

**FOR COUNTY USE ONLY**

County of San Bernardino

F A S**CONTRACT TRANSMITTAL**

<input checked="" type="checkbox"/>	New Change Cancel	Vendor Code FONTANA411		SC	Dept. ECD	A	Contract Number
County Department Community Development and Housing			Dept. ECD	Orgn. ECD	Contractor's License No. N/A		
County Department Contract Representative Debbie Kamrani			Telephone (909)387-4411				Total Contract Amount \$2,700,000
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input checked="" type="checkbox"/> Other: Loan							
If not encumbered or revenue contract type, provide reason:							
Commodity Code 90923		Contract Start Date 2/11/14	Contract End Date 2/11/2071	Original Amount \$2,700,000	Amendment Amount \$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Fund SCS	Dept. ECD	Organization ECD	Appr. 200	Obj/Rev Source 2005	GRC/PROJ/JOB No. 00003684	Amount \$2,700,000	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Project Name NSP3 Loan to Fontana Siena			FY	Estimated Payment Total by Fiscal Year			
			Amount	I/D	FY	Amount	I/D
			_____	_____	_____	_____	_____
			_____	_____	_____	_____	_____
			_____	_____	_____	_____	_____

CONTRACTOR Fontana Siena Partners LPFederal ID No. or Social Security No. 80-0918411Contractor's Representative Todd A. Deutscher, PresidentAddress 15635 Alton Parkway, Suite 375, Irvine CA 92618Phone (949) 491-1422Nature of Contract: *(Briefly describe the general terms of the contract)*

This Neighborhood Stabilization Program (NSP3) Agreement provides for the disbursement of NSP3 funds for the above referenced Borrower. The loan will provide financing for predevelopment costs and the acquisition of vacant land located at 7807 and 7833 Juniper Ave, Fontana, County of San Bernardino, for a proposed affordable housing development for Low Income residents earning 60% or less of Area Median Income (AMI). The sixteen (16) NSP3-assisted units will remain affordable to Very Low Income Households for a period of fifty-five (55) years from the date of recordation of the Notice of Completion. NSP3 funds in the amount of \$2,700,000 will be disbursed upon the satisfaction of all conditions referenced in Section 207 of the Neighborhood Stabilization Program Loan Agreement.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)	Reviewed as to Contract Compliance	Presented to BOS for Signature
► County Counsel	►	► Department Head
Date _____	Date _____	Date _____

Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

NEIGHBORHOOD STABILIZATION PROGRAM LOAN
AGREEMENT
FOR MULTI-FAMILY HOUSING

By and between

COUNTY OF SAN BERNARDINO
385 N. Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0043

and

Fontana Siena Partners LP
15635 Alton Parkway, Suite 375
Irvine, CA 92618

for

Siena Apartments
City of Fontana, San Bernardino County

TABLE OF CONTENTS

		Page
100.	INTRODUCTORY SECTIONS	2
101.	Definitions	2
102.	Representations and Warranties of Borrower	6
103.	Limitation Upon Change in Ownership, Management and Control of Borrower	8
104.	NSP3 Program Provisions	8
200.	FINANCING	11
201.	County Loan	11
202.	Sources of Financing	11
203.	Submission of Evidence of Financing	11
204.	Interest	11
205.	Repayment	12
206.	Assumption	13
207.	County Loan Disbursement	13
208.	Security for County Loan	13
209.	Subordination of Deed of Trust	13
210.	Condition of the Property	13
211.	Conditions Precedent to Disbursement of County Loan Proceeds	17
212.	Other Conditions	21
300.	DEVELOPMENT AND CONSTRUCTION OF THE PROPERTY	22
301.	Commencement and Completion of Project	22
302.	Relocation	22
303.	Notice of Completion	23
304.	Taxes and Assessments	23
305.	Entry by the County	23
306.	Compliance with Laws	23
307.	NSP3 Program Requirements	24
308.	Right of the County to Cure Mortgage or Deed of Trust Default	25
400.	USES OF THE PROPERTY	25
401.	Occupancy Restriction	25
402.	Rent Restrictions	26
403.	Operation and Maintenance	27
404.	Non-Discrimination Covenants	27
405.	Tenant Protections	28
406.	Subordination	29
407.	Monitoring	29
500.	DEFAULT AND REMEDIES	30
501.	Events of Default	30
502.	Remedies and Acceleration of Note	32
503.	Force Majeure	33
504.	Right of Contest	33
505.	Remedies Cumulative	33
506.	Waiver of Terms and Conditions	33
507.	Non-Liability of County Officials and Employees	34

600. GENERAL PROVISIONS	34
601. Time	34
602. Notices.....	34
603. Attorneys' Fees.....	35
604. No Third Parties Benefited	35
605. County to File Notices	35
606. Actions.....	35
607. Successors and Assigns	35
608. Use of Words	35
609. Partial Invalidity.....	35
610. Governing Law	35
611. Amendment.....	35
612. Approvals.....	35
613. Captions and Headings	36
614. Conflict of Interest.....	36
615. Former County Officials.....	36
616. Contract Compliance	36
617. Entire Agreement	36

Exhibit A	Legal Description(s) and Map(s)
Exhibit B	Schedule of Performance
Exhibit C	Schedule of Rents
Exhibit D	Promissory Note (D-1), Deed of Trust (D-2), Request for Notice of Default (D-3)
Exhibit E	Certifications of Continuing Program Compliance (Initial Certification – E-1 and Annual Certification – E-2)
Exhibit F	NSP3 Program Rents
Exhibit G	Project Budget
Exhibit H	Special Terms and Conditions
Exhibit I	Certification of Tenant Eligibility
Exhibit J	Affordability Covenant

NEIGHBORHOOD STABILIZATION PROGRAM LOAN AGREEMENT

THIS NEIGHBORHOOD STABILIZATION PROGRAM Loan Agreement for Multi-Family Housing hereafter referred to as ("Agreement") is entered into as of the 11th day of February, 2014, by and between the County of San Bernardino, hereafter referred to as "County," and Fontana Siena Partners LP, hereafter referred to as "Borrower". Borrower will develop the property located at 7807 and 7833 Juniper Ave, Fontana.

RECITALS

A. The County has received funds from the United States Department of Housing and Urban Development (HUD) pursuant to Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010, specifically Section 2301(b) of the Neighborhood Stabilization Program 3 (NSP3 respectively), to be used for the purposes of this Agreement in accordance with all applicable NSP3 Laws and Regulations.

B. County shall act as the representative member of NSP3 for purposes of the NSP3 program, assuming overall responsibility for ensuring that the NSP3 program is implemented in compliance with program regulations.

C. Borrower provides multi-family housing units to the population of the County and proposes to provide new construction of multi-family housing rental units located in the City of Fontana, San Bernardino County, which is a targeted area under NSP3.

D. Borrower has certified that the multi-family housing rental units are to be constructed as defined in the NSP3 regulations.

E. Borrower proposes that the NSP3 funds, which are the subject of this Agreement, will be used for the acquisition of vacant land and pre development costs incurred for proposed new construction of fifty-four (54) affordable family rental housing units, including fourteen (14) one bedroom units, twenty-three (23) two bedroom units and fourteen (14) three bedroom units; and to assure the long-term affordability of the units to Low Income households as described herein. The project will also include an additional unit which will be set aside as a manager's unit. Sixteen (16) of the fifty-four (54) units will be established as NSP units.

F. Borrower requires financial assistance from the County to accomplish its activities.

G. Through this Agreement, and subject to the terms and conditions herein, the County desires to provide financial assistance to Borrower for land acquisition and predevelopment costs in the form of a loan in the amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000) from NSP3 funds and Borrower desires to make available and rent eleven (11) 2-bedroom and five (5) three-bedroom units (sixteen total) to Very Low Income Households at Affordable Rents (as those terms are defined herein) for a specified period of time.

101. Definitions.

The following terms shall have the following meanings in this Agreement:

1. "Affordable Housing Project" shall mean the multi-family rental complex to be created out of the acquisition and construction of the units described above.
2. "Affordable Rent" shall mean the maximum rent allowed for the Affordable Units in accordance with 24 CFR Part 92.252 of the HOME Regulations.
3. "Affordable Units" shall mean the units on the Property required to be leased at an Affordable Rent to qualified Very Low Income Households, as set forth in Section 402 hereof.
4. "Affordability Period" shall have the meaning set forth in the **Affordability Covenant Agreement** attached hereto as EXHIBIT J and incorporated herein by this reference. A total of sixteen (16) NSP3-assisted units shall remain affordable to Very Low Income households, for not less than fifty-five (55) years, beginning on the recordation of the Notice of Completion, and verification by County that all NSP units are occupied by NSP eligible tenants, as that term is defined in Section 303 of this Agreement.
5. "Agreement" shall mean this NSP3 Agreement.
6. "Annual Financial Statement" shall mean the financial statements of Operating Expenses and Revenues, prepared at Borrower's expense, by an independent certified public accountant **using the comprehensive basis of accounting, namely the tax basis** which shall form the basis for determining the Residual Receipts.
7. "Borrower" shall mean the Fontana Siena Partners LP, a California limited partnership.
8. [Reserved]
9. "Community Housing Development Organization (CHDO)" shall mean a private nonprofit organization certified in the County of San Bernardino pursuant to 24 CFR Part 92, Section 2 of the HOME Regulations.
10. "County" shall mean County of San Bernardino.
11. "County NSP3 Loan" shall mean the NSP3 loan in the amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000) by the County to Borrower. This Loan is the subject of this Agreement.
12. "Current Market Appraised Value" shall mean the value of a home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the Uniform Relocation Act regulations (49 CFR 24.103) and completed within sixty (60) days prior to an offer made for the property by Borrower.

