

**EXHIBIT B**

**NAPA PIPE**

**AFFORDABLE HOUSING PLAN**

**1. DEFINITIONS**

Initially capitalized terms unless separately defined in this Affordable Housing Plan have the meanings and content set forth elsewhere in the Agreement. Terms defined elsewhere in the Agreement and also set forth in this Section are provided herein for convenience only.

1.1 Adequate Security means security provided by Landowner that (i) provides reasonable assurances regarding the obligations secured thereby in accordance with the Agreement; and (ii) is in a form determined by Landowner and reasonably approved by the Local Agency City Director of Public Works, including, but not limited to a guaranty, bonds, letters of credit, certificates of deposit or any other form that provides reasonable assurances regarding the obligations secured thereby. Any security provided in connection with a final subdivision map that conforms to the requirements of Exhibit I to this Agreement, Subdivision Procedures, shall be considered Adequate Security. Landowner and Local Agency City Director of Public Works will in good faith consider reasonable modifications to such Adequate Security for an Affordable Housing Parcel's Approved Site's Project Infrastructure as may be necessary to respond to a request from the Qualified Housing Developer's Developer's lender, provided such request does not require substantial changes to the form, scope, or nature of the Project Infrastructure security that conforms to the requirements of Exhibit I of this Agreement or increase the Landowner's Landowner's costs or obligations with respect to such security, and the modified security provides adequate assurances regarding the secured obligations, as determined by the Local Agency City Director of Public Works.

1.2 Adequately Secured means an obligation that is covered by Adequate Security.

1.3 Affordable Homes shall mean Residential Units constructed by a Qualified Housing Developer on the Developable Affordable Parcels which are available at an Affordable Housing Cost and rented to Very Low Income Households or Low Income Households.

4.1.4 Affordable Homes Regulatory Agreement means an agreement between the City and the Qualified Housing Developer to be recorded against the Developable Affordable Parcels to ensure that the Developable Affordable Parcels are utilized for Affordable Homes, which shall be in substantially the form of the draft Affordable Homes Regulatory Agreement attached to this Affordable Housing Plan as Attachment C.

1.5 Affordable or Affordable Housing Cost means (i) with respect to a Rental Residential Unit required to be Affordable to a Very Low Income Household a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of fifty percent (50%) of the Area Median Income based on Assumed Household Size; (ii) with

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respect to a Rental Residential Unit Affordable to a Low Income Household a monthly rental charge, including a Utility Allowance which does not exceed thirty percent (30%) of one-twelfth of sixty percent (60%) of the Area Median Income based upon Assumed Household Size and (iii) with respect to Rental Residential Unit required to be Affordable to Moderate Income Household, a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of one hundred ten percent (110%) of Area Median Income based upon Assumed Household Size. With respect to a For-Sale Residential Unit, Affordable or Affordable Housing Cost means a purchase price determined such that the ~~homeowner's~~ homeowner's total annual housing payment does not exceed thirty three percent (33%) of the maximum Area Median Income permitted for the applicable type of Residential Unit, based upon Assumed Household Size. For purposes of such For-Sale Residential Units, the total annual housing payment will include principal and interest on a fixed rate thirty (30) year mortgage with commercially reasonable rates, points, and fees, assuming a five percent (5%) ~~downpayment~~ down payment, taxes ~~and~~, assessments ~~[and insurance]~~, and any homeowners association dues.

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1.56 Affordable Housing Parcel shall mean a parcel designated by Landowner and approved by the County/City as a site for development of an Affordable Housing Project, meeting the standards for Developable Affordable Parcels.

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1.67 Affordable Housing Parcel Deed means a grant deed substantially in the form of Attachment A hereto.

1.78 Affordable Housing Project means a Residential Project containing Affordable Homes and may also contain other uses permitted under the Agreement or other Project Approvals.

~~1.9~~ Annual household income means the combined gross income for all adult persons living in a Residential Unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.

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1.10 Approved Sites has the meaning set forth in Section 3.2.1 hereof.

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1.911 Area Median Income means 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 Affordable Housing Plan.

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~~1.1012~~ Assumed Household Size means one person in a studio unit, and for non-studio units, the total number of bedrooms in a Residential Unit multiplied by 1.5.

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~~1.113~~ Commence Construction or Commencement of Construction means, for purposes of this Affordable Housing Plan, commencement of excavation for or commencement of structural foundations for a Residential Project.

~~1.1214~~ Completed means, for purposes of this Affordable Housing Plan, completion of all Project Infrastructure required by Local Agency/City in order to enable a

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Qualified Housing Developer to obtain a building permit to Commence Construction and upon the completion of construction, to obtain a permanent certificate of occupancy for the Affordable Housing Project, subject only to (i) satisfaction of any conditions related to subdivision and completion of all improvement work required under the applicable Subsequent Approvals for the Developable Affordable Parcel (other than any Project Infrastructure obligation within the responsibility of Landowner); (ii) submittal of building plans to the Local Agency/City for approval; and (iii) payment of all applicable Processing Fees.

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1.415 Conveyance Agreement means ~~that an~~ agreement between the County/City and the Qualified Housing Developer which specifies the terms by which the County/City will convey the Developable Affordable Parcel to the Qualified Housing Developer. ~~The, which shall be in substantially the~~ form of the draft Conveyance Agreement ~~is~~ attached to this Affordable Housing Plan as Attachment B.

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1.416 Costa-Hawkins Act has the meaning set forth in Section 6 hereof.

1.417 Deferred Project Infrastructure means items of Project Infrastructure related to the applicable Developable Affordable Parcel consisting of (i) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, irrigation and drainage, and driveway cuts, and (ii) utility laterals serving the applicable Developable Affordable Parcel, including storm, sewer, water, reclaimed water, dry utilities, and joint trench as necessary to provide operable electrical, gas, phone and cable, and utility boxes.

1.418 Developable Affordable Parcels means an Approved Site that is a Residential Project building site to be prepared by Landowner and conveyed to the County/City for subsequent conveyance to a Qualified Housing Developer for the development of Affordable Homes that complies with all of the following:

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1.418.1- The building site has been environmentally remediated to a standard sufficient to allow for residential development on the Affordable Housing Parcel site. Environmental remediation shall be evidenced by a no further action letter or similar letter from the applicable regulatory entity stating that the building site is appropriate for residential use.

1.418.2 The building site has been rough graded in accordance with the grading plans approved by the County/City;

1.418.3 A final subdivision map for conveyance and financing of the building site as a separate legal parcel has been recorded in the Official Records of the County of Napa.

1.418.4 Landowner has Completed all Project Infrastructure applicable to the building site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 3.8 hereof), or Landowner's obligation to Complete such Project Infrastructure is covered in a subdivision or other separate improvement agreement governing the applicable Project Infrastructure (including any Deferred Project Infrastructure) in which (i) Landowner is obligated to Complete the applicable Project Infrastructure (other than any applicable Deferred Project Infrastructure) on the earlier of (A) the

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date that the Qualified Housing Developer Commences Construction of the Affordable Housing Project provided such date is not less than one hundred eighty (180) days after Landowner receives written notice from the Qualified Housing Developer of the date that the Qualified Housing Developer intends to Commence Construction of the Affordable Housing Project, or (B) two (2) years from the recordation of the final subdivision map referenced in Section 1.4617.3 above; and (ii) Landowner's obligations to Complete the Project Infrastructure and Deferred Project Infrastructure within the timeframes required under the subdivision or other separate improvement agreement have been Adequately Secured.

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1.4719 For-Rent or Rental Residential Unit means a Residential Unit which is not a For-Sale Residential Unit.

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1.4820 For-Sale Residential Unit means a Residential Unit which is intended to be offered for sale.

1.4921 HCD means the California Department of Housing and Community Development.

1.201.22 Housing Contribution has the meaning set forth in Section 5 hereof.

1.23 HUD means the United States Department of Housing and Urban Development.

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~~1.21 Inclusionary Units means a For Sale Residential Unit or a For Rent Residential Unit which is available to and occupied by Moderate Income Households and sold or rented at an Affordable Housing Costs for Moderate Income Households.~~

1.221.24 Initial Financing Plan means the financing plan for the construction of all of the Affordable Homes to be developed by the Qualified Housing Developer in consultation with the Landowner and the County/City as described in Section 3.4.

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1.2325 Low Income Household means a household with an annual household income which does not exceed sixtyeighty percent (6080%) of Area Median Income, adjusted for actual household size.

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1.2427 Low Income Unit means a For-Rent Residential Unit which is available to and occupied by Low Income Households and rented at an Affordable Housing Cost for Low Income Households.

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1.28 Market Rate or Market Rate Residential Unit means a Residential Unit ~~which has no restrictions that is not a Low Income Unit, Very Low Income Unit or requirements under this Affordable Housing Plan with respect to affordability levels or income restrictions for occupants other than the marketing requirements set forth in Section 4.3~~ Moderate Income Unit.

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1.2529 Moderate-Income Household means households whose a household with an annual household income that does not exceed one hundred twenty percent (120%) of Area Median Income, adjusted for actual household size.

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1.3540 Very Low Income Household means a household with an annual household income which does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.

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1.41 Very Low Income Unit means a For-Rent Residential Unit which is available to and occupied by Very Low Income Households and rented at an Affordable Housing Cost for Very Low Income Households.

**2. AFFORDABLE HOUSING OBLIGATIONS.**

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A total of twenty percent (20%) of all Residential Units developed on the Property shall be affordable to Very Low Income Households, Low Income Households and Moderate Income Households. ~~As described in this Affordable Housing Plan, based on the maximum development of 945 Residential Units permitted under this Agreement, not fewer than~~ The Affordable Homes will be built on two Developable Affordable Parcels conveyed by the Landowner to the City that are sufficient, as determined by the City, to accommodate one hundred and forty (140) Affordable Homes ~~are required to be in compliance with all applicable local and state codes and regulations, and City will in turn convey the Developable Affordable Parcels to a Qualified Housing Developer, in accordance with Section 3 hereof, who would be responsible for developing the Affordable Homes. Except as otherwise provided herein, Landowner will have no obligations related to the construction of the Affordable Homes beyond the land dedication. As described in this Affordable Housing Plan, one hundred and forty (140) Affordable Homes will be developed and not fewer than at least~~ seventy (70) of the Affordable Homes ~~are required to will~~ be Affordable to Very Low Income Households, with the remaining Affordable Homes Affordable to Low Income Households. ~~The Affordable Homes will be built on land to be contributed by the Landowner to the County which will in turn convey the land to Qualified Housing Developers in accordance with Section 3 hereof. Fifty (50) of the Residential Units In addition to the Affordable Homes, Landowner shall be affordable to Moderate Income Households and are expected to be developed by the Landowner as Inclusionary Units integrated with develop the greater of forty four (44) or six and six-tenths of one percent (6.6%) of the Market Rate Residential Units in accordance with Section as Moderate Income Units Affordable to Moderate-Income Households as described in Section 4 of this Affordable Housing Plan. For example, for 300 Market Residential Units, at 6.6%, 20 Moderate Income Units would be provided, for a total of 320 Market Rate and Moderate Income Units. In addition, Landowner is required to make a Proximity Housing Contribution to the County City in the amount of One Million Dollars (\$1,000,000) to be deposited by the County into the County's Work Proximity Housing Assistance Trust Fund City in a separate designated fund and used in accordance with the terms of Section 5 of this Affordable Housing Plan. In addition, Landowner shall pay to City, for all non-residential development on the Property except for development of a hotel on Parcel E, the amount of the County's Non-Residential Affordable Housing Impact Fees that would be due for such development if the Property had remained in the County's jurisdiction as provided in Section 5.2 of this Affordable Housing Plan, as more particularly described in Section 5 hereof. For development of a hotel on Parcel E, Landowner shall pay the amount of the City's Non-Residential Affordable Housing Impact Fee, subject to the provisions of Section 8.3 of the Agreement, as provided in Section 5.2 of this Affordable Housing Plan.~~

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3.3.1 Criteria. A parcel (except as provided herein) proposed by Landowner to be modified, reconfigured, relocated or substituted for an Approved Site must meet the following criteria unless explicitly waived in writing by the CountyCity:

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(i) Size. Be of sufficient size to accommodate the same number of Affordable Homes as the Approved Site taking into account the physical characteristics of the parcel and assuming a minimum density of twenty (20) units per acre.

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(ii) Dimensions. Parcel dimensions shall be generally similar in shape to lots designated for Market Rate Residential Units with a similar configuration.

(iii) Frontages. Have a minimum of one (1) frontage (which may include an alleyway) that provides immediate vehicular access and immediate pedestrian access to a publicly accessible walkway or right of way.

(iv) Fiscal Impact. Not have a negative impact on the reasonably anticipated or proposed financing for the development of Affordable Homes on the parcel when compared to the Approved Site.

