of this Agreement in relation to the Units, the most restrictive requirement, providing the greatest affordability to the most Tenants for the longest term, shall apply to those Units, except as otherwise specified.

#### 6.5 Covenants to Run With the Land.

The COUNTY and the DEVELOPER hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement, said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the COUNTY expressly releases such conveyed portion of the Property from the requirements of this Agreement.

#### 6.6 Indemnification

(a) To the full extent permitted by law, the DEVELOPER shall indemnify, defend at its own expense, and hold the COUNTY and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the County or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

(b) The provisions of this Section shall survive the expiration of the Term, the reconveyance of the Deed of Trust, and any release of part or all of the Property from the burdens of this Agreement.

#### 6.7 Enforcement by the COUNTY.

Any partners of the DEVELOPER shall have the right to cure any Default. The COUNTY agrees that any cure of a Default by any partners of the DEVELOPER shall be deemed to be a cure by the DEVELOPER, and shall be accepted or rejected on the same basis as if made or tendered by the DEVELOPER. If the DEVELOPER fails to perform any obligation under this Agreement, and fails to cure the Default within thirty (30) days after the COUNTY has notified the DEVELOPER in writing of the Default or, if the Default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, or such longer period as approved by the

COUNTY, in writing, the COUNTY shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law.

(a) Action to Compel Performance or for Damages. The COUNTY may bring an action at law or in equity to compel the DEVELOPER's performance of its obligations under this Agreement, and/or for damages.

6.8 Attorneys' Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.9 Recording and Filing.

The COUNTY and the DEVELOPER shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Napa.

6.10 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of California. Venue shall be Napa County.

6.11 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

6.12 Waiver of Requirements.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the COUNTY in writing. No waiver will be implied from any delay or failure by the COUNTY to take action on any breach or Default of DEVELOPER or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to DEVELOPER to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the COUNTY to any act or omission by DEVELOPER shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the COUNTY's written consent to future waivers.

6.13 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Napa.



6.14 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

DEVELOPER: MidPen Housing, Inc.,

Attn: Executive Director

COUNTY: County of Napa  
County Administration Building  
1195 Third Street, Suite 310  
Napa, CA 94559  
Attention: Housing and Intergovernmental Affairs Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

6.15 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.16 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

**[Signatures on following page.]**

**[Remainder of page intentionally blank.]**

IN WITNESS WHEREOF, the COUNTY and the DEVELOPER have executed this Agreement by duly authorized representatives, all on the date first written above.

COUNTY:

COUNTY OF NAPA, a political subdivision of the State of California

By:

\_\_\_\_\_  
I  
Chair, Napa County Board of  
Supervisors

APPROVED AS TO FORM BY COUNTY  
COUNSEL

\_\_\_\_\_  
Silva Darbinian, Deputy County Counsel

DEVELOPER:

MIDPEN HOUSING, INC., a California  
nonprofit public benefit corporation

By: \_\_\_\_\_

Its: Executive Director

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

WITNESS my hand and official seal.

STATE OF CALIFORNIA )  
 )  
COUNTY OF NAPA )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

WITNESS my hand and official seal.

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**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

The land is situated in the State of California, County of Napa, City of Napa **[if applicable]**, and is described as follows:

**EXHIBIT "B"**  
**AFFORDABILITY SCHEDULE**