13. "Debt Service" shall mean the scheduled principal and interest payments made on the Primary Loan(s).

14. "Deed of Trust" shall mean the Deed of Trust in favor of the County to be recorded as a lien against the Property securing the Promissory Note (Note).

15. "Designated Owner" shall mean Fontana Siena Partners LP

16. "Development Costs" shall mean all costs and expenses approved pursuant to this Agreement which are customarily incurred and shall have been actually incurred by Borrower for the new construction of the Property and shall include without limitation the following: acquisition costs, construction costs in affiliation with the construction; architectural and engineering costs and fees (if any); financing fees ("points"); building permits; title and title insurance; escrow fees and closing costs; appraisals; tests to determine the condition of the Property; and such other costs, fees and expenses, the evidence of which must be provided in writing by the County; provided, however, that payment to parties related to or affiliated with Borrower for Development Costs shall not exceed market rates.

17. [Reserved]

18. [Reserved]

19. "Floating Units" shall mean units described in Federal HOME Regulations ("24 CFR Part 92.253").

20. "Foreclosed Property" shall mean a property that "has been foreclosed upon" at the point that, under state or local law, the mortgage or tax foreclosure is complete. By way of example, HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

21. "HOME Regulations" shall mean the implementing regulations of the HOME Program (Home Investment Partnership Act) set forth at 24 CFR 92 as they now exist and as may hereafter be amended.

22. "LMMH" shall mean the abbreviation for Very Low-, Low-, Moderate-, and Middle-Income Households. LMMH households shall be those households whose incomes do not exceed 120% of the AMI.

23. "Loan Documents" shall mean the following documents evidencing the County NSP3 Loan and required as consideration for County to make the County NSP3 Loan and Predevelopment Loan:

- (a) the Notes, Promissory and Predevelopment Promissory Note;
- (b) the Deed of Trust;
- (c) the Truth-in-Lending Statement;
- (d) Request for Notice of Default; and

(e) this Agreement. Loan Documents shall be executed between the County, Borrower and any necessary parties.

24. "Very Low-Income Households" shall mean those households whose gross annual incomes are less than fifty percent (50%) of AMI.

25. "Moderate-Income Households" shall mean those households whose gross annual incomes are less than 120%, of AMI.

26. "Note", or "Promissory Note", shall mean the Promissory Note in the principal amount of Two Million Four Hundred Thousand Dollars (\$2,400,000), for land acquisition only, evidencing the County NSP3 Loan. The **Promissory Note** shall be in the form of (EXHIBIT D-1) attached hereto and incorporated herein by this reference. A separate Predevelopment Promissory Note in the amount of \$300,000 is included in the Predevelopment Loan Agreement.

27. "NSP3" shall mean the Neighborhood Stabilization Program 3 (NSP3) as described in Section 307 herein, and in 42 U.S.C. 5301 *et seq.* as it now exists and, as may hereafter be amended.

28. "NSP3 Regulations" shall mean the implementing regulations of the NSP3 Program as prescribed by HUD, as they now exist and as may hereafter be amended.

29. "Operating Expenses" shall include the following actual, reasonable, and customary costs, fees and expenses for similarly-restricted and financed multi-family projects directly incurred during the preceding fiscal year in the operation of the Property.

(a) the costs of utilities supplied to and used for the Property not paid by the tenants, including trash removal, electricity, water, sewer and gas;

(b) the cost of all insurance required for the Property to satisfy the requirements of any tax credit equity investor, any lender whose loan is secured by a deed of trust encumbering the Property or requirements imposed in any ancillary documents including, but not limited to, regulatory agreements and covenants, conditions and restrictions, concerning the operation of the Property and encumbering the interest of Borrower therein;

(c) ad valorem tax and assessments payments;

(d) maintenance and repair expenses and services, including material and labor, including charges for public services such as sewer charges, license and permit fees, goods, commodities, materials and equipment, and including all contract repairs and services and maintenance and repair of furniture, furnishings and fixtures (to the extent that such repairs and/or maintenance expenses are paid out of reserves maintained by any lender on the Property, such expenses shall not be deemed "Operating Expenses"); painting; cleaning; pest control; gardening; rubbish removal; graffiti removal; advertising, marketing, and promotion; leasing commissions; accounting, audit and legal expense attributable to the Property; office expenses incurred in operation of the Property; the allocable share of expenses of the Property for maintenance of roads and use of share facilities; and repair and maintenance of elevators and parking structures;

(e) salaries, wages, rent payment or allocation, and other compensation due and payable to the employees or agents of Borrower employed on-site in connection with the maintenance, administration or operation of the Property, along with all withholding taxes, insurance premiums, social security payments and other payroll taxes or payments required in connection with such employees;

(f) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, if any, required on the Primary Loan(s);

(g) management fees, expenses and costs which shall initially be Five percent (5%) of collected rents per unit per month (the "Management Fee"), which Management Fee shall be adjusted annually by a percentage equal to the annual increase in the AMI for the area in which the Property is located in accordance with adjustment factors adopted by HUD;

(h) deposits and payments into accounts maintained for operating reserves and/or replacement reserves required in satisfaction of the requirements therefore imposed by any senior lender;

(i) costs of security services supplied to the Property, if any;

(j) payment of deferred developer fees;

(k) Payment of Partnership management fees and/or asset management fees not to exceed \$20,000 per annum, increased annually by CPI;

(l) Payments to parties related to or affiliated with Borrower for Operating Expenses shall not exceed market rates for similarly restricted and financed multi-family projects. Operating Expenses shall not include (1) repairs or replacements paid out of insurance proceeds received by Borrower, or (2) depreciation of buildings or other similar non-cash items of expense. Operating Expenses shall be reported in the Annual Financial Statement. Operating Expenses shall be documented by financial statements as defined in "Annual Financial Statement."

30. "Parties" shall mean the County and Borrower.

31. "Predevelopment Loan" shall mean the County loan to Borrower in the total principal amount not to exceed Three Hundred Thousand Dollars (\$300,000) for the partial funding of Predevelopment Activities.

32. "Predevelopment Promissory Note" shall mean the Promissory Note in a principal amount not to exceed Three Hundred Thousand Dollars (\$300,000) for predevelopment costs.

33. "Primary Loan(s)" shall mean the mortgage loan or Loan obtained by Borrower from a reputable financial institution, government financing entity, or government entity for financing the new construction of the Property and any permanent loan which is used to repay (in whole or in part) any such construction loan. Initially, "Primary Loan(s)" shall mean the County NSP3 Loan in the amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000) which shall only be used for the vacant land acquisition and pre development costs, as evidenced by two promissory notes, \$2,400,000 for the vacant land acquisition and \$300,000 for the Predevelopment Loan

34. "Project" shall mean the new construction of the Property in accordance with the provisions set forth in this Agreement.

35. "Property" shall mean the real property located at 7807 and 7833 Juniper Ave, Fontana, County of San Bernardino, as more particularly described and shown in the Legal Description attached hereto as Exhibit A and incorporated herein by this reference, together with the buildings, tangible personal property, fixtures and other improvements to be located thereon.

36. "Relocation" shall mean any relocation assistance or payment required to be provided to past or present tenants of the Property under applicable federal, state, or local laws and/or regulations.

37. "Request for Notice of Default" shall mean a request for **Notice of Default** to be recorded against the Property in substantially the same form as EXHIBIT D-3 attached hereto and incorporated herein by this reference.

38. "Residual Receipts" shall mean Revenue less Operating Expenses.

39. "Revenue" shall mean the gross rental income from the Property and any other income Borrower derives from the ownership, operation and management of the Project. Revenue shall be documented by financial statements, as defined in "Annual Financial Statement."

40. "Term" shall mean the period commencing on the date of recordation of the Deed of Trust and shall continue through the Affordability Period as defined in (4) of this section.

41. "Very Low Income Households" shall mean those households whose gross annual incomes are less than fifty percent (50%) of AMI.

102. Representations and Warranties of Borrower. Borrower hereby represents and warrants to the County as follows:

1. Organization. Borrower is the Fontana Siena Partners LP. Copies of the documents evidencing the organization of Borrower delivered to the County are true and correct copies of the originals, as amended to the date of this Agreement.

2. Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowing contemplated hereunder, to execute and deliver the County NSP3 Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

3. Authority of Persons Executing Documents. This Agreement and the County NSP3 Loan Documents 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 or on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the County

NSP3 Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

4. Valid Binding Agreements. This Agreement and the County NSP3 Loan Documents 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 Borrower enforceable against in accordance with their respective terms.

5. No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the County NSP3 Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, does or 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 Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach or a default under any Agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower other than liens established pursuant hereto.

6. Pending Proceedings. Borrower 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 Borrower, threatened against or affecting Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely of Borrower, materially affect Borrower's ability to repay the County Loan or impair the security to be given to the County pursuant hereto.

Each of the foregoing items (1) through (6), inclusive, shall be deemed to be an ongoing representation and warranty. Borrower shall immediately advise the County in writing if there is any change relating to it pertaining to any matters set forth or referenced in the foregoing items (1) through (6), inclusive.

103. Limitation Upon Change in Ownership, Management and Control of Borrower.

1. Prohibition. Except as expressly set forth herein, during the Term of this Agreement, no voluntary or involuntary successor in interest of Borrower shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Borrower make any total or partial sale, transfer, conveyance, or encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the County, which approval shall not unreasonably be withheld, delayed or conditioned (other than the lease of **fifty-four (54)** Affordable Units to Low- Income tenants and one (1) manager's unit (**55** total units)). Any purported transfer, voluntary or by operation of law, in violation of this Section 103 shall constitute a default hereunder and shall be void.

2. Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, County approval of an assignment of this Agreement or conveyance of the Property or any part thereof, shall not be required in connection with the following:

(a) The conveyance, dedication, transfer or assignment of the whole or any portion of the Property to the County or other governmental agency;

(b) The granting of easements or permits to public utilities to facilitate the operation of the Property.

(c) Transfer of this Agreement and/or the Project to an entity in which Borrower or Borrower's general partner owns not less than fifty-one percent (51%) of the beneficial interest in the Project, and which is under the management and control of Borrower or Borrower's general partner and the transferee entity executes an agreement reasonably acceptable to County assuming all of Borrower's obligations under this Agreement.

(d) The admission or removal of any partner of Borrower so long as Palm Communities, or its affiliate, remains a general partner of Borrower.

3. Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Borrower and the permitted successors and assigns of Borrower. Whenever the term "Borrower" is used in this Agreement, such terms shall include any other permitted successors and assigns as herein provided.

104. NSP3 Program Provisions

1. Use of the NSP3 Program funds. Activities to be performed under this Agreement are described in Section 201. Specific tasks to be performed including a schedule for completing said tasks are attached as **Schedule of Performance** EXHIBIT B and is incorporated herein by this reference. A Project budget has been reviewed, approved and is attached as **Project Budget** EXHIBIT G and incorporated herein by this reference.

2. Affordability. Housing assisted with NSP3 Program funds under this Agreement must meet the requirements described herein of NSP3 Regulations and are to be maintained as "affordable" to Very Low Income households (VLH) pursuant to the following, commencing at initial rent-up, as set forth in Section 401 and 402 of this Agreement. The County NSP3 Loan shall become immediately due and payable at any time, if sixteen (16) NSP3-assisted units are not rented or maintained as vacant units available to rent at affordable rents to Very Low-Income households earning fifty percent (50%) or less than the AMI for not less than fifty-five (55) years from the date of recordation of the Notice of Completion, as defined by Section 303 of this Agreement, and after County verifies the NSP3-assisted units were initially rented to VLH, but only after appropriate written Notice of the Default has been given by County to Borrower. Borrower shall have the applicable cure periods as provided in this Agreement.

Borrower agrees that one hundred percent (100%) of the NSP3 funds will be used to provide sixteen (16) Floating Units to Very Low-Income residents.

3. Repayment. Terms for repayment are outlined in Sections 204 and 205 of this Agreement and restated in the Note.

4. Uniform Administrative Requirements (92.505). The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR Part 84 apply to sub recipients receiving NSP3 Program funds: 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62,

84.72, and 84.73. Copies of OMB Circulars may be obtained from Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; telephone: (202) 395-7332.

5. Project Compliance. This Agreement requires that the Project comply with all applicable requirements of Subpart F of the NSP3 Regulations.

6. Housing Quality Standards. Housing assisted with NSP3 Program funds under this Agreement shall be maintained to meet U. S. Department of Housing and Urban Development Housing Quality Standards and local housing code requirements for the duration of this Agreement. Any NSP3-assisted new construction shall be to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety, quality and habitability, in order to rent or redevelop the Property.

7. Other Program Requirements. Borrower must implement this Project in conformance with NSP3 requirements as described in Section 307 of this Agreement.

8. Affirmative Marketing. Borrower must comply with requirements described in Section 307.3 of this Agreement and Subpart H, 24 CFR Part 92, Section 351 of the HOME Program Regulations.

9. Conditions of Religious Organizations. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in NSP3. Neither the federal government nor a state or local government receiving funds under NSP3 shall discriminate against an organization on the basis of the organization's religious character or affiliation.

10. Request for Disbursement of Funds. The County shall disburse funds to Borrower in compliance with Section 207 of this Agreement.

11. Reversion of Assets. Any subrecipient, as defined in Subpart A, 24 CFR Part 92, Section 2 of the HOME Regulations, shall agree to transfer to the County any NSP3 funds on hand at the time of the expiration or termination of the Agreement, and any accounts receivable attributable to the use of NSP3 funds.

12. Records and Reports.

(a) Borrower shall maintain the following records and reports in order to assist the County in meeting its record keeping and reporting requirements:

- (i) Files on the annual review and certification of tenant income;
- (ii) Any information on the qualification of affordable rents;
- (iii) Terms and conditions of all signed leasehold agreements between tenants and Borrower; and
- (iv) All legal reports and records, in forms, or at a frequency, as may be required by the County.

13. Enforcement of the Agreement. The County shall have the right, by prior written notice to Borrower, to enforce the terms and conditions to this Agreement by liens on the real property (including but not limited to, the **Affordability Covenant Agreement** (EXHIBIT J)),

the affordability requirements in 24 CFR Part 92, Section 252, or any other such violation as is brought to the attention of the County regarding the Project. In the event of a breach of any condition or provision hereof, the County shall have the right, by prior written notice to Borrower to suspend or terminate this Agreement if Borrower fails to comply with any term of the Agreement. Termination of this Agreement, in whole or in part, shall be made by giving Borrower written notice in accordance with 24 CFR Part 85, Section 44.

14. Duration of this Agreement. This Agreement will remain in effect for the statutory minimum Period of Affordability of twenty (20) years under HUD NSP3 Regulations, and an additional County imposed Affordability Period of thirty-five (35) years, for a total affordability term of fifty-five (55) years from the date of recordation of the Notice of Completion, as defined in Section 303 of this Agreement, and verification by County that all NSP3-assisted units are occupied by NSP3-eligible tenants.

15. Monitoring.

(a) The County is responsible for managing the day-to-day operations of its NSP3 Program and monitoring the performance of all entities receiving NSP3 Program funds to ensure compliance with the NSP3 Program requirements, and for taking appropriate action when performance problems arise.

(b) Not less than annually, the County will review the activities of Borrower as relates to the management and ownership of this Affordable Housing Development assisted with NSP3 Program funds to assess compliance with the requirements of the NSP3 Program, as set forth in this Agreement. Pursuant to 92.504 the County shall be granted access to the affordable units for the purpose of bi-annual physical inspections.

(c) The results of these reviews must be included in the County's performance report or any other reports required by HUD.

200. FINANCING

201. **County NSP3 Loan.** The County has been awarded funds by HUD pursuant to the NSP3 Program. The County hereby agrees to loan from such NSP3 Program funds, and Borrower hereby agrees to borrow, the amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000) - the "County NSP3 Loan" - for predevelopment costs and the acquisition of the vacant property located at 7807 and 7833 Juniper Ave, Fontana, County of San Bernardino, California as more particularly described in the **Legal Description** attached hereto as EXHIBIT A and incorporated herein by this reference, subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the Note, as shown in **Promissory Note** (EXHIBIT D-1) and the Predevelopment Loan Promissory Note to be executed by Borrower, in connection with this transaction. Both the Note and Predevelopment Loan Promissory Note shall be secured by a Deed of Trust in substantially the same form as EXHIBIT D-2 attached hereto and incorporated herein by this reference. Borrower shall execute all additional loan documents required by County in connection with this transaction, including:

1. DEED OF TRUST

2. REQUEST FOR NOTICE OF DEFAULT

3. AFFORDABILITY COVENANT

Sources of Financing. The County and Borrower anticipate that the Project shall be financed with a combination of funds, which may include loan proceeds from NSP3, tax credit equity, conventional debt, Mental Health Service Act (“MHSA”) funds and City of Fontana HOME funds. Borrower has requested that the County provide financial assistance in an amount not to exceed Three Hundred Thousand Dollars (\$300,000), subject to the conditions provided in the Predevelopment Loan, to assist Borrower in performing predevelopment tasks associated with the Project, including but not limited to architectural work and site planning, engineering due diligence and design, cost estimates, and securing land use approvals and environmental clearances. If borrower is unable to obtain a 9% Low Income Housing Tax Credit Award by July 15, 2014 the Predevelopment Loan must be repaid to the County by August 1, 2014.

The Borrower and the County agree to work with the City of Fontana to discuss any changes in funding amounts provided to the Project, so it can maintain a competitive existing 9% Low Income Housing Tax Credit tie-breaker score. If additional funds are to be provided by the County, this Agreement may be amended.

The Borrower and the County agree to work together with the City of Fontana over the next two (2) years (2014 and 2015) and the possibility of a third year through 2016, to produce a development which can be financed. In the event the project does not obtain a 9% Low Income Housing Tax Credit Award during 2014 or 2015, the County may request that the Borrower consider one or more of the following options.

- Re-design to reduce the number of units to lower the Total Development Cost
- Re-design or re-structure of financing to a 4% tax credit transaction
- Introduction of development partner

If the project is unable to obtain a 9% Low Income Housing Tax Credit Award by December 31, 2016, the County at its sole and absolute discretion has the option to take one of the following actions:

- The County takes ownership of the entitled vacant land at no cost to the County, in which case the Promissory Note executed by the Borrower in favor of the County, as well as Borrower's other obligations under this Agreement, shall be cancelled. All plans, studies, and other development documents become the property of the County.
- The County agrees to allow Palm Communities to repay the County 100% of the \$2.4M no later than October 1, 2017.

204. Interest. The County Loan shall bear simple interest at the rate of three percent (3%) as defined in the **Note** (EXHIBIT D-1) except upon the occurrence of an Event of Default by Borrower as defined in Section 501. In the Event of Default, interest shall accrue on the unpaid principal balance of the **Note** (EXHIBIT D-1) at the rate of seven percent (7%) per annum compounded annually from the date of default as determined by the County until the **Note** (EXHIBIT D-1) is paid in full; provided, however, that if such rate of interest may not be collected under applicable law, interest shall accrue on the unpaid principal balance of the **Note** (EXHIBIT D-1) at the highest rate permitted under the laws of the State of California. Interest shall be computed based on an actual-day year and actual number of days elapsed. Interest shall commence from the date of the disbursement of any amounts pursuant to this Agreement.