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(v) Dispersal of Affordable Units, Timing and Location. Maintains the overall balance of providing Affordable Homes with access to transit, proximity to parks and other public amenities and that are dispersed throughout the SiteProperty, integrates the location of the Affordable Housing ParcelHomes and the Market Rate Residential Units, and generally maintains the timing and proportionality of Affordable Homes and the Market Rate and InclusionaryModerate Income Units relative to the Phasing Plan.

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(vi) Site Conditions. Should not result in a parcel that is more difficult or expensive to develop (i.e., sites that include the need for extensive retaining walls, subsurface improvements, ongoing monitoring responsibilities, or that cannot accommodate the contemplated parking or common areas).

(vii) Project Infrastructure. Has or will have Completed Project Infrastructure (other than the Deferred Project Infrastructure, including as may be provided in a secured improvement agreement), access, and utility connections that are sufficient to support the proposed Affordable Housing Project at Commencement of Construction of the Affordable Housing Project.

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(viii) Other Matters. The CountyCity may consider such additional or unique matters as may arise during the course of the development of the Project.

3.3.2 CountyCity Agreement. Within thirty (30) days after Landowner has provided the information in Subsection 3.3.1 above, the CountyCity shall confirm in writing its agreement, such agreement not to be unreasonably withheld, that the proposed parcel meets the criteria of this Section. In the event the CountyCity determines that the proposed parcel does not agree that meet the criteria in Subsection 3.3.1 above have been met and the Parties are unable to resolve such disagreement within thirty (30) days thereafter, the Landowner shall not be allowed to modify or substitute the Approved Site with the proposed parcel.

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3.4 Conditions to Conveyance of Developable Affordable Parcels.

Landowner shall convey ~~to the City one~~ Developable Affordable Parcel in ~~each Phase to the County One and one Developable Affordable Parcel in Phase Two~~ when the following conditions have been met:

3.4.1 Qualified Housing Developer. Landowner has designated a Qualified Housing Developer approved by the ~~County~~City. As of the date of this Agreement, MidPen Housing Corporation has been so designated and approved to develop the Developable Affordable Parcels, subject to the possible designation of an alternative Qualified Housing Developer as may be necessary or appropriate.

3.4.2 Initial Financing Plan. The ~~County~~City shall have approved an Initial Financing Plan prepared by the Qualified Housing Developer, in consultation with the ~~County~~City and the Landowner, for the construction and operation of the Affordable Homes ~~on each Developable Affordable Parcel~~. The Initial Financing Plan shall include a sources and uses breakdown of the costs of constructing the Affordable Homes ~~on the Developable Affordable Parcels~~, and an operating proforma for the Affordable Homes ~~and may show separate sources and uses and operating proformas for each of the applicable~~ Developable Affordable ~~Parcels~~Parcel. Such sources and uses breakdown and operating proforma shall reflect the Qualified Housing ~~Developer's~~Developer's then current expectations for development costs and funding sources (including, without limitation, funding provided from the ~~County's~~County's Affordable Housing Fund and low income housing tax credits, federal and state affordable housing funding sources and conventional loans). The ~~County's~~City's review of the proposed Initial Financing Plan shall be solely to determine if, in the ~~County's~~City's reasonable judgment, there are sufficient sources of funds available to construct and operate the Affordable Homes ~~The County on the applicable Developable Affordable Parcel~~. The City shall either approve or disapprove the Initial Financing Plan in writing within thirty (30) days of receipt. If disapproved, the ~~County~~City shall give specific reasons for disapproval. If the Initial Financing Plan is disapproved, ~~the~~Landowner and Qualified Housing Developer may resubmit, and the ~~County~~City shall promptly review and approve or disapprove a revised Initial Financing Plan that addresses the reasons for disapproval.

3.4.3 Conveyance Agreement. The ~~County~~City and the Qualified Housing Developer have entered into a Conveyance Agreement for the Developable Affordable Parcel, which shall be substantially in the form attached hereto as Attachment B and which meets the requirements set forth in Section 3.6 below. ~~The~~ ~~County~~City and the Qualified Housing Developer shall enter into the Conveyance Agreement no later than close of escrow for conveyance of each ~~Developable Affordable Housing~~ Parcel to the ~~County~~City by Landowner.

3.4.4 County City Approvals. The ~~County~~City has approved the ~~Affordable Housing Parcel~~Approved Site as meeting all of the standards necessary to ~~accommodate a sufficient number of Affordable Homes as required by this Agreement and to~~ create a Developable Affordable Parcel and, if determined necessary by ~~County~~City, to meet the "all appropriate inquiries" standards under 40 CFR Part ~~31-2312~~; Standards and Practice for All Appropriate Inquiries; Final Rule, the ~~County~~City has obtained on or before the effective date of the Conveyance Agreement a Phase 1 Environmental Site Assessment prepared in accordance

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with ASTM International's E1527E1527-13 standard, or such replacement standard as is adopted under federal rules to meet the all appropriate inquiry standard.

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3.5 Conveyance of Developable Affordable Housing Parcels Parcel to County-City.

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3.5.1 Delivery of Affordable Housing Parcel Deed. Within thirty (30) days of satisfaction of the conditions set forth in Section 3.4, the Landowner shall, at no cost to the City, deliver to the escrow established by the Landowner and the County-City an Affordable Housing Parcel Deed substantially in the form attached hereto as Attachment A, conveying title to the County, at no cost, City. Landowner shall be responsible for paying all escrow costs, transfer tax, recording fees and title insurance costs for a CLTA Owner's Policy with reasonable endorsements.

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3.5.2 Recordation of Conveyance Agreement. At close of escrow conveying the Developable Affordable Parcel to the County-City, a memorandum of the Conveyance Agreement shall be recorded against the Developable Affordable Parcel.

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3.5.3 Delivery of Title. At close of escrow, the Landowner shall deliver insurable title to the Developable Affordable Housing Parcel to the County-City free and clear of liens, encumbrances, leases or other rights or possession, actual possession by any person, covenants, easements, taxes, assessments and other limitations or title defects, and all claims to any of the foregoing (collectively, "Title Defects"), except:

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(i) applicable building and zoning laws and regulations;

(ii) the Affordable Housing Parcel Deed;

(iii) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Affordable Housing Parcel Deed;

(iv) title exceptions reasonably approved by the County and City;

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(v) the liens of any financing approved by the County-City;

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(vi) the Development Agreement and other Project Approvals and Subsequent Approvals, including, without limitation, the final map recorded for the Developable Affordable Housing Parcel and all matters disclosed therein; and

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(vii) any environmental restrictions and covenants required to be recorded by the State of California Regional Water Quality Control Board (RWQCB) consistent with the approved environmental investigation and responses program, including the regional monitoring program (RMP).

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The exceptions listed in (i) through (vii) are the "Approved Title Exceptions".

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3.5.4 Conveyance of Developable Affordable Parcel. The CountyCity, after obtaining title to the Developable Affordable Parcel shall subsequently convey the Developable Affordable Parcel to the Qualified Housing Developer in accordance with the terms of the Conveyance Agreement and subject only to the Approved Title Exceptions.

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3.5.5 Applications for Tax Credit or Other Financing. Prior to the conveyance of a Developable Affordable Parcel to the CountyCity, the Landowner shall reasonably cooperate with the County'sCity's or Qualified Housing Developer's requests to be a co-applicant on any tax credit or other financing application for the financing of Affordable Homes on the Developable Affordable Housing Parcel, provided that such reasonable cooperation shall be at no cost to the Landowner and the Landowner shall assume no liability whatsoever relating to or arising out of the Landowner being a co-applicant.

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3.6 Requirements for Conveyance Agreement.

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The Conveyance Agreement shall include the following:

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3.6.1 Subsequent Approvals. The Qualified Housing Developer shall be obligated to obtain all applicable Subsequent Approvals in accordance with the Project Approvals, prior to conveyance of the Developable Affordable Parcel.

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3.6.2 Project Financing Plan. The Qualified Housing Developer shall (A) have submitted or be required to submit an Initial Financing Plan, as described in Section 3.4.3 and (B) be required to submit to the CountyCity for ~~its~~City approval a Project Financing Plan prior to conveyance of the Developable Affordable Parcel. The Project Financing Plan shall be in substantial conformance with the guiding documents of the ~~Napa CountyCity~~ Affordable Housing ~~Trust~~Impact Fee Fund, including specifically (a) the Policies and Procedures Manual (approved in ~~2010~~2010); (b) the Multifamily Rental Housing Transaction Underwriting Guidelines (approved in 2010); and (c) any updated versions of these documents or new guiding policies and documents that may be issued for the Affordable Housing ~~Trust~~Impact Fee Fund prior to the date for submission of the Project Financing Plan in the Conveyance Agreement. The Project Financing Plan shall include sources and uses breakdown of the costs of constructing the Affordable Homes on the Developable Affordable Parcel and an operating proforma for the Affordable Homes. Funding sources identified in the Project Financing Plan shall be based on evidence of preliminary funding commitments reasonably satisfactory to CountyCity. Notwithstanding the foregoing, if the Qualified Housing Developer is unable to provide preliminary commitments for sources of funds other than funding provided from the County's County's Affordable Housing Impact Fee Fund, the CountyCity in its sole discretion may nevertheless approve the Project Financing Plan based on information provided by the Qualified Housing Developer as to the feasibility of such identified sources not already committed and the County'sCity's own investigation as to the feasibility of obtaining such funding sources, including competitiveness of the proposed development for such sources based on the then applicable scoring systems in place for such funding sources. The CountyCity shall either approve or disapprove the Project Financing Plan in writing within thirty (30) days of receipt. If disapproved, the CountyCity shall give specific reasons for disapproval. If the Project Financing Plan is disapproved, the Qualified Housing Developer may resubmit, and the CountyCity shall

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promptly review and approve or disapprove a revised Project Financing Plan that addresses the reasons for disapproval.

3.6.3 Affordable Home Requirements. The Qualified Housing Developer shall be obligated to provide to the County/City a breakdown of the number of Affordable Homes it intends to develop Low Income Units and rent at Affordable Housing Costs to Very Low Income Households and Low Income Households Units, prior to conveyance of the each Developable Affordable Parcel to the Qualified Housing Developer. No fewer than fifty percent (50%) of the Affordable Homes to be developed on each Developable Affordable Parcel shall be Affordable to Very Low Income Households Units, unless the number of Completed Affordable Homes Affordable to Very Low Income Households Units exceeds fifty percent (50%) of the total number of Affordable Homes Completed, in which event the Qualified Housing Developer may propose a lesser number of Affordable Homes Affordable to Very Low Income Households Units as long as the total number of Affordable Homes Affordable to Very Low Income Households Units Completed plus the number proposed is not less than fifty percent (50%) of the total number of Affordable Homes Completed and proposed.

3.6.4 Consistency. The Qualified Housing Developer shall be obligated to develop and construct the Affordable Housing Project in accordance with the applicable Project Approvals and Subsequent Approvals and to manage and operate the Affordable Homes consistent with the requirements of this Affordable Housing Plan.

3.6.5 Sources of Financing. Prior to conveyance of the each Developable Affordable Parcel to the Qualified Housing Developer, the Qualified Housing Developer shall have secured the financing necessary for the development and operation of the Affordable Homes consistent with the approved Initial Financing Plan and, upon approval, the Project Financing Plan. If the Qualified Housing Developer is not able to obtain any source of financing that was identified in the approved Project Financing Plan, the Conveyance Agreement shall require the Qualified Housing Developer to submit to the County/City an updated Project Financing Plan showing alternative sources of funding and feasibility of obtaining such funding.

3.6.6 Regulatory Agreement. The Qualified Housing Developer shall be required to enter into a Regulatory Agreement for the Affordable Homes for the benefit of the County/City (which shall be binding on their respective successors and assigns) substantially in the form attached as Attachment C- ("Affordable Homes Regulatory Agreement"). The Affordable Homes Regulatory Agreement shall require that the Affordable Homes be rented at an Affordable Housing Cost and occupied by Very Low Income Households and Low Income Households for a term of not less than fifty-five (55) years. The Affordable Homes Regulatory Agreement will be recorded on the Developable Affordable Parcel against each Approved Site at the time of conveyance to the Qualified Housing Developer.

3.6.7 Performance Measures. The Conveyance Agreement will include performance measures that the Qualified Housing Developer is required to meet with regards to the development of the Affordable Homes and grant the County/City the right to terminate the Conveyance Agreement in the event the Qualified Housing Developer fails to meet the performance measures.

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3.6.8 Right of Reverter. The Conveyance Agreement shall include a right of reverter for the benefit of the CountyCity that will provide the CountyCity the right to reacquire title to the Developable Affordable Parcel if the Qualified Housing Developer fails to construct the Affordable Homes in accordance with the terms and conditions of the Conveyance Agreement. If the CountyCity acquires the Developable Affordable Parcel pursuant to the right of reverter, the CountyCity shall take title subject to the Affordable Homes Regulatory Agreement and the conditions set forth in this Affordable Housing Plan and shall cause the development of the proposed Affordable Housing Project on the Developable Affordable Parcel consistent with the Project Approvals and Subsequent Approvals. If the CountyCity exercises its right of reverter and the Qualified Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 3.8 below and the Qualified Housing Developer has not installed the Deferred Project Infrastructure prior to the City's exercise of the right of reverter, the Qualified Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the CountyCity at time of transfer of Title onto the Developable Affordable Parcel. If the CountyCity exercises the right of reverter and takes title to the Developable Affordable Parcel, the CountyCity shall also be entitled to an assignment of all plans, studies and other materials prepared by the Qualified Housing Developer related to the development of the Affordable Housing Project, provided the CountyCity and the Qualified Housing Developer are able to reach agreement on compensation to the Qualified Housing Developer for the costs incurred for the preparation of such plans and studies.

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~~3.6.9 Waiver and Release of Right to Oppose Annexation. The Conveyance Agreement shall include a waiver and release by the Qualified Housing Developer of any rights it may have to remonstrate against any pending or future annexation of the Developable Affordable Parcel to the City of Napa, which waiver shall be a covenant running with the land and shall be binding upon all transferees, successors, and assigns and shall be a requirement in all residential leases for the Affordable Homes constructed on the Developable Affordable Parcel.~~

3.6.9 RESERVED.

3.6.10 Notice Prior to Construction. The Qualified Housing Developer shall be required to give the Landowner the Preliminary Development Notice required pursuant to Section 3.7 as well as a written Commencement Notice at least six (6) months prior to the date the Qualified Housing Developer intends to Commence Construction and to provide the Landowner with notice of any subsequent revision to Qualified Housing Developer's Commencement of Construction date in order to allow the Landowner sufficient time to coordinate and Complete the applicable Project Infrastructure (other than Deferred Project Infrastructure) required to provide access and utility service to the Developable Affordable Housing Parcel prior to Commencement of Construction.

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3.6.11 Affordable Housing Parcel Approved Site Maintenance. The Qualified Housing Developer shall agree to maintain the Affordable Housing Parcel Approved Site in a safe and orderly condition, including by fencing it to prevent entry by the public.

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3.6.12 Coordination Provisions. The Conveyance Agreement shall incorporate the provisions of Sections 3.7 and 3.8.

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3.6.13 Other Requirements. Such other requirements as the County/City and the Qualified Housing Developer may mutually determine are necessary to meet the goals and objectives of this Affordable Housing Plan to ensure the development of the Affordable Homes.

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3.7 Preliminary Development Notice.

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3.7.1 Cooperation and Coordination Agreement. The planning, design and construction of the Affordable Housing Project and its associated Project Infrastructure and Deferred Project Infrastructure required to provide minimum access and utility services for the Affordable Housing Project will require cooperation and coordination between Landowner and the Qualified Housing Developer, and coordination and cooperation will also be required of them with respect to the construction of other projects and Project Infrastructure that may, from time to time, also be concurrently under construction. The Qualified Housing Developer and Landowner shall agree to cooperate and to take all acts reasonably necessary to reduce conflicts between the Affordable Housing Project's/Project's development and its associated Project Infrastructure and the development of other portions of the Property and associated Project Infrastructure.

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3.7.2 Preliminary Development Notice. The Qualified Housing Developer shall provide Landowner with a preliminary development notice at the earlier of (i) eighteen (18) months prior to its targeted date for Commencement of Construction on a Developable Affordable Parcel, or (ii) the date that Qualified Housing Developer submits its first application for tax credit financing to the California Tax Credit Committee (the "Preliminary Development Notice"). The Preliminary Development Notice shall include to the extent available, and if not then available, as soon thereafter as such information becomes available, the information reasonably required to prepare and coordinate approval of improvement plans, permits and agreements, including the Qualified Housing Developer's/Developer's anticipated construction start date, preliminary construction schedule, description of the general location of buildings, parking areas, site access, schematic utility design, power loads, wet utility demands and sanitary discharge loads, and anticipated dates for completion of construction of the Affordable Housing Project, when Deferred Project Infrastructure, including utility hookups and public access, will be required. The Preliminary Development Notice shall be updated on regular intervals, but not less frequently than every three months.

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3.7.3 Notice of Changes in Development Schedule: Good Faith Negotiations. The Qualified Housing Developer shall notify Landowner if at any time, or from time to time, its development plans, or changes thereto, are likely to require changes to the Project Infrastructure or Deferred Project Infrastructure, or to the noticed Completion dates thereof. The Qualified Housing Developer and Landowner shall agree to negotiate in good faith with respect to any amendments to such construction schedule as may be necessary or appropriate from time to time to enable Landowner to prepare and obtain approval of necessary improvement plans, and to obtain required permits and authorizations for any Project Infrastructure changes.





of completing some or all of the Deferred Project Infrastructure on the applicable Developable Affordable Housing Parcel (the “**Deferred Infrastructure Liquidation Amount**”). The County/City, the Qualified Housing Developer, and the Landowner shall meet and confer in good faith during the 60-day period (or such longer period as may be agreed to by the County/City, the Qualified Housing Developer and the Landowner) to reach agreement on the Deferred Project Infrastructure Liquidation Amount. Landowner shall provide its estimate of such costs, based upon the Deferred Project Infrastructure to be completed and substantiated by qualified contractor bid(s) or estimates(s) specifying the quantity and cost to complete the Deferred Project Infrastructure. If the County/City, Qualified Housing Developer and the Landowner are able to reach agreement on the Deferred Infrastructure Liquidation Amount, then Landowner shall promptly pay this sum to the then current owner of the Developable Affordable Housing Parcel, either the County/City or the Qualified Housing Developer, and thereafter (i) Landowner shall be released from any further obligation to construct that portion of the Deferred Project Infrastructure for which Landowner has paid the Deferred Infrastructure Liquidation Amount, and (ii) the Local Agency/City shall release any associated Adequate Security.

If the County/City receives the Deferred Infrastructure Liquidation Amount, the County/City shall transfer the Deferred Infrastructure Liquidation Amount to the Qualified Housing Developer at time of the conveyance of the Developable Affordable Parcel. Upon receipt of the Deferred Infrastructure Liquidation Amount, the Qualified Housing Developer shall be responsible to construct the portion of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount. If the County/City, Qualified Housing Developer and the Landowner are not able to reach agreement on the Deferred Infrastructure Liquidation Amount within the time frame set forth above, then Landowner shall proceed to install the Deferred Project Infrastructure related to the applicable Developable Affordable Housing Parcel. The Parties agree that completion of the utility laterals and other components of Deferred Project Infrastructure on the Developable Affordable Parcels/Parcel in advance of the design development or related construction of the Affordable Housing Project on a particular Developable Affordable Housing Parcel may result in the need to move or replace all or part of said Deferred Project Infrastructure. In order to avoid unnecessary costs and duplication of work, in the event the Landowner elects to proceed and to install the Deferred Project Infrastructure serving ana Developable Affordable Housing Parcel prior to adequate design development or construction to define and locate said Deferred Project Infrastructure for the Affordable Housing Project, Landowner shall Complete all of the Deferred Project Infrastructure except for the utility laterals and any other components of Deferred Project Infrastructure for which Landowner does not have sufficient design information from the Qualified Housing Developer, and the Landowner shall pay to the County/City or the Qualified Housing Developer a Deferred Infrastructure Liquidation Amount equal to the amount determined by Landowner and Approved by the County/City and the Qualified Housing Developer as the reasonably estimated cost of installing the utility lateral(s) or other deferred components of Deferred Project Infrastructure upon Completion of the remaining Deferred Project Infrastructure and upon such payment (i) Landowner shall be released from any obligation to Complete such Deferred Project Infrastructure and (ii) the Local Agency/City shall release any associated Adequate Security.

### 3.8.3 Payment in Lieu of Deferred Project Infrastructure Obligation.

Landowner and the Qualified Housing Developer shall also have the right to request at any time after conveyance of ana Developable Affordable Housing Parcel for the Landowner to pay the

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Deferred Infrastructure Liquidation Amount in lieu of ~~Landowner's~~Landowner's obligation to provide the Deferred Project Infrastructure for such ~~Developable Affordable Housing~~ Parcel. If the ~~CountyCity~~, the Qualified Housing Developer, and the Landowner are able to agree upon the Deferred Infrastructure Liquidation Amount as set forth in subsection 3.8.2 above, then Landowner shall pay this amount to the ~~CountyCity~~ or the Qualified Housing Developer, as applicable, at such time and thereafter (i) Landowner shall be released from the obligation to provide the Deferred Project Infrastructure for which the Deferred Infrastructure Liquidation Amount has been paid and (ii) the ~~Local AgencyCity~~ shall release any associated Adequate Security. The ~~CountyCity~~ shall transfer the Deferred Infrastructure Liquidation Amount to the Qualified Housing Developer upon conveyance of the Developable Affordable Parcel to the Qualified Housing Developer. The Qualified Housing Developer shall use such funds for the Deferred Project Infrastructure, and for no other purpose, as set forth in subsection 3.8.2 above. If the ~~CountyCity~~ and the Landowner are not able to agree upon the Deferred Infrastructure Liquidation Amount, then there will be no action or payment on the Deferred Project Infrastructure unless and until Landowner provides notice to the Qualified Housing Developer and the ~~Local AgencyCity~~ pursuant to subsection 3.8.2 above of its intent to commence the Deferred Project Infrastructure on a particular ~~Developable Affordable Housing~~ Parcel or Landowner is otherwise required to commence and Complete the Deferred Project Infrastructure in accordance with this Agreement.

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3.8.4 Schedule Adjustments. ~~Landowner's~~Landowner's schedule under this Affordable Housing Plan to deliver Project Infrastructure and Deferred Project Infrastructure required to service an Affordable Housing Project shall be subject to modification if and to the extent changes in the type, nature, locations, amount, cost or phasing of Project Infrastructure or Deferred Project Infrastructure are required to respond to a Qualified Housing ~~Developer's~~Developer's request or to accommodate changes in the Affordable Housing Project from those assumed in the previously approved improvement plans and agreement. Landowner shall have the right to reject such proposed Project Infrastructure changes if it would materially and adversely: (i) ~~delay~~ (unless such delay is accepted by the Qualified Housing Developer) or increase the costs of Project Infrastructure for the Affordable Housing Project; (ii) ~~increase~~ the costs to other Residential Projects or their associated Project Infrastructure; or (iii) ~~delay~~ or interfere with actual construction of such other Project Infrastructure or such other Residential Projects. If Landowner believes any adjustment to the Project Infrastructure or Deferred Project Infrastructure Completion dates related to the Affordable Housing Project is required, it shall provide ~~CountyCity~~ and the Qualified Housing Developer with notice and the detailed reasons therefor, and the ~~Parties~~Parties shall thereafter proceed in good faith to attempt to mutually agree upon a revised schedule, provided that the Landowner shall have the right to modify the schedule as necessary to respond to such materially changed circumstances or information related to the design and development of the Affordable Housing Project.

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3.8.5 Completion Delay. Any delay in Completing any Project Infrastructure resulting from either a Force Majeure Delay or Affordable Housing Project specific infrastructure changes as described ~~in Section 3.8.4~~ above shall not constitute a default by Landowner under this Agreement, nor shall Landowner's failure to Complete any Project Infrastructure (or Deferred Project Infrastructure) on or before the Project Infrastructure ~~or~~ Deferred Project Infrastructure Completion dates resulting from a Force Majeure Delay or project specific infrastructure changes ~~described in Section 3.8.4 above~~ constitute a default by

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Landowner under this Agreement, except to the extent that such delay is the result of the gross negligence or willful misconduct of Landowner or any contractor or agent of Landowner.

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3.8.6 Performance. During the construction of Project Infrastructure and ~~Deferred~~ Project Infrastructure, Landowner shall deliver status reports to the ~~Local~~ Agency/City and the Qualified Housing Developer advising of the status and progress of the preparation of improvement plans and the construction of the Project Infrastructure (or Deferred Project Infrastructure), including a ~~report~~ report of any significant delays in the progress of such construction and whether such delays are due to Force Majeure Delay or Affordable Housing Project specific infrastructure changes described in Section 3.8.4, and updating, as necessary, the estimated Project Infrastructure Completion date. Notwithstanding the foregoing provisions of this Affordable Housing Plan to the contrary, in no event shall Landowner be in default of its obligation to Complete the Project Infrastructure (or Deferred Project Infrastructure) hereunder unless Landowner's failure materially and adversely interferes with the Qualified Housing Developer's obtaining construction financing, permits and/or approvals for development of the Affordable Housing Project, or the construction, use or occupancy of the Affordable Housing Project thereon, materially increases the Qualified Housing Developer's costs with respect to such Affordable Housing Project, or materially delays the Qualified Housing Developer's construction or occupancy of the Affordable Housing Project (when compared to the development schedule, including any updates provided or agreed upon in good faith), and such failure continues for more than forty-five (45) days following Landowner's receipt of written notice thereof from the Qualified Housing Developer; provided, however, that if more than forty-five (45) days is reasonably required to sufficiently complete the Project Infrastructure (or Deferred Project Infrastructure) to eliminate the interference with or delay to the Qualified Housing ~~Developer's~~ Developer's obtaining construction permits or approvals for development of the Affordable Housing Project or its construction, use or occupancy of the Affordable Housing Project, then ~~Landowner's~~ Landowner will not be in default hereunder so long as: (i) ~~temporary~~ infrastructure is available to eliminate such interference or delay, including any interference or delay in the Qualified Housing Developer's obtaining construction permits or approvals for the Affordable Housing Project or, if applicable, a certificate of occupancy, and Landowner provides such temporary infrastructure within thirty (30) days following Landowner's receipt of the Qualified Housing Developer's notice described above; (ii) ~~Landowner~~ continues to so provide such temporary infrastructure until the completion of the Project Infrastructure (or Deferred Project Infrastructure); and (iii) ~~Landowner~~ diligently pursues completion of the Project Infrastructure (or Deferred Project Infrastructure). The Qualified Housing Developer's notice to Landowner of Landowner's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) must specify, in reasonable detail, the basis for the Qualified Housing Developer's assertion that Landowner's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) constitutes a default in ~~Landowner's~~ Landowner's obligations as described above.