205. Repayment. As long as Borrower has not committed an Event of Default pursuant to Section 501 and subject to any cure period for the Event of Default, the County NSP3 Loan shall be repaid by Borrower as follows:

1. Payments will commence on the first April 1st of the year following the issuance of a Certificate of Occupancy for the Project. Borrower shall have the right to retain twenty five percent (25%) of the Residual Receipts in a particular year, as such amount is determined by the Annual Financial Statement, with the remainder to be paid to the various subordinate lenders, which may include the County, CalHFA (MHSA) and the City of Fontana, split proportionately according to the initial amount of the loans provided by each lender. Borrower shall submit the Annual Financial Statement to the County for the preceding fiscal year within (90) calendar days after year end. County shall review and approve such statement, or request revisions, within forty-five (45) days of receipt. In the event the County fails to approve or disapprove the **Annual** Financial Statement within the forty-five (45)-day period, Borrower may request a written determination of approval or disapproval following the expiration of such period. In the event the County fails to provide a written determination to Borrower within ten (10) days following the receipt of Borrower's request for determination, the Annual Financial Statement shall be deemed approved. In the event the County determines that there is an understatement in the amount and payment of Residual Receipts due to County, Borrower shall promptly pay to the County such understated amount, but in any event, within twenty (20) days of notice of such understatement. In the event the County determines that there is an overpayment in the amount and payment of the Residual Receipts due to the County, County shall promptly pay to Borrower the amount of the overpayment, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest.

Once the amount of Residual Receipts has been finally determined, the appropriate proportionate amount of Residual Receipts shall be paid towards the County NSP3 Loan. Any payments made by Borrower shall be applied first to pay current annual interest due, if any, then the cumulative interest owed, if any, then to reduce the principal amount of the Loan. In any event all principal owed and all current and accrued interest on the NSP3 Loan shall be due and payable as provided above.

2. Notwithstanding the foregoing, the then outstanding principal balance, plus interest under the Note shall be immediately due and payable at the election of the County, upon the earlier of:

(a) the sale, lease, exchange, assignment or other conveyance (whether voluntary or by operation of law) of all or any part of the Project or any interest in

the Project unless otherwise approved or deemed approved pursuant to Section 103.2 hereof by the County (other than the lease of fifty-four (54) Affordable Units to Low-Income tenants and the lease of one (i) manager's unit pursuant to Section 103 of the Agreement); or

(b) An Event of Default, as defined in Section 501 of the Agreement, has occurred and remains uncured, the continuation of which would require the County to repay all or any portion of the County NSP3 Loan to HUD due solely to the errors, acts or omissions of Borrower.

206. Assumption. The Note shall not be assignable or assumable by successors and assigns of Borrower without the prior written consent of the County, which consent may be withheld in the County's sole and complete discretion if the County finds that the proposed assignee has inadequate assets, experience, or qualifications, or any other reasonable basis exists for withholding consent.

207. County NSP3 Loan Disbursement. Upon satisfaction of the conditions precedent to County NSP3 Loan disbursement set forth in Section 211 below, the County shall disburse the amount listed in the approved estimated closing statement required to complete the acquisition of the vacant land, including any development costs as defined in Section 101 (15), Development Costs. The proceeds shall be disbursed as follows:

1. Costs and expenses for the vacant land acquisition will be paid as part of the close of escrow, upon satisfactory receipt of an estimated closing statement, wire instructions and escrow instructions reviewed and approved by the County.

2. Pre-development costs and expenses already paid by the developer, upon receipt of satisfactory proof of completed services and payment, and additional costs approved by the County per the pre development budget, will be disbursed to the developer in accordance with a separate Pre-development Loan agreement.

208. Security for County NSP3 Loan. The County NSP3 Loan shall be evidenced by this Agreement and the Note and shall be secured by the **Deed of Trust** (EXHIBIT D-2) and the **Request for Notice of Default** (EXHIBIT D-3).

209. Subordination of Deed of Trust. The **Deed of Trust** (EXHIBIT D-2) shall be subordinate only to (i) the **Affordability Covenant Agreement** (EXHIBIT J), (ii) the Deed of Trust (and any other related documents) given to the lender of any conventional financing used to develop and/or operate the Project consistent with the financing plan for the Project approved by the County, and shall not be subordinate to the lien of any other Loan, mortgage or deed of trust, unless approved in writing by the County.

210. Condition of the Property.

1. Environmental Condition Prior to County NSP3 Loan Disbursement. Borrower shall represent to the County that it is not aware of, to the best of its actual constructive knowledge, and has not received any notice or communication from any governmental agency having jurisdiction over the Property, the seller of the Property, or any other person or entity, notifying it of the presence of Hazardous Materials or Hazardous Materials Contamination in, on, or under the Property, or any portion thereof. Borrower knows of no circumstances, conditions or

events that may now, or may with the passage of time, give rise to any Environmental Claim against or affecting the Property.

2. Indemnification. In addition to, and without limiting the indemnity provided for in Section 211, Borrower shall save, protect, pay for, defend, indemnify and hold harmless the County and its officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation penalties, fines and monetary sanctions), losses, costs or expenses (including without limitation consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the County or its officers, employees, representatives or agents by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of ;

- (a) the ownership of all or any part of the Property;
- (b) any act or omission of any person with respect to the Property;
- (c) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination;
- (d) the environmental condition of the Property; and
- (e) any Liabilities incurred under any Governmental Requirements relating to Hazardous Materials.

(f) Notwithstanding the foregoing, this indemnity shall not be effective in the event that Liabilities occur as a result of the presence or the gross negligence, willful misconduct or illegal activities of County, its officers, employees, representatives and agents or which arise after Borrower has transferred the Property in accordance with the terms of this Agreement.

3. Release. Borrower hereby waives, releases and discharges forever the County, and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with Borrower's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials Contamination in any state on the Property, however they came to be placed there.

Borrower acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

- (a) "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor."
- (b) As such relates to this Section 210, Borrower hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

(c) Notwithstanding the foregoing, this Release shall not be effective in the event the presence or release of Hazardous Materials on the Property occur as a result of the gross negligence, willful misconduct or illegal activities of County, its officers, employees, representatives and agents.

4. Duty to Prevent Hazardous Material Contamination. Upon the execution of this Agreement, Borrower at all times during which it owns the Property shall take such actions as are necessary or prudent to prevent the release of any Hazardous Materials into the environment on or under the Property. During the operation and maintenance of the Property, Borrower shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Borrower shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the then prevailing standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

5. Environmental Inquiries. Borrower shall notify the County, and provide to the County a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports or certificates filed, or applications made, pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Borrower shall report to the County, as soon as possible, any unusual or potentially important incidents including, but not limited to, the following:

- (a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials required by any Governmental Requirements;
- (b) All notices of suspension of any permits;
- (c) All notices of violation from federal, state or local environmental authorities;
- (d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes concerning investigation, compliance schedules, clean-up, or other remedial actions;
- (e) All orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, and clean-up and abatement orders;
- (f) Any notices of violation from OSHA or CAL-OSHA concerning employees' exposure to Hazardous Materials; and
- (g) All complaints and other pleadings filed against Borrower, Borrower or the County relating to Borrower's storage, use, transportation, handling or disposal of Hazardous Materials on the Property.

In the event of a release of any Hazardous Materials into the environment from or at the Property, Borrower shall, as soon as possible after the release, furnish

to the County a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the County, Borrower shall furnish to the County a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

6. Definitions. For the purposes of this Section 210, the following terms shall have the meanings herein specified:

(a) The term "Hazardous Materials" shall mean

- (i) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*), as amended from time to time, and regulations promulgated thereunder;
- (ii) any "hazardous substance" as defined by the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25300 *et seq.*), as amended from time to time, and regulations promulgated thereunder;
- (iii) asbestos;
- (iv) polychlorinated biphenyls;
- (v) petroleum, oil, gasoline (refined and unrefined) and their respective by-products and constituents; and
- (vi) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any "Governmental Requirements" (as defined in Subparagraph (c) of Paragraph 6 of this Section 210) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment.

Notwithstanding anything contained in any other provision of this Agreement, the term "Hazardous Materials" shall not include materials commonly used in the construction or operation of a multifamily residential complex, provided such materials are used and stored in a manner and in such quantities to be in compliance with all applicable laws.

(b) The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in, or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in, or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Property.

(c) The term "Governmental Requirements" shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and of any

other political subdivision, agency or instrumentality exercising jurisdiction over the County, Borrower, Borrower or the Property.

(d) The term "Environmental Claim" shall mean (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of non-compliance or violation and notices to comply), requests for information or investigation instituted or threatened by any governmental authority pursuant to any Governmental Requirement; or (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate to any damage, contribution, cost recovery, compensation, loss or injury resulting from the release or threatened release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirement, or the generation, manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

211. Conditions Precedent to Disbursement of County NSP3 Loan Proceeds. The County shall disburse County NSP3 Loan proceeds on behalf of Borrower into the designated escrow account in accordance with Section 207 and, subject to the requirements of Section 207 and this Section 211. No disbursement of the County NSP3 Loan shall be made until all of the following conditions are completed to the satisfaction of the County:

1. Deadlines for Completion of Certain Activities. Borrower must provide a copy of the executed purchase and sale agreement by February 1, 2014; and 2) Provide a copy of the executed final Escrow Instructions and wire instructions by February 1, 2014.

2. Execution and Delivery of Documents. As applicable, Borrower shall have executed and delivered into Escrow, the Note, the Deed of Trust, the Affordability Covenant, this Agreement, and any other documents and instruments required to be executed and delivered; all in form and substance satisfactory to the County.