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3.8.7 Post-Completion Changes to Project Infrastructure. If the Project Infrastructure (or Deferred Project Infrastructure) required to service an Affordable Housing Project has been completed at the time a change is requested by the Qualified Housing Developer or ~~Local~~ Agency/City, with respect thereto to accommodate a change to or design of the Affordable Housing Project, then Landowner may, at its sole option, require the requesting Party to construct or to pay the costs associated with such Project Infrastructure changes,

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Affordable Housing Impact Fee Ordinance (County Code of Ordinances Section 18-107) with respect to,) for the congregate care retirement community by paying an in lieu fee in accordance with the County's Affordable Housing Ordinance, which shall be calculated on the square footage of congregate living or assisted living dwelling units (exclusive of common areas and all other areas) located within the congregate care retirement community facility. ~~Any Landowner's payment to the City of the amount of the County's Affordable Housing Impact Fee for the CCRC facility shall be in lieu of and full satisfaction of the City's Affordable Housing Impact Fee for such facility. Any impact~~ fee paid by the Landowner in connection with the ~~congregate care retirement community~~ CCRC shall be used to ~~either~~ assist the development of the Affordable Homes or to fund the County's Proximity Housing Assistance Program for use in connection with the Property by the Qualified Housing Developer.

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4.3 Marketing of the Market Rate Residential Units. The Landowner recognizes that the provision of the Project Approvals was predicated in part on the need to provide housing opportunities within the County for persons employed within the County. In order to maximize the opportunity ~~to~~for persons employed within the County ~~to have an opportunity~~ to purchase or rent the Market Rate Residential Units in the Project, the Landowner, prior to the first sale or rental of a Market Rate Residential Unit, shall develop and submit to the ~~County~~City for its approval an outreach and marketing plan for the Market Rate Residential Units that will focus marketing efforts on persons employed within the County. The marketing plan will include preferences for those who currently live or work in Napa County, to the extent reasonably practicable and consistent with commercially reasonable criteria. The ~~County~~City will approve or disapprove the marketing plan within thirty (30) days of submission, such approval not to be unreasonably withheld. The Landowner shall implement the ~~County~~City - approved marketing plan, ~~as it may be amended from time to time~~, when marketing any Market Rate Residential Units and will require any Residential Project developers developing Residential Units to do so as well.

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4.4 Landowner's Landowner's Obligation. ~~Landowner's~~Landowner's only obligations with respect to any affordable housing requirement(s) for the Property are to convey the Developable Affordable Parcels and provide Project Infrastructure (and Deferred Project Infrastructure) as required herein at no cost to the ~~County~~City and Qualified Housing Developer, pay the ~~Proximity~~One Million Dollar Housing Contribution, ~~(as described in Section 5 below of this Affordable Housing Plan)~~, to include or require the Residential Project developers to include the ~~Inclusionary~~Moderate Income Units in the Market Rate Residential Developments, ~~to market the Inclusionary Units as required under in accordance with~~ Section 4-1.4 of this Affordable Housing Plan, and to market the ~~Moderate Income Units and the~~ Market Rate Residential Units as required ~~in~~under Section 4-3 of this Affordable Housing Plan, in the condition and in the manner described herein. Landowner will be obligated to convey the ~~Developable~~ Affordable Housing Parcels to the ~~County~~City whether or not a Qualified Housing Developer Commences Construction of Affordable Homes or Completes Construction and regardless of how many Affordable Homes are actually built by the Qualified Housing Developers. Landowner shall not be entitled to issuance of building permits for development of residential or commercial private development in a subsequent Phase of the Project (except for the proposed hotel on Block E or other development in the Industrial Zoning District) unless in the previous Phase Landowner ~~conveyed~~is in compliance with its obligations to date under this Affordable Housing Plan, including, where required or not otherwise conditioned, with respect to conveyance of a

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Affordable Housing Impact Fees and other funds in the County's affordable housing fund to provide assistance to the Fee for such non-residential development.

5.3 Use of Affordable Homes. Without limiting the foregoing, County Housing Impact Fees Generated by Project. The City shall use all Non-Residential Affordable Housing Impact Fees generated from development on the Property only for purposes of providing funding assistance to the Qualified Housing Developer for the development of the Affordable Homes through the date that Commencement of Construction of all (as defined in the Affordable Housing Plan) of one hundred and forty (140) Affordable Homes has occurred. Thereafter, any Non-Residential Affordable Housing Impact Fees generated from development of on the Property shall be used to fund the County's Proximity Housing Assistance Program for use development of the Moderate Income Homes on the Property or to assist Moderate Income Households who work in connection with the marketing of the Residential Units the County of Napa to rent or purchase the Moderate Income Homes. Notwithstanding the foregoing, the City's obligation to use Affordable Housing Impact Fees as described in this Section 3.1 shall terminate on the first date that both (a) Commencement of Construction of 140 Affordable Homes occurred, and (b) the City has issued Certificates of Occupancy for forty-five (45) deed restricted Moderate Income Homes on the Property.

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**6. NON-APPLICABILITY OF COSTA HAWKINS ACT**

The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in no way shall limit or otherwise affect the restriction of rental charges for the Affordable Homes or the Inclusionary Moderate Income Units developed pursuant to this Affordable Housing Plan. The Agreement falls within an express exception to the Costa-Hawkins Act because the Agreement is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 4 of Title 7 of the California Government Code. Accordingly, Landowner, on behalf of itself and all of its successors and assigns, including all Residential Project developers, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Landowner's Landowner's obligations set forth in this Affordable Housing Plan related to Inclusionary Moderate Income Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Landowner shall include the following language, in substantially the following form, in all agreements it enters into with Residential Project developers:

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"The Development Agreement (including the Affordable Housing Plan) by and between the City of Napa County and Napa Redevelopment Partners, LLC, dated \_\_\_\_\_ and recorded \_\_\_\_\_, at \_\_\_\_\_ implements County of Napa policies and City of Napa policies and includes regulatory concessions, incentives and significant public investment in the Napa Pipe Project. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Landowner and Residential Project developer, as contemplated by California Government Code section 65915. In light of the County's City's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand

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and agree that the Costa-Hawkins Act does not and shall not apply to the ~~Inclusionary Moderate Income~~ Units as defined in the Development Agreement developed at the Napa Pipe Project Site<sup>22</sup>."

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The Parties understand and agree that ~~neither the County City nor Landowner~~ would ~~not be~~ willing to enter into ~~the~~ this Agreement, without the agreement and waivers as set forth in this Article ~~56~~.

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ATTACHMENT A: ~~-~~ Affordable Housing Project Deed

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ATTACHMENT B: ~~-~~ Form of Conveyance Agreement

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ATTACHMENT C: ~~-~~ Form of Regulatory Agreement

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ATTACHMENT A  
Affordable Housing Project Deed

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

**MAIL TAX STATEMENTS TO:**

(Above Space for Recorder's Use Only)

A.P.N.: Block 8711, Lot 32

(A.P.N. Lot 227 Portion Only)

**GRANT DEED**

( )

Documentary Transfer Tax not shown  
pursuant to Section 11932 of the Revenue  
and Taxation Code, as amended.

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby  
acknowledged, NAPA REDEVELOPMENT PARTNERS, a Delaware limited liability company  
("Grantor"), hereby GRANTS to THE COUNTY OF NAPA, a political subdivision of the State  
("Grantee"), the real property located in the County of Napa, State of California, as described in  
Exhibit 1 attached hereto and incorporated herein by this reference (the "Property").

This Affordable Housing Parcel Deed ("Deed") is given in accordance with the Development  
Agreement between Grantor and Grantee dated as of \_\_\_\_\_ and recorded on \_\_\_\_\_  
\_\_\_\_\_ in the Official Records of Napa County on \_\_\_\_ ("Development Agreement"), including,  
without limitation the Affordable Housing Plan attached as Exhibit B to the Development  
Agreement ("Housing Plan"). Capitalized terms used in this Deed and not otherwise defined  
shall have the meanings set forth in the Development Agreement and the Housing Plan.

For a continuous period of \_\_\_ years from the date of issuance of a Certificate of Occupancy for a  
Residential Project located on the Property, regardless of any termination of the Development  
Agreement (the "Term"), the Grantee shall use the Property solely in accordance with the  
requirements of the Development Agreement and the Housing Plan, including but not limited to  
compliance with the use restrictions described in the Housing Plan, as such document may be  
amended from time to time. Grantee covenants that the restrictions in this Deed shall be binding  
on Grantee and its successor and assigns for the Term, and that upon expiration of the Term,  
Grantee and its successors and assigns may utilize the Property without regard to the restrictions  
contained in the Housing Plan.

ATTACHMENT A  
Affordable Housing Project Deed

~~This Grant Deed may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single agreement with the same effect as if both parties had signed the same counterpart. Any signature page from any counterpart of this Grant Deed, signed only by one party, may be detached from such counterpart and re-attached to any other counterpart of this Grant Deed signed only by the other party.~~

~~IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of \_\_\_\_\_, 2014.~~

~~NAPA REDEVELOPMENT PARTNERS, LLC~~

~~By \_\_\_\_\_~~

~~Name: \_\_\_\_\_~~

~~Its: \_\_\_\_\_~~



ATTACHMENT A  
Affordable Housing Project Deed

~~ACCEPTANCE BY GRANTEE~~

~~Grantee hereby accepts this Grant Deed and agrees to be bound by the reservations and exceptions contained herein and by the covenants made by Grantee herein.~~

~~COUNTY OF NAPA, a political subdivision of the state~~

By \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTACHMENT A  
Affordable Housing Project Deed

**CERTIFICATE OF ACKNOWLEDGMENT  
OF NOTARY PUBLIC**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_)

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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 \_\_\_\_\_ (Seal)

ATTACHMENT A  
Affordable Housing Project Deed

**CERTIFICATE OF ACKNOWLEDGMENT  
OF NOTARY PUBLIC**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_)

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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 \_\_\_\_\_ (Seal)

ATTACHMENT A  
Affordable Housing Project Deed

~~EXHIBIT "1"~~

~~LEGAL DESCRIPTION OF PROPERTY~~

~~All that certain real property located in the County of Napa, State of California, described as follows:~~

ATTACHMENT B  
Form of Conveyance Agreement

CONVEYANCE AGREEMENT

BETWEEN

THE COUNTY OF NAPA

AND

MIDPEN HOUSING CORPORATION

ATTACHMENT B  
Form of Conveyance Agreement

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- Exhibit A: — Legal Description of the Property
- Exhibit B: — Initial Financing Plan
- Exhibit C: — Development Schedule

ATTACHMENT B  
Form of Conveyance Agreement

CONVEYANCE AGREEMENT

(NAPA PIPE)

This Conveyance Agreement (the "Agreement") is entered into as of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date"), by and between the County of Napa, a political subdivision of the State (the "County"), and MidPen Housing Corporation, a California nonprofit public benefit corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article I of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The County and Napa Redevelopment Partners, LLC ("NRP") have entered into that certain Development Agreement related to the Napa Pipe project (the "Project", dated as of \_\_\_\_\_ ("Development Agreement")) providing for the redevelopment of certain property commonly referred to as the Napa Pipe property ("Development Area").

C. The Development Agreement and in particular the Affordable Housing Plan attached as Exhibit B to the Development Agreement require that NRP convey to the County certain property located within the Development Area to be developed with housing affordable to Very Low Income and Low Income Households in accordance with the Affordable Housing Plan.

D. The Developer has been selected by NRP and approved by the County under the Affordable Housing Plan as the Qualified Housing Developer for the Property.

E. The County and the Developer desire to determine the conditions under which the Property will be conveyed to the Developer in accordance with the Affordable Housing Plan, so that the Developer may develop the Improvements on the Property and operate an affordable housing project thereon.

F. The County prepared and certified an environmental impact report on the Napa Pipe Development ("Final EIR"). The FEIR was determined to constitute complete and adequate environmental review for this Agreement in accordance with CEQA.