3. Indemnification. Borrower agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. Borrower's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782 nor as a result of the illegal activities of the County or any officer, employee, agent or volunteer thereof.

Borrower shall defend and indemnify County for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.

5. Insurance.

(a) Additional Insured - All policies, except for the Workers'

Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insured's with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy.

Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(b) Reserved.

(c) Policies Primary and Non-Contributory - All policies required herein are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the County.

(d) Severability of Interests - Borrower agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Borrower and the County or between the County and any other insured or additional insured under the policy.

(e) Proof of Coverage - Borrower shall furnish Certificates of Insurance to the County Department of Community Development and Housing administering the contract evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Borrower shall maintain such insurance from the time Borrower commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Borrower shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

(f) Acceptability of Insurance Carrier - Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII". In the alternative, if Borrower is a self-insured public entity for purposes of General Liability, Automobile Liability and Worker's Compensation, it shall warrant that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

(g) Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by County Risk Management.

(h) Failure to Procure Coverage - In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by Borrower or County payments to the Contractor will be reduced to pay for County purchased insurance.

(i) Insurance Review - Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Borrower agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

6. Insurance Requirements. Borrower agrees to provide insurance set forth in accordance with the requirements herein. If Borrower uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Borrower agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, Borrower shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

(a) Workers' Compensation/Employers Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Borrower has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Borrower that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(b) Commercial/General Liability Insurance - Borrower shall carry General Liability Insurance covering all operations performed by or on behalf of Borrower providing coverage for bodily injury and property damage with a combined single limit of not less than Two Million Dollars (\$2,000,000), per occurrence. The policy coverage shall include:

(i) Premises operations and mobile equipment.

- (ii) Products and completed operations.
- (iii) Broad form property damage (including completed operations).
- (iv) Explosion, collapse, and underground hazards.
- (v) Personal injury
- (vi) Contractual liability.
- (vii) \$2,000,000 general aggregate limit.

(c) Automobile Liability Insurance - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired, and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Borrower is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Borrower owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(d) Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

212. Other Conditions.

1. Title to Land. Borrower shall have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than the Affordability Covenant Agreement, liens for current real property taxes and assessments not yet due and payable, and the Deed of Trust approved by the County and/or as contemplated in the Project's financing plan approved by the County and any other mortgages, liens, pledges or encumbrances approved in writing by the County.

2. Permits and Approvals. Borrower shall, at its own cost and expense, obtain any and all permits and approvals required by the County or by other governmental agencies for the Property, pursuant to the **Schedule of Performance** (EXHIBIT B), approved by the County herein. Borrower shall obtain a Certificate of Occupancy.

3. Recordation. The County shall record the **Affordability Covenant Agreement** (EXHIBIT J), and the **Deed of Trust** (EXHIBIT D-2) against the Property and issue or cause to be issued to the County by a title insurance company approved by the County, an American Land Title Association policy of lender's title insurance with mechanic's lien coverage, together with such endorsements as the County may require, which shall insure the Deed of Trust as a lien upon the Property subject only to the items specified herein.

4. Priority of This Agreement. Once this Agreement has been executed, the County shall record the **Affordability Covenant Agreement** (EXHIBIT J), and the **Deed of Trust** (EXHIBIT D-2) securing the **Note** (EXHIBIT D-1). The Affordability Covenant Agreement (EXHIBIT J) shall be superior to all other liens and encumbrances, until documents evidencing the construction financing are recorded, at which time documents evidencing the construction loan will be superior. The Affordability Covenant Agreement may be subordinate to any permanent loan financing.

5. Monitoring Capability. Borrower shall demonstrate to the satisfaction of the County that the Project record keeping and monitoring system is capable of complying with the requirements set forth in Section 407 herein.

6. Representations and Warranties. All representations and warranties of Borrower herein contained are true and correct in all material respects.

7. Property Appraisal. Before execution of this agreement, Borrower shall submit to County a true and correct copy of an appraisal of the Current Market Appraised Value of the Property for County's approval.

8. Disbursal of County NSP3 Funds. After the execution of this agreement, Borrower shall submit detailed invoices or receipts for costs or expenses described in Section 207 monthly. The County may request additional information or documents as needed prior to the approval of payments. Upon approval of a request for payment, County funds will be disbursed within thirty (30) days.

9. Certification Relating to Federal Elections. Borrower shall certify that it has not been indicted for violation of federal election law relating to election for federal office and it does not employ applicable individuals as defined in 42 U.S.C. §5301 *et seq.*

10. [Reserved]

11. Other Special Terms and Conditions. Special Terms and Conditions contained within the **Special Terms and Conditions** attached hereto as EXHIBIT H and incorporated herein by this reference. Prior to any disbursement of the County Loan, Borrower must satisfy all requirements set forth in the **Special Terms and Conditions** (EXHIBIT H).

300. DEVELOPMENT AND CONSTRUCTION OF THE PROPERTY

301. Commencement and Completion of Project. Within the times set forth in the **Schedule of Performance** (EXHIBIT B), Borrower hereby covenants and agrees to commence and to diligently prosecute to completion the new construction and subsequent operation of the Project in accordance with **Schedule of Performance** (EXHIBIT B), the site plan and other plans and drawings to be submitted and approved in accordance with Sections 305 and 306 hereof, including any applicable mitigation measures and to file a Notice of Completion pursuant to California Civil Code Section 3093 and obtain a Certificate of Occupancy. Subject to the provisions of Section 200 *et seq.*, Borrower, at Borrower's sole cost and expense, shall complete or cause the completion of the acquisition and new construction and subsequent initiation of operation of the Project pursuant to this Agreement and **Schedule of Performance** (EXHIBIT B).

302. Relocation. Borrower shall be fully responsible for administering determinations of eligibility and payments pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Section 4601 *et seq.*) and pursuant to any other federal, state or local enactment including implementing regulations providing for relocation assistance or benefits in connection with the acquisition of the Property pursuant to this Agreement (collectively, the “Relocation Laws”). The cost of such permanent relocation including without limitation relocation benefits paid to eligible persons as determined by Borrower, consultant fees, attorney's fees and court costs arising or in any way connected with claims for relocation assistance or benefits as may be asserted by any resident of the Property (“Relocation Cost”) shall be paid by Borrower. NSP3 Program funds may be used by Borrower for eligible relocation expenses pursuant to 24 CFR Part 92, Section 205,

303. Notice of Completion. Promptly after the completion of the new construction, in accordance with California Civil Code Section 3093 and this Agreement, Borrower shall execute a Notice of Completion that evidences and determines the satisfactory completion of the acquisition and new construction in accordance with this Agreement. The Notice of Completion shall be recorded with the appropriate jurisdiction. Borrower shall transmit a copy of the recorded Notice of Completion to the County.

The issuance and recordation of the Notice of Completion with respect to the Property shall not supersede, cancel, amend or limit the continued effectiveness of any obligations relating to the maintenance, or uses, or payment of monies, or any other obligations, except for the obligation as referred to in Section 3093 of the California Civil Code.

304. Taxes and Assessments. So long as Borrower, or its successor, assigns, owns or leases the Property or portions thereof, but subject to its right to claim a “welfare exemption” under California Revenue and Taxation Code Section 214 (g), Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, 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 lien or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, 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.

305. Entry by the County. Borrower shall permit the County, through its officers, agents, or employees, at all reasonable times upon reasonable prior written notice to enter into the Property to determine that the same is maintained in conformity with applicable codes, laws, and regulations. Borrower acknowledges that the County is under no obligation to supervise, inspect, or inform the Owner of the progress of construction, property compliance with codes, Owner shall not rely upon the County therefore. Borrower shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the maintenance, and of the performance of subcontractors.

306. Compliance with Laws. Borrower shall comply with all federal, state and local statutes, ordinances, regulations and laws with respect to the ownership and operation of the Project including without limitation the rental of the Affordable Units.

Borrower acknowledges that the Project is subject to the payment of prevailing wages under California law and/or to the federal Davis-Bacon Act. Borrower is responsible for assuring compliance with any applicable prevailing wage requirements.

307. NSP3 Program Requirements. Because the County NSP3 Loan to Borrower will be provided through NSP3 Program funds, Borrower shall carry out the new construction and the operation of the Project in conformity with all requirements of the NSP3 Program such as, but not limited to:

1. **Equal Opportunity.** No person shall be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with NSP3 funds. In addition, NSP3 funds must be made available in accordance with all laws and regulations listed in 24 CFR Part 92, Section 350(a).

2. **Fair Housing.** Actions described in Section 570.904(c) of Title II of the Cranston-Gonzalez National Affordable Housing Act to further fair housing shall be adhered to.

3. **Affirmative Marketing.** Borrower shall adopt affirmative marketing procedures and requirements. These must include:

(a) Methods for informing the public;

(b) Requirements and practices that Borrower must adhere to in order to carry out the County's affirmative marketing procedures and requirements;

(c) Procedures used by Borrower to inform and solicit applications from persons in the housing market area who are not likely to apply without special outreach;

(d) Records that will be kept describing actions taken by Borrower to affirmatively market units, and records to assess the results of these actions; and

(e) A description of how Borrower will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

4. **Environmental Review.** The County has completed an assessment of activities to be undertaken with NSP3 funds in accordance with the requirements of 24 CFR Part 58. However, Borrower must also comply with requirements outlined in Section 210 of this Agreement.

5. **Displacement and Relocation.** Requirements described in Section 301 and Section 302 of this Agreement as well as those listed at 24 CFR Part 92, Section 353 of HOME Regulations shall be met where applicable.

6. **Conflict of Interest.** Borrower will comply with all requirements set forth herein regarding conflicts of interest.