THEREFORE, the County and the Developer agree as follows:

ARTICLE I.

DEFINITIONS AND EXHIBITS

Section 1.1 Definitions:

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Affordable or Affordable Housing Cost" means (i) with respect to a Residential Unit required to be Affordable to a Very Low Income Household, a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one twelfth of fifty percent (50%) of the Area Median Income based on Assumed Household Size; (ii) with respect to a Residential Unit Affordable to a Low Income Household a monthly rental charge, including a Utility Allowance which does not exceed thirty percent (30%) of one twelfth of sixty percent (60%) of the Area Median Income based upon Assumed Household Size.

(b) "Affordable Housing Plan" means Exhibit B to the Development Agreement, as it may be amended from time to time.

(c) "Annual Income" means the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations, Section 6914.

ATTACHMENT B  
Form of Conveyance Agreement

- (d) —“Area Median Income” means 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 or the Regulatory Agreement.
- (e) —“Assumed Household Size” means the total number of bedrooms in a Residential Unit multiplied by 1.5.
- (f) —“CEQA” means the California Environmental Quality Act (Public Resource Code §§ 21000 et seq.) and its implementing regulations.
- (g) —“Certificate of Completion” means the certificate to be issued by the County pursuant to Section 4.14 of this Agreement.
- (h) —“Certificate of Occupancy” means the final certificate of occupancy issued by the Local Agency upon completion of construction of the Improvements.
- (i) —“City” means the City of Napa, a municipal corporation.
- (j) —“Close of Escrow” means the date the Grant Deed is recorded in the Official Records.
- (k) —“Control” means direct or indirect management or control of the: (i) managing member or members in the case of a limited liability company; (ii) the managing general partner or general partners in the case of a partnership; and (iii) boards of directors that overlap by fifty percent (50%) or more of their directors, or a majority of the directors in the case of a corporation.
- (l) —“County” means Napa County, a political subdivision of the State.
- (m) —“County Board” means the Board of Supervisors of the County.
- (n) —“County Event of Default” has the meaning set forth in Section 7.3.
- (o) —“Deferred Project Infrastructure” means items of Project Infrastructure related to the Property consisting of (1) final, primarily behind the curb, right of way improvements, including, sidewalks, light fixtures, street furniture, landscaping, irrigation and drainage, and driveway cuts, and (2) utility laterals serving the Property, including storm, sewer, water, reclaimed water, dry utilities, and joint trench as necessary to provide operable electrical, gas, phone and cable, and utility boxes.
- (p) —“Deferred Infrastructure Liquidation Amount” means that amount agreed upon by NRP, the County and the Developer as the cost of completing some or all of the Deferred Project Infrastructure on the Property as determined pursuant to the Affordable Housing Plan.
- (q) —“Developer” means MidPen Housing Corporation, a California nonprofit public benefit corporation, and its successors and assigns as permitted by this Agreement.
- (r) —“Developer Event of Default” has the meaning set forth in Section 7.4.
- (s) —“Development” means the Property and the Improvements.
- (t) —“Development Schedule” means the schedule attached as Exhibit C, as approved by the County setting forth the Developer’s anticipated schedule for the Developer’s acquisition of the Property and development of the Development.
- (u) —“Effective Date” means the date this Agreement is entered into by the Parties as first written above.
- (v) —“Grant Deed” means the grant deed by which the County conveys the Property to the Developer in a form to be provided by the County.
- (w) —“Hazardous Materials” means:
- (1) — any “hazardous substance” as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

ATTACHMENT B  
Form of Conveyance Agreement

~~(2) — any “hazardous waste,” “infectious waste” or “hazardous material” as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;~~

~~(3) — any other waste, substance or material designated or regulated in any way as “toxic” or “hazardous” in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq., Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and~~

~~(4) — any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Development.~~

~~The term “Hazardous Materials” shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction or maintenance, of residential developments, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.~~

~~(x) — “Hazardous Materials Laws” means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.~~

~~(y) — “Improvements” means, collectively, the Low Income Homes and the related improvements to be developed on the Property.~~

~~(z) — “Initial Financing Plan” means the initial financing Plan prepared by the Developer in consultation with NRP and the County for the construction of all of the Low Income Homes on the Development Area and approved by the County, attached hereto as Exhibit B.~~

~~(aa) — “Local Agency” means the County as to any portion of the Property that is within County jurisdiction, and City as to any portion of the Property that is annexed to the City.~~

~~(bb) — “Low Income Homes” means, collectively, the \_\_\_\_\_ (\_\_\_) for rent Residential Units to be developed by the Developer on the Property at an Affordable Housing Cost and rented to Very Low and Low Income Households in accordance with this Agreement and the Regulatory Agreement.~~

~~(cc) — “Low Income Household” means a household with an annual income which does not exceed sixty percent (60%) of Area Median Income, adjusted for actual household size.~~

~~(dd) — “Memorandum of Conveyance Agreement” means the Memorandum of Conveyance Agreement to be recorded against the Property when the Property is conveyed to the County and this Agreement is entered into by the Developer and the County. A form of the Memorandum of Conveyance Agreement shall be provided by the County.~~

~~(ee) — “Official Records” means the official land records of the County.~~

~~(ff) — “Preliminary Development Notice” means that notice to be given by the Developer to NRP pursuant to Section 4.1 of this Agreement.~~

~~(gg) — “Project Approvals” means those certain approvals for the mixed use project known as Napa Pipe, which Project Approvals include:~~

ATTACHMENT B  
Form of Conveyance Agreement

(1) Resolution No. 2013-60, approved by the Napa County Board of Supervisors on June 4, 2013, adopting (1) CEQA findings, a statement of overriding considerations and a Mitigation Monitoring and Reporting Program (2) a Water Supply Assessment pursuant to Water Code Section 10911; and (3) conforming amendments to the Napa County General Plan (i.e., the GPA as described in Recital E.1 above);

(2) Ordinance No. 1382, approved by the County Board on June 4, 2013, adding chapter 18.66 to the Napa County Code to create the Napa Pipe Zoning District, as described in Recital E.2 of the Development Agreement, and specifying conditions of approval for future development in the Napa Pipe Zoning District;

(3) Resolution No. \_\_\_\_\_, approved by the Planning Commission on \_\_\_\_\_, 2014, approving a Tentative Map for the Project;

(4) Ordinance No. \_\_\_\_\_, approved by the County Board on \_\_\_\_\_, 2014, approving the Development Plan for the Napa Pipe Zoning District;

(5) Ordinance No. \_\_\_\_\_, approved by the County Board on \_\_\_\_\_, 2014, approving the Design Guidelines for the Napa Pipe Zoning District; and

(6) Ordinance No. \_\_\_\_\_, approved by the County Board on \_\_\_\_\_, 2014, approving the Development Agreement, including approval of the modifications to the Napa County Subdivision Code as applied to the Project described in Exhibit 1 to the Development Agreement.

(hh) —“Project Financing Plan” means the Developer’s plan for financing the development of the Improvements, as more fully described in the Affordable Housing Plan and in Section 2.3 of this Agreement.

(ii) —“Project Infrastructure” shall have the meaning set forth in the Development Agreement.

(jj) —“Property” means the real property to be developed by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(kk) —“Residential Unit” means a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, with or without shared living spaces, such as kitchens, dining facilities or bathrooms.

(ll) —“Security Financing Interest” has the meaning set forth in Section 8.1.

(mm) —“Subsequent Approvals” means any and all land use approvals, entitlements or permits or approvals of any kind or character consistent with the Project Approvals that are necessary or advisable for the development, construction, use, and occupancy of the Improvements in accordance with the Development Agreement, the other Project Approvals, and this Agreement, including, but not limited to, approvals required under the Zoning Ordinance, Design Guidelines, Plan Review Process, subdivision maps, site permits, minor administrative permits, sign permits, lot mergers, building permits, street and park improvement permits, improvement plans, use permits, variances, demolition permits, site clearance permits, grading and excavation plans and permits, certificates of occupancy, abandonment or establishment of streets or rights of way, utility easements, right of way transfers, sewer and water conversion permits, and encroachment permits.

(nn) —“Title Company” means \_\_\_\_\_, or such other title company as the Parties may mutually select.

(oo) —“Title Report” means that certain title report dated \_\_\_\_\_, issued by the Title Company for the Property.

(pp) —“Transfer” has the meaning set forth in Section 6.1.

ATTACHMENT B  
Form of Conveyance Agreement

~~(qq) —“Utility Allowance” means a utility allowance based on the utility allowance schedule published by the City of Napa Housing Authority or the California Tax Credit Allocation Commission.~~

~~(rr) —“Very Low Income Household” means a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.~~

~~Section 1.2 — Exhibits:~~

~~The following exhibits are attached to and incorporated in the Agreement:~~

~~Exhibit A: — Legal Description of the Property~~

~~Exhibit B: — Initial Financing Plan~~

~~Exhibit C: — Development Schedule~~

~~ARTICLE 2.~~

~~PREDISPOSITION REQUIREMENTS FOR  
CONVEYANCE OF THE PROPERTY~~

~~Section 2.1 — Conditions Precedent to Disposition of Property:~~

~~The requirements set forth in this Article 2 are conditions precedent to the County’s obligation to convey the Property to the Developer. The County shall have no obligation to convey the Property to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 2 in the manner set forth below and within the timeframe set forth in the Development Schedule. Developer may request extensions to the time periods and dates set forth in the Development Schedule and the County may grant such requests in its sole and absolute discretion. In no event shall the County be obligated to provide such extensions.~~

~~Section 2.2 — Subsequent Approvals:~~

~~No later than the date set forth in the Development Schedule, the Developer shall apply for, and exercise diligent good faith efforts to obtain, the Subsequent Approvals, including without limitation design review approval in accordance with the Project Approvals. Without limiting any other provision of this Agreement, Developer’s failure to obtain building permits by the date set forth in the Development Schedule shall be a material default of this Agreement by Developer. The Developer’s application for the Subsequent Approvals shall be substantially consistent with the Project Approvals. Procurement by the Developer of all Subsequent Approvals necessary to commence construction of the Improvements shall be a condition precedent to the County’s obligation to convey the Property to the Developer.~~

~~As set forth in Section 9.14, the Developer acknowledges that execution of this Agreement by the County does not constitute approval by the Local Agency of any required permits, applications, or allocations, and in no way limits the discretion of the Local Agency in the permit allocation and approval process.~~

~~Section 2.3 — Initial Financing Plan and Project Financing Plan:~~

~~As of the Effective Date, the County has approved the Initial Financing Plan attached to this Agreement as Exhibit B prepared by the Developer in consultation with NRP providing an initial financing plan for all of the Low Income Homes to be developed on the Development Area. No later than the date set forth in the Development Schedule, the Developer shall submit an updated and revised Project Financing Plan for the Development. The Project Financing Plan shall be in substantial conformance with the guiding documents of the Napa County Affordable Housing Trust Fund, including specifically (a) the Policies and Procedures Manual (approved in 2010); (b) the Multifamily Rental Housing Transaction Underwriting Guidelines (approved in 2010); and (c) any updated versions of these documents or new guiding policies and documents that~~



ATTACHMENT B  
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may be issued for the Affordable Housing Trust Fund prior to the date of submission of the Project Financing Plan. The Project Financing Plan shall include the following:

(a) — A breakdown of the number of Low Income Homes the Developer intends to develop and rent at Affordable Housing Costs to Very Low Income Households and Low Income Households. No fewer than fifty percent (50%) of the Low Income Homes shall be Affordable to Very Low Income Households unless the number of completed Low Income Homes Affordable to Very Low Income Households in the Development Area exceeds fifty percent (50%) of the total number of Low Income Homes completed, in which event the Developer may propose a lesser number of Low Income Homes Affordable to Very Low Income Households as long as the total number of completed Low Income Homes Affordable to Very Low Income Households plus the number proposed is not less than fifty percent (50%) of the total number of Low Income Homes completed and proposed.

(b) — An updated “sources and uses” breakdown of the costs of constructing the Improvements, and an updated operating proforma for the Development. Such updated sources and uses breakdown and operating proforma shall reflect the Developer’s then current expectations for funding sources and development costs.

(c) — Copies of funding commitments for any financing source, including loans and grants, in amounts sufficient to demonstrate that the Development is financially feasible and copies of any funding commitments for all other financing required to develop and operate the Development. If at the time of submission of the Project Financing Plan, the Developer does not have commitments from all sources of financing, the Project Financing Plan shall include information on the Developer’s actions to obtain such financing commitments and the Developer’s estimate of the likelihood of receiving such financing commitments.

(d) — A Tax Credit Reservation from TCAC and a letter of intent from an investor for equity funding for the Development in an amount that when combined with the other sources of financing committed to the Development demonstrates that the Development is financially feasible, or if the Developer has not applied for tax credits at the time of submission, the Project Financing Plan shall include the Developer’s projected date for submitting an application for tax credits, the requirements for submitting an application that is likely to score sufficient points to receive a Tax Credit Reservation and Developer’s estimation of the feasibility of meeting those requirements within the time frame set out in the Project Financing Plan.

(e) — Any other information that would assist the County in determining that the Developer has the financial capability to pay all costs of constructing the Improvements and operating the Development.

The County shall review the Project Financing Plan to determine if, in the County’s reasonable judgment, the Developer has the financial capability to pay all realistically established costs of constructing the Improvements, and operating the Development. The County shall either approve, disapprove, or conditionally approve the Project Financing Plan and any proposed amendments of the Project Financing Plan in writing within thirty (30) days of receipt. If disapproved, the County shall give specific reasons for disapproval. If the Project Financing Plan is disapproved, the Developer may resubmit, and the County shall promptly review, a revised Project Financing Plan that addresses the reasons for disapproval, and the County shall grant the Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Project Financing Plan. If, at the time of submission of the Project Financing Plan, the Developer does not have commitments for all financing required to pay for the costs of constructing the Improvements and a Tax Credit Reservation, the County, in its sole

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~~discretion, may conditionally approve the Project Financing Plan, in which event, the County's conditional approval will require that the Developer submit amendments to the Project Financing Plan demonstrating progress on obtaining the necessary financing within time frames to be determined by the County based on information provided by the Developer in the submitted Project Financing Plan. The County shall not be obligated to convey the Property to the Developer until the County has unconditionally approved a Project Financing Plan.~~

~~All financing necessary to construct the Improvements, as approved by the County in the Project Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the conveyance of the Property by the County to the Developer. The Developer shall also submit to the County evidence, reasonably satisfactory to the County, that any conditions to the release or expenditure of the financing described in the approved Project Financing Plan as the sources of funds to pay the costs of constructing the Improvements have been met, or will be met upon conveyance of the Property to the Developer, and that such funds will be available, subject to the Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Improvements. Submission by the Developer, and approval by the County, of such evidence of financing availability shall be a condition precedent to the County's obligation to convey the Property to the Developer.~~

~~Section 2.4 — Building Permit.~~

~~No later than the date set forth in the Development Schedule, the Developer shall apply for a building permit allowing for the construction of the Improvements consistent with the Subsequent Approvals. After submitting an application for a building permit, the Developer shall diligently pursue and obtain a building permit for the Improvements, no later than the date set forth in the Development Schedule. In the event the Developer intends to use funds disbursed at Close of Escrow to pay for a building permit, the County may convey the land to Developer if Developer has obtained a permit ready letter in place of a building permit; provided, however, the Developer shall provide evidence and assurances reasonably satisfactory to the County that Developer will pull the permit concurrently with or immediately following Close of Escrow. The County shall render all reasonable assistance (at no additional cost or expense to the County) to the Developer to obtain the building permit.~~

~~ARTICLE 3.~~

~~CONVEYANCE OF PROPERTY~~

~~Section 3.1 — Conveyance.~~

~~Provided the pre-disposition requirements set forth in Article 2 have been satisfied in the manner set forth above and by the dates set forth in the Development Schedule, the County shall convey to the Developer, and the Developer shall acquire from the County, the Property pursuant to the terms, covenants, and conditions of this Agreement at no cost to the Developer.~~

~~Section 3.2 — Opening Escrow.~~

~~To accomplish the conveyance of the Property from the County to the Developer, the Parties shall establish the escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions shall be consistent with this Agreement.~~

~~Section 3.3 — Close of Escrow.~~

~~The Close of Escrow shall occur no later than the date set forth in the Development Schedule, and only in the event that all conditions precedent to conveyance set forth in Article 2 have been satisfied or waived by the County. In addition to the conditions precedent set forth in Article 2,~~

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the following conditions shall be satisfied prior to or concurrently with, and as conditions of, the Close of Escrow:

- (a) ~~The Developer shall provide the County with copies of the Developer's organizational documents, a certified copy of a Developer's authorizing resolution, approving the transactions contemplated pursuant to this Agreement.~~
- (b) ~~The Developer shall have executed and delivered to the County the Regulatory Agreement and the Grant Deed, and all other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the County.~~
- (c) ~~The Grant Deed and the Regulatory Agreement shall have been recorded against the Property.~~
- (d) ~~There shall exist no condition, event or act which would constitute a breach or default under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default.~~
- (e) ~~All representations and warranties of the Developer contained in this Agreement shall be true and correct as of the Close of Escrow.~~

~~Section 3.4 Condition of Title:~~

~~Upon the Close of Escrow, the Developer shall have insurable title to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:~~

- (a) ~~applicable building and zoning laws and regulations;~~
- (b) ~~the Memorandum of Conveyance Agreement and the Regulatory Agreement;~~
- (c) ~~the Grant Deed;~~
- (d) ~~any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed;~~
- (e) ~~exceptions numbered \_\_\_\_\_ in the Title Report; and~~
- (f) ~~the liens of any financing approved by the County.~~

~~Section 3.5 Condition of Property:~~

~~(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the County hereby represents and warrants that it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the County to the Developer.~~

~~(b) **"AS IS" PURCHASE. PRIOR TO THE EFFECTIVE DATE, THE DEVELOPER WAS PROVIDED THE OPPORTUNITY TO INVESTIGATE THE PROPERTY, AND HAS APPROVED THE PHYSICAL CONDITION OF THE PROPERTY. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS SELLING AND THE DEVELOPER IS BUYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL**~~

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~~CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NOW WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.~~

~~(e) — Survival. The terms and conditions of this Section 3.5 shall expressly survive the Close of Escrow, shall not merge with the provisions of the Grant Deed, or any other closing documents and shall be deemed to be incorporated by reference into the Grant Deed. The County is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.~~

~~(d) — Acknowledgment. The Developer acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in Section 3.5 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this~~

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Agreement and that the County would not have agreed to convey the Property to the Developer without the disclaimers and other agreements set forth in this Section.

~~(e) — Developer’s Release of the County. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the County and its supervisors, board members, employees, officers, directors, representatives, and agents (the “Released Parties”) from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement.~~

~~(f) — Scope of Release. The release set forth in Section 3.5(e) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer’s release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the County from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:~~

~~“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”~~

~~Developer’s Initials: \_\_\_\_\_~~

~~Section 3.6 — Costs of County Parcel Escrow and Closing.~~

~~Ad valorem taxes, if any, shall be prorated as of the date of conveyance of the Property from the County to the Developer. The Developer shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the escrow.~~

~~ARTICLE 4.~~

~~CONSTRUCTION OF IMPROVEMENTS~~

~~Section 4.1 — Preliminary Development Notice.~~

~~(a) — Developer is required to coordinate construction of the Improvements with the construction of the Project Infrastructure applicable to the Property, including the Deferred Project Infrastructure, which is to be constructed by NRP. Developer agrees to cooperate and to take all acts necessary to reduce conflicts between the construction of the Improvements and the~~

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construction of the Project Infrastructure and the development of other portions of the Development Area by NRP.

(b) — The Developer shall provide NRP with a Preliminary Development Notice at the earlier of (i) eighteen (18) months prior to its targeted date for commencement of construction of the Improvements, or (ii) the date that Developer submits its first application for tax credit financing to the California Tax Credit Allocation Committee. The Preliminary Development Notice shall include to the extent available, and if not then available, as soon thereafter as such information becomes available, all of the following: information reasonably required to prepare and coordinate approval of improvement plans, permits and agreements, including the Developer's anticipated construction start date; preliminary construction schedule, including the anticipated dates for completion of the Improvements and when Deferred Project Infrastructure, including utility hookups and public access, will be required; and description of the general location of buildings, parking areas, site access, schematic utility design, power loads, wet utility demands and sanitary discharge loads. The Developer shall update the Preliminary Development Notice on regular intervals, but not less frequently than every three months.

(c) — The Developer shall notify NRP if at any time, or from time to time, its development plans, or changes thereto, are likely to require changes to the Project Infrastructure or Deferred Project Infrastructure, or to the noticed completion dates thereof. As provided in the Affordable Housing Plan, the Developer and NRP shall agree to negotiate in good faith with respect to any amendments to such construction schedule as may be necessary or appropriate from time to time to enable NRP to prepare and obtain approval of necessary improvement plans, and to obtain required permits and authorizations for any Project Infrastructure changes.

~~Section 4.2 — Construction Pursuant to Plans.~~

~~The Improvements shall be constructed substantially in accordance with the Subsequent Approvals.~~

~~Section 4.3 — Commencement of Improvements.~~

~~The Developer shall commence construction of the Improvements no later than the date set forth in the Development Schedule.~~

~~Section 4.4 — Completion of the Improvements.~~

~~Subject to Section 9.3 below, the Developer shall diligently prosecute to completion the construction of the Improvements no later than the date set forth in the Development Schedule.~~

~~Section 4.5 — Coordination of Construction and Deferred Project Infrastructure.~~

(a) — The Affordable Housing Plan requires NRP to construct the Project Infrastructure serving the Property, including the Deferred Project Infrastructure, or to pay to the Developer or the County, the Deferred Infrastructure Liquidation Amount. If NRP has not constructed the Project Infrastructure or any portion thereof or paid the Deferred Infrastructure Liquidation Amount for the portion of the Project Infrastructure not completed at the time that the Developer commences construction of the Improvements, the Developer shall provide NRP with all access needed to complete the Project Infrastructure on the Property. In accordance with the Affordable Housing Plan, NRP is required to coordinate the construction of the Deferred Project Infrastructure with the construction of the Improvements to ensure that (i) the Deferred Project Infrastructure (other than utility laterals serving the Property) is completed at or before completion of the Improvements, (ii) the utility laterals serving the Property are completed in coordination with the construction of the Improvements, and (iii) NRP's work does not interfere with or obstruct the Developer's work during such construction to the maximum extent reasonably feasible and that the Developer's work similarly does not interfere with NRP's work.

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~~(b) — If NRP has paid the Deferred Infrastructure Liquidation Amount to the Developer prior to the Developer commencing construction of the Improvements, the Developer shall be responsible for construction of the portion of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount and all costs associated with the construction of such Deferred Project Infrastructure. If NRP paid the Deferred Infrastructure Liquidation Amount to the County prior to conveyance of the Property to the Developer, upon conveyance of the Property to the Developer in accordance with Article 3, the County shall transfer the Deferred Infrastructure Liquidation Amount to the Developer and the Developer shall be responsible for the construction of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount and all costs associated with the construction of such Deferred Project Infrastructure.~~

~~(c) — The provisions of Sections 3.6 and 3.7 of the Affordable Housing Plan are incorporated into this Agreement by this reference.~~

~~Section 4.6 — Equal Opportunity:~~

~~During the construction of the Improvements, the Developer, and its successors, assigns and Subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction of the Improvements because of race, color, religion, ethnic group identification, sex, sexual preference, marital status, ancestry or national origin. Each of the following activities shall be conducted in a non-discriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.~~

~~Section 4.7 — Construction Pursuant to Laws:~~

~~(a) — The Developer shall cause all work performed in connection with the Development to be performed in compliance with: (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; and (ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the County for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Development.~~

~~(b) — To the extent required by law, the Developer shall and shall cause the Subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR") and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. The Developer shall and shall cause the Subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the County provide to the County such records and other documentation reasonably requested by the County. Copies of the currently applicable per diem prevailing wages are available on the DIR website. During the construction of the Improvements the Developer shall post at the Property the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by the County) the County against any claim for damages,~~



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~~compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, or its Subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with construction of the Improvements or any other work undertaken or in connection with the Property. The provisions of this Section 4.7(b) shall survive termination of this Agreement.~~

~~Section 4.8 — Progress Report~~

~~Until such time as the Developer has completed construction of the Improvements, as evidenced by the Certificate of Completion, the Developer shall provide the County with copies of all draw requests for use of all funds set forth on the approved Project Financing Plan and quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the development budget as set forth in the Project Financing Plan (as it may be amended and modified).~~

~~Section 4.9 — Construction Responsibilities~~

~~(a) — It shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement.~~

~~(b) — The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the construction documents, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, Subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the County with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the County, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Development.~~

~~Section 4.10 — Mechanics Liens, Stop Notices, and Notices of Completion~~

~~(a) — If any claim of lien is filed against the Property or the Improvements or a stop notice is served on any lender or other third party in connection with the Development, then the Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge or cause the Developer's contractor to pay and fully discharge, the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond from a surety reasonably acceptable to the County in sufficient form and amount, or provide the County with other assurance reasonably satisfactory to the County that the claim of lien or stop notice will be paid or discharged.~~

~~(b) — If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the County may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternatively, the County may require the Developer to immediately deposit with the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.~~

~~(c) — The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more,~~

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~~and take all other reasonable steps to forestall the assertion of claims of lien against the Property and/or Improvements. The Developer authorizes the County, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interest in the Development and Property.~~

~~Section 4.11 — Inspections.~~

~~The Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the County and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.~~