7. **Debarment and Suspension.** As required in 24 CFR Part 92, Section 357 of the HOME Regulations, Borrower will comply with all debarment and suspension certifications.

308. Right of the County to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or Deed of Trust default or breach by Borrower, Borrower shall immediately deliver to County a copy of any mortgage holder's notice of default. If the holder of any mortgage or Deed of Trust has not exercised its option to foreclose, the County shall have the right but no obligation to cure the default. In such event, the County shall be entitled to reimbursement from Borrower of all proper costs and expenses incurred by the County in curing such default. The County shall also be entitled to a lien upon the Property for any said costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or Deeds of Trust of the County.

309. Compliance with Laws; Prevailing Wages.

1. The Borrower shall comply with all federal, state and local statutes, ordinances, regulations and laws with respect to the ownership and operation of the Project including without limitation the rental of the Affordable Units.

2. 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, including without limitation and to the extent applicable, the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations, as further set forth in subsection (4)(a) below, and state prevailing wages, if applicable, pursuant to California Labor Code Section 1770 et seq., and the regulations pursuant thereto, as further set forth in subsection (4)(b) below;

3. This Agreement has been prepared with the intention that the County Loan is assisting sixteen (16) units in the Project and consequently Davis-Bacon prevailing wage requirements will apply to the Project. The Borrower shall cause construction of the Project to be in compliance with all applicable prevailing wage requirements of the federal Davis-Bacon and Related Act Requirements (40 U.S.C. Sections 3141-3148). The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon and Related Acts and implementing rules and regulations in connection with the construction of the Project or any other work undertaken or in connection with the Property. The requirements in this Subsection shall survive repayment of the Loan and the reconveyance of the Deed of Trust.

4. The prime Contractor and all Subcontractors shall be required to pay their laborers and mechanics employed under this Contract, a wage not less than minimum wage classification, as specified in the applicable Federal law when the Contract amount for the Prime contract exceeds \$2,000. Davis-Bacon Prevailing Wage will be enforced for all work related to this Project. The Prime Contractor is responsible for ensuring Subcontractor compliance with Davis-Bacon and Related Act Requirements. Federal Labor Standards Provisions (HUD 4010) apply to this project. A weekly certified payroll submitted through LCP Tracker is required during the term of construction. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(a) Borrower shall cause construction of the Project to be in compliance with the prevailing wage requirements of the Federal Davis-Bacon Act (40 U.S.C. 3141-3148). Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the Federal Davis-Bacon Act and implementing rules and regulations in connection with the rehabilitation of the Project or any other work undertaken or in connection with the Property. The requirements in this Subsection survive repayment of the Loan and the reconveyance of the Deed of Trust.

(b) Borrower hereby agrees to indemnify and hold the County harmless from any failure by Borrower to comply with state prevailing wage requirements and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of state prevailing wages. The Borrower further acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations or any court with jurisdiction, require Borrower or any of its contractors or subcontractors to pay state prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, et seq., of the California Labor Code for all or any of the assistance provided hereunder, then Borrower shall indemnify, defend, and hold the County harmless from any such determinations, or actions (whether legal, equitable or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the prevailing wage law. The County makes no representation that any construction completed by Borrower that is part of this Agreement is or is not subject to state prevailing wage law.

5. Labor Standards: The labor requirements set forth in 24 C.F.R. 92.354; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

6. Equal Opportunity: During the construction of the Project discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work is not allowed.

7. Minority and Women-Owned Contractors: Borrower shall use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable

opportunity to participate in the construction of the Project. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in San Bernardino County of bid opportunities for the construction of the Project. A listing of minority owned and women owned businesses located in the County and neighboring counties is available from the County. Documentation of such notifications must be maintained by Borrower and available to the County as requested

8. Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts executed under this Agreement:

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

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

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

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

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

24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

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

g. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450e](#)) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

400. USES OF THE PROPERTY

Borrower covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that upon the acquisition and new construction and thereafter, Borrower, its successors and assignees, shall use, maintain, and operate the Property as specified in this Agreement throughout the Term. All uses conducted on the Property including, without limitation, all activities undertaken by Borrower pursuant to this Agreement shall conform to all applicable provisions of local, state and federal laws and regulations.

None of the dwelling units on the Property shall at any time be utilized on a transient basis nor shall the Property or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or assisted living facility.

All sixteen (16) of the NSP3 units are designated as Floating Units. Floating Units are changed to maintain conformity with the requirements of this section during the Affordability Period so that the total number of housing units meeting the requirements of this section remains the same, and substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated NSP3-assisted unit.

Borrower agrees that the improved property shall not be converted to for-sale condominium units during the term of the Note and/or County NSP3 Loan Agreement.

Borrower agrees not to discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, State or local housing assistance program or, except for a housing project for elderly persons, on the basis that the tenants have a minor child or children who will be residing with them, for at least fifty-five (55) years beginning on the date of the recordation of the Notice of Completion.

401. Occupancy Restriction.

Throughout the Term, Borrower covenants and agrees to make available, restrict occupancy to, and rent a total of sixteen (16) of the dwelling units on the Property as Affordable Units to Very Low-Income households at an Affordable Rent pursuant to the terms set forth in this Agreement. Prior to leasing an Affordable Unit, Borrower shall verify the income eligibility of the tenant applicant in order to assure compliance with the rent and occupancy restrictions and monitoring requirements of this Agreement. Borrower shall complete a **Schedule of Rents** in the form attached hereto as EXHIBIT C and incorporated herein by this reference which will list the initial rents for unit receiving NSP3 assistance. Borrower shall upon request by the County complete such income verification on forms provided by the County.

402. Rent Restrictions.

1. Affordable Rents shall not be greater than the lesser of:

(a) The fair market rent including the cost of utilities and service (excluding telephone and cable) for existing housing for comparable units in the area as established by the United States Department of HUD under 24 CFR Part 888, Section 111; or

(b) A Low NSP3 program rent that does not exceed thirty percent (30%) of the annual income of a family whose income equals fifty percent (50%) or less of the AMI for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits, which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a). In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, Borrower must subtract a monthly allowance for any utilities and service (excluding telephone) to be paid by the tenant. A copy of the current **NSP3 Program Rents** are attached as (EXHIBIT F). County will provide the new HOME Program Rents and Income Limits provided by HUD annually.

2. If the unit receives federal or state project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than thirty percent (30%) of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.

3. Rent Schedule and Utility Allowance. The County will approve the Affordable Rents proposed by Borrower together with the monthly allowances for utilities and services to be paid by the tenant. Borrower must re-examine the income of tenant household living in the Affordable Units annually. The maximum monthly rent must be recalculated by Borrower and reviewed and approved by the County annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for the Affordable Units is subject to the provisions of outstanding leases. Rents may not be increased during the existing lease term. Borrower must provide written notice to tenants and to the County of those units not less than thirty (30) days before implementing any increase in rents. Utility allowances along with maximum rents will follow HOME Program Regulations.

4. Determining Tenant Income. Tenant income must be determined in accordance with 92.203 of HOME Regulations using the income option selected by the County.

5. Increases in Tenant Income. The Affordable Units shall qualify as Affordable Housing despite a temporary noncompliance if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to County are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as very low-income families must pay as rent the lesser of the amount payable by the tenant under state or local law or thirty percent (30%) of the family's adjusted monthly income, except that tenants of NSP3 assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42. In addition, in projects in which the NSP3 units are designated as floating (as in this Agreement), tenants who no longer qualify as Low- and Moderate-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood, as re-certified annually.

6. Rental agreements with tenant may not be for a period of time less than one (1) year.

403. Operation and Maintenance. Borrower shall manage, operate, and maintain the Property in accordance with this Agreement and shall maintain or cause to be maintained the interiors and exteriors of the Affordable Units in a decent, safe, and sanitary manner, and in accordance with the HUD Housing Quality Standards and the maintenance standards required by Section 92.251 of the HOME Regulations.

404. Non-Discrimination Covenants. Borrower covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Borrower itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

Borrower shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, marital status, familial status, disability, national origin or ancestry of any person.

405. Tenant Protections.

1. Lease. Borrower shall execute or cause to be executed a written lease in a form approved by the County with tenant household identifying by name all permitted occupants, both adults and minors, occupying Affordable Unit. The lease between tenants occupying the Affordable Units must be for not less than one (1) year unless otherwise agreed by the tenant and Borrower.

2. Prohibited Lease Terms. The lease may not contain any of the following provisions:

(a) Agreement to be Sued. Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of Borrower in a lawsuit brought in connection with the lease;

(b) Treatment of Property. Agreement by tenant that Borrower may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. Borrower may dispose of this personal property in accordance with state law;

(c) Excusing Borrower from Responsibility. Agreement by the tenant not to hold Borrower or Borrower's agents, legally responsible for any action or failure to act, whether intentional or negligent;

(d) Waiver of Notice. Borrower may institute a lawsuit without notice to the tenant;

(e) Waiver of Legal Proceedings. Agreement by the tenant that Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(f) Waiver of a Jury Trial. Agreement by the tenant to waive any right to a trial by jury;

(g) Waiver of Right to Appeal Court Decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(h) Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by owner of the Property against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

3. Termination of Tenancy. Borrower may not terminate the tenancy or refuse to renew the lease of a tenant of the Project except for: (1) serious or repeated violation of the terms and conditions of the lease; (2) for violation of applicable federal, state, or local law; or (3) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for the action.