~~Section 4.12 — Financing; Revisions to Plan.~~

~~The Developer shall promptly submit any proposed material amendments to the approved Project Financing Plan, including but not limited to any material amendments or modifications to the development budget, or the commitment letter from any other lender, to the County. Written consent of the County shall be required to amend the Project Financing Plan; provided that the County shall consent to any amendment of the Project Financing Plan that increases the cost of the construction of the Improvements if such amendment also demonstrates that there is financing available to pay for such increases. The County shall utilize best efforts to approve or disapprove requested amendments to the Project Financing Plan within five (5) working days of receipt of a request for approval.~~

~~Section 4.13 — Information.~~

~~The Developer shall provide any information reasonably requested by the County in connection with the Development.~~

~~Section 4.14 — Certificate of Completion.~~

~~Promptly after completion of the Improvements in accordance with those provisions of this Agreement relating solely to the obligations of Developer to construct the Improvements (including the dates for beginning and completion thereof), the County will provide a Certificate of Completion so certifying. Such certification shall be conclusive determination that certain covenants in this Agreement with respect to the obligations of the Developer to construct the Improvements (excluding the Developer's compliance with Section 4.7) and the dates for the beginning and completion thereof have been met. Such certification shall be in such form as will enable it to be recorded among the Official Records. Such certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer: (i) to any holder of deed of trust securing money loaned to finance the Improvements or any part thereof; (ii) to pay prevailing wages; (iii) compliance with the Regulatory Agreement; and (iv) shall not be deemed a notice of completion under the California Civil Code.~~

~~ARTICLE 5.~~

~~ONGOING DEVELOPER OBLIGATIONS~~

~~Section 5.1 — Applicability.~~

~~The conditions and obligations set forth in this Article 5 shall apply from the Effective Date of this Agreement until expiration of the Regulatory Agreement term unless a different period of applicability is specified for a particular condition or obligation.~~

~~Section 5.2 — Use.~~

~~The Developer hereby agrees that, for the entire term of the Regulatory Agreement that the Development will be used only for uses consistent with the Regulatory Agreement and will manage and operate the Low Income Homes consistent with the requirements of the Affordable Housing Plan.~~

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~~Section 5.3 — Taxes and Assessments.~~

~~The Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, social security 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 lien or charge from attaching to the Property; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the 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.~~

~~Section 5.4 — Hazardous Materials.~~

~~(a) — Developer shall keep and maintain the Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property to be in violation of any Hazardous Materials Law. Developer may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.~~

~~(b) — Developer shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.~~

~~(c) — The County has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the County (or counsel of its own choice if a conflict exists with Developer) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.~~

~~(d) — Developer shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) — loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any~~

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~~rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.~~

~~Section 5.5 — Notice of Litigation.~~

~~Developer shall promptly notify the County in writing of any litigation materially affecting Developer or the Property and of any claims or disputes that involve a material risk of such litigation.~~

~~Section 5.6 — Waiver of Rights to Remonstrate.~~

~~The Developer hereby waives and forever releases any rights to remonstrate against any pending or future annexation of the Property to the City of Napa. This waiver shall be a covenant running with the Property and shall be binding on upon all transferees, successor and assigns and shall be required in all residential leases for the Low Income Homes.~~

~~ARTICLE 6.~~

~~ASSIGNMENT AND TRANSFERS~~

~~Section 6.1 — Definitions.~~

~~As used in this Article 6, the term “Transfer” means:~~

- ~~(a) — Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or~~
- ~~(b) — Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer, or any contract or agreement to do any of the same; or~~
- ~~(c) — Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer; or~~
- ~~(d) — The leasing of part or all of the Property or the Improvements thereon, provided, however, that leases of the units included within the Improvements to tenant occupants shall not be deemed a “Transfer” for purposes of this Article 7.~~

~~Section 6.2 — Purpose of Restrictions on Transfer.~~

~~This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the County, in view of:~~

- ~~(a) — The importance of the redevelopment of the Property to the general welfare of the community; and~~
- ~~(b) — The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible; and~~
- ~~(c) — The reliance by the County upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property; and~~
- ~~(d) — The fact that a change in ownership or control of the Developer as owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and~~

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~~(e) — The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and~~

~~(f) — The importance to the County and the community of the standards of use, operation and maintenance of the Property.~~

~~The Developer further recognizes that it is because of such qualifications and identity that the County is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.~~

~~Section 6.3 — Prohibited Transfers.~~

~~The limitations on Transfers set forth in this Article shall apply throughout the term of the Regulatory Agreement. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the County.~~

~~Any Transfer made in contravention of this Section 6.3 shall be void and shall be deemed to be a default under this Agreement whether or not the Developer knew of or participated in such Transfer.~~

~~Section 6.4 — Permitted Transfers.~~

~~Notwithstanding the provisions of Section 6.3, the following Transfers shall be permitted and are hereby approved by the County:~~

~~(a) — Any Transfer creating a Security Financing Interest permitted pursuant to the approved Project Financing Plan; and~~

~~(b) — Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 8.~~

~~(c) — Any Transfer of easement interest to utility providers to facilitate the delivery of utilities to the Development.~~

~~(d) — Any Transfer to a limited partnership formed by the Developer for the purpose of securing Tax Credit Funds in which the general partner is the Developer or an entity wholly controlled by the Developer, provided, Developer submits to the County for its approval and obtains the County's approval of any limited partnership agreement prior to any such Transfer.~~

~~(e) — The initial Transfer of the limited partnership interest in the Developer in connection with the syndication of the low income housing tax credits that will be generated by the Development, which syndication will require the transfer of limited partnership interests in the Developer.~~

~~(f) — Any Transfer of the limited partner interest provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the amended partnership agreement approved by the County; and (ii) in subsequent Transfers, a wholly owned affiliate of the initial limited partner retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner. The limited partner may Transfer its interest in Developer to a non-affiliated entity, subject to the prior written consent of the County, which consent shall not be unreasonably withheld.~~

~~(g) — Any Transfer of the general partner interest in Developer to a nonprofit affiliate of Developer, controlled by the Developer.~~

~~(h) — Any Transfer of the Property from the Developer to a non-profit affiliate of Developer at, before, or after the end of the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986 (26 U.S.C. Section 42 (i)(1)), pursuant to an option agreement as described in Developer's partnership agreement (the "Partnership Option~~

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Agreement”)), provided that the transferee expressly assumes the obligations of the Developer under the Regulatory Agreement, utilizing a form of assignment and assumption agreement acceptable to the County.

(i) — Any Transfer of the limited partner interest in the Developer to MidPen Housing or a non-profit affiliate of MidPen Housing pursuant to the Partnership Option Agreement.

(j) — In the event the general partner of Developer is removed by the limited partner of Developer for cause following default under the Developer’s partnership agreement, any Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation selected by the limited partner and approved by the County, which approval shall not be withheld unreasonably.

~~Section 6.5 — Effectuation of Certain Permitted Transfers.~~

~~(a) — No Transfer of this Agreement permitted pursuant to Section 6.4 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by the County and in form recordable among the Official Records, shall expressly assume the obligations of the Developer under this Agreement and shall agree to be subject to the conditions and restrictions to which the Developer is subject arising during the term of this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest shall have been acquired by, through or under a Security Financing Interest or shall have been derived immediately from any holder thereof shall not be required to give to County such written assumption until such holder or other person is in possession of the Property or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.~~

~~(b) — In the absence of specific written agreement by the County, no such Transfer, assignment or approval by the County shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.~~

~~Section 6.6 — Other Transfers with County Consent.~~

~~The County may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the County for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the County such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the County within thirty (30) days of receipt by the County of Developer’s request for approval of a Transfer.~~

~~ARTICLE 7.~~

~~DEFAULT AND REMEDIES~~

~~Section 7.1 — General Applicability.~~

~~The provisions of this Article 7 shall govern the parties’ remedies for breach or failure of this Agreement.~~

~~Section 7.2 — No Fault of Parties.~~

~~The following events constitute a basis for a party to terminate this Agreement without the fault of the other:~~

~~(a) — The County, despite good faith and diligent efforts, is unable to convey the Property to the Developer and the Developer is otherwise entitled to such conveyance.~~

~~(b) — The Developer, despite good faith and diligent efforts, is unable to obtain the County’s approval of the Project Financing Plan, provide evidence of the availability of the financing, or obtain the Subsequent Approvals necessary to develop the Improvements.~~

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~~Upon the happening of an above-described event and at the election of either party, this Agreement may be terminated by written notice to the other party. After such termination of this Agreement, neither party shall have any rights against or liability to the other under this Agreement, except that the indemnification provisions of this Agreement shall survive such termination and remain in full force and effect.~~

~~Section 7.3—Fault of County.~~

~~Except as to the events constituting a basis for termination under Section 7.2, the following events each constitute a County Event of Default and a basis for the Developer to take action against the County:~~

~~(a) The County, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such conveyance; or~~

~~(b) The County breaches any other material provision of this Agreement.~~

~~Upon the happening of any of the above-described events, the Developer shall first notify the County in writing of its purported breach or failure, giving the County forty five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty five (45) days, to commence to cure such breach, failure, or act. In the event the County does not then so cure within said forty five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty five (45) days, the County fails to commence to cure within such forty five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement shall survive such termination); and (2) prosecuting an action for damages or specific performance.~~

~~Section 7.4—Fault of Developer.~~

~~The following events each constitute a Developer Event of Default and a basis for the County to take action against the Developer:~~

~~(a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in Article 2, one or more of the conditions precedent to the County's obligation to convey the Property to the Developer; or~~

~~(b) The Developer refuses to accept conveyance from the County of the Property within the time periods and under the terms set forth in Article 3; or~~

~~(c) The Developer constructs or attempts to construct the Improvements in violation of Article 4; or~~

~~(d) The Developer has not satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the date set forth in the Development Schedule, or fails to commence or complete construction of the Improvements by the date set forth in the Development Schedule, or abandons or suspends construction of the Improvements prior to completion of all construction for a period of sixty (60) days after written notice by the County of such abandonment or suspension; or~~

~~(e) The Developer fails to comply with any obligation or requirement set forth in the Regulatory Agreement; or~~

~~(f) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 6; or~~



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~~(g) — Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the County in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or~~  
~~(h) — A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer, or seeking any arrangement for the Developer, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer, in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (h) as well; or the Developer, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive; or~~

~~(i) — The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection (i) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution; or~~

~~(j) — The Developer shall have voluntarily suspended its business or, the Developer shall have been dissolved or terminated; or~~

~~(k) — There shall occur any default declared by any lender under any loan document related to any loans secured by a deed of trust on the Development, after the expiration of applicable cure periods; or~~

~~(l) — The Developer breaches any other material provision of this Agreement. Upon the happening of any of the above described events, the County shall first notify the Developer in writing of its purported breach, failure or act above described, giving the Developer forty five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty five (45) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said forty five (45) days, or if such breach is of a nature that it cannot be cured within forty five (45) days, Developer fails to commence to cure within said forty five (45) days and diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days (or such longer period as the County in its sole discretion may allow), then the County shall be afforded all of its rights at law or in equity by taking any or all of the following remedies:~~

~~(1) — Termination of this Agreement by written notice to the Developer; provided, however, that the County's remedies pursuant to this Article 7 and the indemnification provisions of this Agreement shall survive termination.~~

~~(2) — Prosecuting an action for damages or specific performance; and~~

~~(3) — Any of the remedies specified in Sections 7.5, 7.6, 7.7, or 7.8.~~

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Notwithstanding the notice and cure periods set forth above, with respect to an Event of Default described in subsection (h), (i), or (j) above, the County may initiate enforcement action, without the provision of any notice, or the passage of any cure period.

Section 7.5 — Right of Reverter.

(a) — In the event that, following the Close of Escrow, this Agreement is terminated pursuant to Section 7.4 and such termination occurs prior to issuance of a Certificate of Completion for the Improvements, then the County shall have the right to reenter and take possession of the Property and all improvements thereon and to re-vest in the County the estate of the Developer in the Property.

(b) — Such right of reverter, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(1) — Any Approved Security Interest permitted by this Agreement; or

(2) — Any rights or interest provided in this Agreement for the protection of the holder of such Approved Security Interests.

(c) — Upon vesting or re-vesting in the County of title to the Property, the County shall promptly use its best efforts to resell the Property consistent with the Affordable Housing Plan. Upon sale the proceeds shall be applied as follows:

(1) First, to reimburse the County for any costs it incurs in managing or selling the Property (after exercising its right of reverter), including but not limited to amounts to discharge or prevent liens or encumbrances arising from any acts or omissions of the Developer;

(2) Second, to reimburse the County for damages to which it is entitled under this Agreement by reason of the Developer's default;

(3) Third, to the Developer up to the reasonable cost of the Improvements the Developer has placed on the Property and such other reasonable costs Developer has incurred directly in connection with development of the Property that were not financed by the County; and

(4) Fourth, any balance to the County.

(d) — If the County exercises its right of reverter and the Developer has accepted a Deferred Infrastructure Liquidation Amount but has not installed the Deferred Project Infrastructure prior to the exercise of the right of reverter, the Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the County at time of transfer of title to the County. The County shall also be entitled to an assignment of all plans, studies and other materials prepared by the Developer related to the development of the Improvements, provided that the County and the Developer are able to reach agreement on compensation to the Developer for the costs incurred for the preparation of such plans and studies.

Section 7.6 — Option to Repurchase, Reenter and Repossess.

(a) — The County shall have the additional right at its option to repurchase, reenter and take possession of the Property or any portion thereof owned by the Developer with all improvements thereon, if after conveyance of title to any portion of the Property and prior to the issuance of the Certificate of Completion for the Improvements, there is a Developer Event of Default pursuant to Section 7.4.

(b) — Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(1) — Any Approved Security Interest permitted by this Agreement; or

(2) — Any rights or interest provided in this Agreement for the protection of the holder of such Approved Security Interests.

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~~(e) — To exercise its right to repurchase, reenter and take possession with respect to the Property owned by the Developer, the County shall pay to the Developer in cash an amount equal to:~~

~~(1) — The fair market value of the improvements existing on the applicable portion of the Property at the time of the repurchase, reentry and repossession; less~~

~~(2) — Any gains or income withdrawn or made by the Developer from the applicable portion of the Property or the improvements thereon; less~~

~~(3) — The value of any unpaid liens or encumbrances on the applicable portion of the Property which the County assumes or takes subject to said encumbrances.~~

~~(d) — If the County exercises its option and the Developer has accepted a Deferred Infrastructure Liquidation Amount but has not installed the Deferred Project Infrastructure prior to the exercise of the right of reverter, the Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the County at time of transfer of title to the County. The County shall also be entitled to an assignment of all plans, studies and other materials prepared by the Developer related to the development of the Improvements, provided that the County and the Developer are able to reach agreement on compensation to the Developer for the costs incurred for the preparation of such plans and studies.~~

~~Section 7.7 — Acceleration of Note:~~

~~Following occurrence of a Developer Event of Default, the County shall have the right to cause all indebtedness of the Developer to the County, if any, together with any accrued interest thereon, to become immediately due and payable. The Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the any deed of trust. The Developer shall be liable to pay the County on demand all expenses, costs and fees (including, without limitation, attorney's fees and expenses) paid or incurred by the County in connection with the collection of any loan and the preservation, maintenance, protection, sale, or other disposition of the security given for any loan.~~

~~Section 7.8 — Right to Cure at Developer's Expense:~~

~~The County shall have the right to cure any monetary default by the Developer under a loan in connection with the Development. The Developer agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Developer upon demand therefor, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.~~

~~Section 7.9 — Project Documents:~~

~~If the Agreement is terminated pursuant to Sections 7.2 or 7.4, the Developer, at no cost to the County, shall deliver to the County copies of any plans and specifications and studies in the Developer's possession or to which Developer is entitled related to development of the Improvements on the Property.~~

~~Section 7.10 — Rights of Mortgagees:~~

~~Any rights of the County under this Article 7 shall not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests. Any conveyance or reverter of the Property to the County pursuant to this Article 7 shall be subject to Security Financing Interests permitted by this Agreement.~~

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Section 7.11 — Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 8.

SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 — No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Property, but only for the purpose of securing loans approved by the County pursuant to the approved Project Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the County pursuant to the approved Project Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 8.2 — Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the County to the Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 8.3 — Notice of Default and Right to Cure.

Whenever the County pursuant to its rights set forth in Article 7 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the County shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the County are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the County relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the County and recordable among the Official Records (the "Security Financing Interest Assignment"). The holder in that event must agree to complete, in the manner provided in this Agreement (or as may be amended by the Security Financing

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~~Interest Assignment; provided, however, the County is under no obligation to extend the dates for performance set forth in this Agreement), the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the County, to a Certificate of Completion from the County.~~

~~Section 8.4 — Failure of Holder to Complete Improvements.~~

~~In any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct pursuant to the Security Financing Interest Assignment, has not proceeded diligently with construction (as reasonably determined by the County), the County shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement.~~

~~Section 8.5 — Right of County to Cure.~~

~~In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the Improvements, and the holder has not exercised its option to complete the Improvements on the Property, the County may cure the default, prior to the completion of any foreclosure. In such event the County shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the County in curing the default. The County shall also be entitled to a lien upon the Property or any portion thereof to the extent of such costs and disbursements. The County agrees that such lien shall be subordinate to any Security Financing Interest, and the County shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.~~

~~Section 8.6 — Right of County to Satisfy Other Liens.~~

~~After the conveyance of title to the Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the County shall have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.~~

~~Section 8.7 — Holder to be Notified.~~

~~To the extent deemed necessary by the County, Developer shall insert each term contained in this Article 8 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.~~

~~ARTICLE 9:~~

~~GENERAL PROVISIONS~~

~~Section 9.1 — Notices, Demands and Communications.~~

~~Formal notices, demands, and communications between the County and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by reputable overnight delivery service, or delivered personally, to the principal office of the County and the Developer as follows:~~

County: \_\_\_\_\_ Napa County  
County Administration Building

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1195 Third Street  
Suite 310  
Napa, CA 94559  
Attention: County Executive Officer

with a copy to:

Office of the County Counsel  
County Administration Building  
1195 Third Street  
Suite 301  
Napa, CA 94559  
Attention: County Counsel

Developer: ~~MidPen Housing Corporation~~  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404  
Attention: President

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 9.1.

~~Section 9.2 — Non Liability of County Officials, Employees and Agents.~~

~~No member, official, employee or agent of the County shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the County or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.~~

~~Section 9.3 — Forced Delay.~~

~~In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God, or other deities; acts of terrorism or the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the County); or any other causes (other than Developer's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the County and the Developer. In no event shall the cumulative delays exceed one hundred twenty (120) days, unless otherwise agreed to by the Parties in writing.~~

~~Section 9.4 — Inspection of Books and Records.~~

~~Upon request, the Developer shall permit the County to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.~~

~~Section 9.5 — Provision Not Merged with Deed.~~

~~None of the provisions of this Agreement are intended to or shall be merged by any grant deed transferring title to any real property which is the subject of this Agreement from County to~~

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~~Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.~~

~~Section 9.6 — Title of Parts and Sections.~~

~~Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.~~

~~Section 9.7 — General Indemnification.~~

~~The Developer shall indemnify, defend (with counsel reasonably selected by the County) and hold the County, and its board members, officers, agents and employees (collectively, the "Indemnified Parties") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against all or any of the Indemnified Parties, and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement or the Regulatory Agreement, including but not limited to the conveyance of the Property, development of the Improvements, and the rental of the Low Income Homes, except to the extent such claim arises from the grossly negligent or willful misconduct of the County as applicable. The provisions of this Section shall survive both the issuance of a Certificate of Completion by the County and termination of this Agreement.~~

~~Section 9.8 — Applicable Law.~~

~~This Agreement shall be interpreted under and pursuant to the laws of the State of California.~~

~~Section 9.9 — No Brokers.~~

~~Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.~~

~~Section 9.10 — Severability.~~

~~If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the 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.~~

~~Section 9.11 — Legal Actions and Attorneys' Fees.~~

~~Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of the County. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney's fees and costs incurred in such action.~~

~~Section 9.12 — Binding Upon Successors.~~

~~This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to~~



ATTACHMENT B  
Form of Conveyance Agreement

~~apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.~~

~~The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property 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 the Property from the requirements of this Agreement.~~

~~Section 9.13 — Parties Not Co-Venturers.~~

~~Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.~~

~~Section 9.14 — Discretion Retained by County.~~

~~The County's execution of this Agreement does not constitute approval by the County of any Subsequent Approvals and in no way limits the discretion of the Local Agency in the permit and approval process in connection with development of the Improvements.~~

~~Section 9.15 — Time of the Essence.~~

~~In all matters under this Agreement, the Parties agree that time is of the essence.~~

~~Section 9.16 — Action by the County.~~

~~Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the County is required or permitted under this Agreement, such action may be given, made, or taken by the County Executive Director, or by any person who shall have been designated in writing to the Developer by the Executive Director, without further approval by the County Board. Any such action shall be in writing.~~

~~Section 9.17 — Representation and Warranties of Developer.~~

~~The Developer hereby represents and warrants to the County as follows:~~

~~(a) — Organization. The Developer is a duly organized, validly existing California corporation, and is in good standing under the laws of the State of California and has the power and County to own its property and carry on its business as now being conducted.~~

~~(b) — Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.~~

~~(c) — Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.~~

~~(d) — Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.~~

~~(e) — No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered,~~

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~~pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.~~

~~(f) — Compliance With Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.~~

~~(g) — Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.~~

~~(h) — Title to Property. Upon recordation of the Grant Deed, the Developer will not record or permit any mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.~~

~~(i) — Financial Statements. The financial statements of the Developer, and other financial data and information furnished by, or on behalf of the Developer, to the County fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.~~

~~(j) — Sufficient Funds. Upon the acquisition of the Property the Developer will hold sufficient funds or binding commitments for sufficient funds to obtain the Property, and complete the construction of the Improvements in accordance with this Agreement.~~

~~Section 9.18 — Entry by the County.~~

~~The Developer shall permit the County, through its officers, agents, or employees, at all reasonable times to enter into the Development (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (b), following completion of construction to inspect the ongoing management of the Development (or portion thereof then owned by Developer) during normal business hours or upon twenty-four hours notice, to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the County is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the County therefor. Any inspection by the County during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.~~

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~~Section 9.19—Entire Understanding of the Parties.~~

~~This Agreement constitutes the entire understanding and agreement of the parties. All prior discussions, understandings and written agreements are superseded by this Agreement. The Developer and the Developer's counsel have read and reviewed this Agreement and agree that any rule of construction (including, but not limited to Civil Code Section 1654, as may be amended from time to time) to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.~~

~~Section 9.20—Operating Memoranda; Implementation Agreements.~~

~~(a) The parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the parties which, after execution shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of operating memoranda or implementation agreements may be appropriate.~~

~~(b) Operating memoranda or implementation agreements may be executed on the County's behalf by the County Executive Director, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 9.21 and must be approved by the County Board.~~

~~Section 9.21—Amendments.~~

~~The parties can amend this Agreement only by means of a writing executed by the Developer and the County.~~

~~Section 9.22—Counterparts; Multiple Originals.~~

~~This Agreement may be executed in counterparts, each of which shall be deemed to be an original.~~

~~[Signatures on following page.]~~

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

ATTACHMENT B  
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~~IN WITNESS WHEREOF, the County and the Developer have executed this Agreement as of the Effective Date.~~

~~DEVELOPER:~~

~~MIDPEN HOUSING CORPORATION, a California nonprofit public benefit corporation~~

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

~~Name: \_\_\_\_\_~~

~~Its: \_\_\_\_\_~~

~~COUNTY:~~

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

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

~~\_\_\_\_\_, Executive Officer~~

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
County Counsel

**Note: Section 3.5 Requires the Developer's Initials**

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Form of Conveyance Agreement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_)

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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 \_\_\_\_\_ (Seal)

ATTACHMENT B  
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_)

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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 \_\_\_\_\_ (Seal)

ATTACHMENT B  
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~~EXHIBIT A~~  
~~LEGAL DESCRIPTION OF THE PROPERTY~~



ATTACHMENT B  
Form of Conveyance Agreement

~~EXHIBIT B~~  
~~INITIAL FINANCING PLAN~~

ATTACHMENT B  
Form of Conveyance Agreement

EXHIBIT C  
DEVELOPMENT SCHEDULE

<u>Obligation</u>	<u>Section</u>	<u>Schedule</u>
Developer shall apply for, and exercise diligent good faith efforts to obtain, all Subsequent Approvals necessary for development of the Improvements	2.2	Not later than _____.
Developer shall submit a Project Financing Plan	2.3	Not later than _____.
Close of Escrow	3.3	Not later than _____.
Developer obtain a building permit for the Improvements	2.4	Not later than _____.
Developer to commence construction of the Improvements	4.2	Thirty (30) days following close of escrow and in no event later than _____.
Developer to complete construction of the Improvements	4.#	_____(24) months after the commencement of construction, and in no event later than _____.

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 1.1U)). 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 fine 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 Corporation;~~

~~COUNTY: ——— Attn: Executive Director  
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: \_\_\_\_\_  
\_\_\_\_\_ Chair,  
Napa County Board of  
\_\_\_\_\_ Supervisors~~

~~APPROVED AS TO FORM BY COUNTY COUNSEL~~

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

~~DEVELOPER:~~

~~MIDPEN HOUSING CORPORATION, a California nonprofit public benefit corporation~~

~~By: \_\_\_\_\_  
Its: \_\_\_\_\_ Executive Director~~

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_>

County of \_\_\_\_\_>

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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 \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_>

County of \_\_\_\_\_>

On \_\_\_\_\_ before me, \_\_\_\_\_, a 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 \_\_\_\_\_ (Seal)

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

*Final 12-12-2019*

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