4. Tenant Selection. Borrower shall not refuse to rent a unit in the Project to a holder of a Rental Voucher or a Rental Certificate or comparable document evidencing participation in the Section 8 Program or a HOME Tenant-Based Rental Assistance (TBRA) program. Borrower must adopt written tenant selection policies and criteria approved by the County that:

(a) Are consistent with the purpose of providing housing for qualified Lower Income Households;

(b) Are reasonably related to Program eligibility and the applicants' ability to perform the obligations of the lease;

(c) Give reasonable consideration to the housing needs of families that would have a federal preference under Section 960.211 of Title II of the Cranston-Gonzalez National Affordable Housing Act of 1992; and

(d) Provide for:

- (i) The selection of tenants from a written waiting list in the chronological order of their application insofar as is practicable; and
- (ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

406. Subordination. Unless otherwise contemplated by the financing plan for the Project approved by the County, the Affordability Covenant Agreement shall be recorded and shall run with the land and shall be senior to all liens and encumbrances, including the lien of the Primary Loan. Unless otherwise contemplated by the financing plan for the Project approved by the County, the County NSP3 Loan shall be in second position, behind the County's Affordability Covenant.

407. Monitoring. Throughout the Term, Borrower shall comply with all applicable record keeping and monitoring requirements set forth in (24 CFR Section 92.508) of the HOME Regulations and shall annually complete and submit to County a Certification of Continuing Program Compliance in the form attached hereto as **Annual Certification of Continuing Program Compliance** (EXHIBIT E-2), and incorporated herein.

Representatives of the County shall be entitled to enter the Property during ordinary business hours upon at least twenty-four (24) hours prior written notice to monitor compliance with the Affordability Covenant Agreement, this Agreement, to inspect the records of the Project with respect to the Affordable Units, and to conduct an independent audit of such records. Pursuant to 92.504 the County shall be granted access to the affordable units for the purpose of bi-annual physical inspections. Borrower agrees to cooperate with the County in making the Property available for such inspection. If for any reason the County is unable to obtain Borrower's consent to such an inspection, Borrower understands and agrees that the County may obtain, at Borrower's expense, an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. Borrower agrees to maintain records in a business-like manner and to make such records available to the County during ordinary business hours upon twenty-four (24) hours prior written notice. Unless the County otherwise approves, such records shall be maintained for the Term of this Agreement.

Throughout the Term, the Borrower grants the County inspection rights as set forth in Section 407 above, and Borrower shall make best efforts to allow the County to comply with all applicable physical monitoring requirements set forth in (24 CFR Section 92.504(d) and 24 C.F.R. 92.251) of the HOME Regulations.

The County will enforce a per-unit monitoring charge on all NSP assisted developments. NSP assisted developments will be charged as follows:

- 1-20 assisted units = \$35.00 per unit/ annually
- 20+ assisted units = \$25.00 per unit/ annually

The Borrower shall pay such charge within seven (7) days of receipt of an invoice from the County.

The County reserves the right to waive or defer a portion of the monitoring charge if a development is unable to pay these costs. All waivers must be submitted in writing, with adequate supporting financial documentation, for review by the County EDA Administrator.

Crime-Free Multi-Housing Unit Program Participation.

Property owners and managers shall be required to participate in the San Bernardino County Sheriff-Coroner Department's Crime Free Multi-Housing Unit Program, wherein specialized training and other resources are provided to multi-family property owners and managers to reduce the potential for onsite criminal activity. Completion of the Department's four (4) training phases, a Final Certification (Phase V) shall be achieved and maintained by the owner/representative and onsite property manager.

500. DEFAULT AND REMEDIES

501. Events of Default. (1) Subject to the extensions of time set forth in Section 503, failure or delay by either party to perform, observe or comply with the material conditions, provisions, terms, covenants or representations in the Agreement, and the Affordability Covenant Agreement, constitutes a default ("Default") under the Agreement. Each of the following shall constitute an event of Default ("Event of Default"):

1. Failure to rent the sixteen (16) Affordable Units to qualified, income-eligible tenants, subject to any periods of vacancy as described in Section 6(b). Pursuant to Section 402 of the Agreement and 24 CFR Section 92.252, tenant income must be determined for the applicable compliance period in accordance with 24 CFR Section 92.203 of the HOME Regulations;

2. Failure to charge rent on the Affordable Units in the appropriate amount for comparable units in the area as established by HUD pursuant to 24 CFR Section 888.111, subject to any monthly allowances for utilities and services, as described in Section 402 of the Agreement, (24 CFR 92.252);

3. Failure to provide any required and/or requested Compliance Reports;

4. Discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or the establishment or permitting the establishment of any such practice or

practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project, as described in Section 404 of the Agreement;

5. Failure to maintain the Project in accordance with the U.S. Department of Housing and Urban Development Housing Quality Standards and all applicable local housing code regulations and requirements, as described in Section 104(6) of the Agreement;

6. Violation of the applicable requirements of Subpart F (Project Requirements) of 24 CFR Section 92, (or any successor regulations) not previously described and cited above, including, but not limited to:

(a) 24 CFR Section 92.253 (tenant protections), which requires a lease for not less than one year and prohibits the inclusions of certain lease provisions that disfavor tenants;

(b) 24 CFR Section 92.254 (converting rental units to home ownership units for existing tenants); and

(c) 24 CFR Section 92.257 (faith-based activities)

8. Violation of Section 307(1), 307(2) and 307(3) of the Agreement;

9. Failure to Satisfy Conditions Precedent. Failure of Borrower to satisfy the conditions precedent to the disbursement of County Loan proceeds as set forth in Section 211 within the time specified therefore in the **Schedule of Performance**, as such schedule may be amended (EXHIBIT B).

10. Material Misstatement or Omissions. If any omission, representation or warranty contained in this Agreement or in any application, evidence of financing or financial statement, certificate or report submitted to the County in connection with the County Loan proves to have been incorrect in any material respect when made, or becomes incorrect, and Borrower fails to immediately notify the County in writing as required by this Agreement.

11. Insolvency, as described herein. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower if any such decree or order described in clauses (i) to (iv) inclusive shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted to cure under any other mortgage on the Property, in which event such lesser time period will apply under subsection 501(6) as well; or Borrower 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 (i) to (iv) inclusive;

12. Assignment or attachment, as described herein. Borrower 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 501(5) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note representing the County Loan contemplated hereunder;

13. **Suspension: Termination.** Borrower shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated without the prior consent of the County; and

14. **Liens on Development and Land.** A lien (other than liens permitted by the terms hereof and those approved in writing by the County) shall have been recorded against the Property or any part thereof, or any interest or right appurtenant thereto, or the service of any notice to withhold proceeds of the County Loan and the continued maintenance of said claim of lien or notices to withhold for a period of thirty (30) days without discharge or satisfaction thereof or provision therefore satisfactory to the County. The lien of the County NSP3 Loan shall remain superior at all times (with the exception of the Affordability Covenant) unless otherwise approved in writing by the County, until recordation of the construction financing described in the **Project Budget** (Exhibit G).

502. Remedies and Acceleration of Note. The occurrence of any Event of Default will either at the option of the County, or automatically where so specified, relieve the County of any obligation to perform hereunder including, without limitation, to make or continue the County Loan, and shall give the County the right to proceed with any and all remedies set forth in this Agreement and/or the County Loan Documents including, but not limited to, the following:

1. **Acceleration of Note.** The County shall have the right to cause all indebtedness of Borrower to the County under this Agreement and the Note to become immediately due and payable pursuant to the terms stated in Section 501. Borrower 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 and including foreclosure under the Deed of Trust. Subject to any non-recourse provisions in this Agreement, Borrower shall be liable to pay the County on demand all expenses, costs and fees (including without limitation attorneys' fees, costs and related expenses) paid or incurred by the County in connection with the collection of the County Loan, the default hereunder, and the preservation, maintenance, protection, sale, or other disposition of the security given for the County Loan.

2. **Specific Performance.** The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the County Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the County Loan Documents.

3. **Right to Cure at Borrower's Expense.** The County shall have the right to cure any monetary default by Borrower under a loan other than the County Loan; provided, however, that if Borrower is in good faith contesting a claim of default under a loan and the County's interest under the County Loan Documents are not imminently threatened by such

default, the County shall not have the right to cure such default. Borrower agree to reimburse the County for any funds advanced by the County to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the rate of ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

4. **Termination.** The County shall have the right to terminate this Agreement and, at its sole option, to seek any remedies at law or equity available hereunder, and thereafter neither party shall have any further rights against the other under this Agreement.

5. **Notice of Default.** The County shall provide notice of an Event of Default, specifying the Default and the period to cure the Default, which period shall not be less than thirty (30) days. If the Event of Default shall continue uncured or if Borrower has not commenced to diligently cure the Event of Default within thirty (30) days (unless a different period of notice is required by the Agreement), then the County may pursue any of the remedies described in this Section 502.

503. Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the County's acts or failure to act shall not excuse performance of the County hereunder), or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

504. Right of Contest. Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

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

506. Waiver of Terms and Conditions. The County may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement without Borrower completing an amendment to this Agreement. No waiver of any default or breach Borrower hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default

specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach the same covenant, term, or condition. The consent or approval by the County to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the County Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the County Loan Documents unless in the exercise of any right, power, or remedy all obligations of Borrower to County are paid and discharged in full.

507. Non-Liability of County Officials and Employees. No member, official or employee of the County shall be personally liable to Borrower, or any successor in interest, in the event of any default or breach the County or for any amount which may become due to Borrower or its successors, or on any obligations under the terms of this Agreement.

600. GENERAL PROVISIONS

601. Time. Time is of the essence in this Agreement.

602. Notices. Any notice requirement set forth herein shall be deemed to be satisfied five (5) days after mailing of the notice first-class United States Certified Mail, postage prepaid, addressed to the appropriate party as follows:

Borrower: Fontana Siena Partners LP
15635 Alton Parkway, Suite 375
Irvine, CA 92618

County: Community Development and Housing Department, Director
County of San Bernardino
Department of Community Development and Housing
385 North Arrowhead Ave. Third Floor
San Bernardino, CA 92415-0043

Such addresses may be changed by notice to the other party given in the same manner as provided above.

603. Attorneys' Fees. In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

604. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the County, its successors and assigns, and Borrower, its successors and assigns, and no other person or persons shall have any right of action hereon.

605. County to File Notices. Borrower irrevocably appoints, designates, and authorizes the County as its agent (said agency being coupled with an interest) to file for record

any notices of completion, cessation of labor, or any other notices that the County deems necessary or desirable to protect its interest hereunder and under the County Loan Documents.

606. Actions. The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the disbursement of any proceeds of the County Loan.

607. Successors and Assigns. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of Borrower's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of the County as specified in Section 103 above, and that any such assignment without said consent shall be void.

608. Use of Words. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

609. Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

610. Governing Law. This Agreement and the County Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California.

611. Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by the parties to this Agreement.

612. Approvals. Where an approval or submission is required under this Agreement, such approval, or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the County, such approval may be given on behalf of the County by the County Administrative Officer or his or her designee, who may, in his or her sole discretion, submit such approval or consent for consideration by County Counsel.

613. Captions and Headings. Captions and headings in this Agreement are for convenience of reference only, and are not to be considered in construing the Agreement.

614. Conflict of Interest. No member, official or employee of the County or Borrower shall have any personal interest, direct or indirect, in the subject matter of County Loan, nor shall any such member, official or employee participate in any decision relating to County Loan which affects his personal interest or the interests of any corporation, partnership or association in which he has an interest, whether directly or indirectly.

615. Former County Officials. Borrower agree to provide or has already provided information on former County of San Bernardino Administrative Officials (as defined below) who are employed by or represent Borrower. The information provided includes a list of former County Administrative Officials who terminated County employment within the last five (5) years and who are now officers, principals, partners, associates, or members of the business. The

information also includes the employment with or representation of Borrower. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such Officer's staff, County Administrative Officer or member of such Officer's staff, County Department or Group Head, Assistant Department or Group Head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

616. Contract Compliance. Borrower will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and Labor Surplus Area firms (a firm located in an area of high unemployment) are used when possible in compliance with provisions of Title 24 Code of federal Regulations Part 85.36 (e).

Borrower agrees to comply with the provisions of the Contract Compliance Program of San Bernardino County and the rules and regulations adopted pursuant thereto. Borrower shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act (FEHA), as revised, and other applicable federal, state, and County laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

Borrower shall make every effort to ensure that all projects funded wholly or in part by NSP3 Program funds shall provide equal employment and career advancement of opportunities for minorities and women. In addition, Borrower shall make every effort to employ residents of the area and shall keep a record of Borrower staff positions that have funded directly by or as a result of this program.

617. Entire Agreement. This Agreement shall be executed in four (4) duplicate originals, of which is deemed to be an original.

618. Tax Credit Equity Investor. The County agrees and acknowledges that the development of the Project will be financed in part with the proceeds of an equity investment made by one or more limited partners of the Borrower (collectively, the "Limited Partner") in connection with the allocation of federal and/or state low income housing tax credits to the Borrower. Notwithstanding anything to the contrary set forth in this Agreement, the following provisions shall apply at all times during which a Limited Partner is a partner of the Borrower:

1. Removal of General Partner. The withdrawal, removal and/or replacement of Borrower's general partner(s) for cause in accordance with Borrower's Amended and Restated Agreement of Limited Partnership shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. If a Limited Partner exercises its right to remove a general partner of Borrower, County shall not unreasonably withhold its consent to the substitute general partner. Notwithstanding the foregoing, the substitute general partner shall assume all of the rights and obligations of the removed general partner under all of the Loan Documents.

2. Notice and Cure Rights. The County hereby agrees that any cure of any default made or tendered by a Limited Partner shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower under the terms of the Loan Documents shall also be sent to each Limited Partner at an address to be provided to County in writing by said Limited Partner.

3. Insurance and Condemnation Proceeds. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project, or any part thereof, Borrower shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefore, provided that (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Project in a manner that provides adequate security to Lender for repayment of the Loan, or if such proceeds are insufficient then Borrower shall have funded any deficiency, (b) County shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no continuing material default then exists by Borrower under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to County for repayment of the remaining balance of the Loan.

4. Extended Use Agreement. County acknowledges that Borrower and the California Tax Credit Allocation Committee (CTCAC) intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code (IRC), as amended. As of the date hereof, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure. In the event the extended use agreement required by CTCAC is recorded against the Property, the County agrees to comply with the provisions set forth in IRC Section 42(h)(6)(E)(ii).

//

//

//

//

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Property.

This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one (1) instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed below.

BORROWER

Fontana Siena Partners LP, a California limited partnership

By: PC Fontana II Developers, LLC, a California limited liability company its administrative general partner

By: Palm Communities, a California corporation, its sole member/manager

By: _____
Todd A. Deutscher, President

Dated: _____

COUNTY OF SAN BERNARDINO

By: _____
JANICE RUTHERFORD, Chair
Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

LAURA H. WELCH
Clerk of the Board of Supervisors

By: _____

APPROVED AS TO LEGAL FORM

JEAN-RENE BASLE
COUNTY COUNSEL

By: _____
MICHELLE D. BLAKEMORE
Chief Assistant County Counsel

Dated: _____

EXHIBIT A

LEGAL DESCRIPTION(s) AND MAP(S)

Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel A

All that portion of farm lot 642, of the lands belonging to the semi-tropic land and water company, in the City of Fontana, County of San Bernardino, State of California, according to Plat therof recorded in Book 11, Page 12 of maps, in the office of the County Recorder of said County, described as follows:

Beginning at a point on the center of Juniper Street where said center line of Juniper street intersects the north line of said farm lot 642, extended west, a distance of 30 feet; thence south along the center line of Juniper street, 173 feet; thence east 660 feet, thence North 173 feet, thence West along the North line of said farm lot 642 and its extension Westerly, a distance of 660 feet to the point of beginning.

Saving and excepting therefrom, that portion lying within Juniper Avenue.

Parcel B

That portion of farm lot 642, according to map showing subdivisions of lands belonging to semi-tropic land and water company, in the City of Fontana, County of San Bernardino, State of California, as per map recorded in book 11, pages(s) 12 of maps, in the office of the County Recorder of said County.

Described as Follows:

Beginning at a point in the center line of Juniper Street, 173 feet South of the North line of said lot, extending Westerly;

Thence east 660 feet to the East line of the West ½ of said lot;

Thence South to the North line of the South ½ of said lot;

Thence West 660 feet to the center line of Juniper Street;

Thence North to the point of beginning.

Except that portion lying within the boundaries of Juniper Street.

APN: 0190-141-02-0-000 and 0190141-03-0-000

EXHIBIT B

SCHEDULE OF PERFORMANCE

Fontana Siena Partners LP
7807 and 7833 Juniper Ave, Fontana CA

Milestone	Date	Key Prerequisite Milestone / Contingency
Submit application or planning entitlement/approvals	06/18/13	<i>Planning Commission Approval</i>
Environmental review/Phase 1 Study	01/23/13	<i>CEQA & NEPA Complete 06/18/13</i>
Prepare detailed cost estimate	02/05/14	
State or Federal Regulatory permitting process	6/18/13	<i>CEQA & NEPA Review Complete</i>
Select Tax Credit investor	03/01/14	
Submit tax credit application	03/05/14	
Obtain tax credit allocation	06/11/14	<i>Estimate</i>
Submit plans and application(s) for plan check and building permit	07/14	<i>After receiving CTCAC Award</i>
Obtain approval of construction plans	10/14	<i>No later than the 180 day CTCAC submittal in December 2014</i>
Obtain construction and permanent loan commitment	10/14	<i>No later than the 180 day CTCAC submittal in December 2014</i>
Final Construction Contract	10/14	<i>No later than the 180 day CTCAC submittal in December 2014</i>
Partnership Agreement	11/14	<i>No later than the 180 day CTCAC submittal in December 2014</i>
Pay impact fees and obtain construction permits	11/14	<i>No later than the 180 day CTCAC submittal in December 2014</i>
Begin construction	12/14	
Management Plan	1/16	
Complete construction	3/16	
100% Occupied	6/16	
Permanent Loan Closing	7/16	

Any changes to these dates require the written approval of the Director of Community Development and Housing, which shall not be unreasonably withheld, conditioned or delayed, but do not require an amendment to this Agreement. These time frames are to be no later than dates above, and Milestones can be completed sooner without penalty, provided, however, that the dates identified above shall be adjusted to reflect a CTCAC award in a time frame later than that described above but still within the time frame for such award in Section ____ of this Agreement.

EXHIBIT C

SCHEDULE OF RENTS

Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

The Monthly Rent for the Housing Units to be rented to Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI for a family of a size appropriate to the unit, as published annually by HUD.

NSP3 ASSISTED UNITS

UNITS/OR NUMBER	NUMBER OF BEDROOMS	INITIAL NSP3 RENT INCLUDING UTILITIES
		Low
2	2	430
6	2	645
3	2	717
2	3	497
3	3	828

Note: All NSP3 units to be Floating Units.

EXHIBIT D-1

PROMISSORY NOTE SECURED BY DEED OF TRUST

Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

FOR VALUE RECEIVED, the undersigned Borrower promises to pay to the order of The County of San Bernardino, Department of Community Development and Housing (the "Lender") located at 385 North Arrowhead Ave., Third Floor, San Bernardino, California, or at such other location designated by Lender, the principal sum of Two Million Four Hundred Thousand Dollars (\$2,400,000), with interest as provided below and in accordance with the terms herein and under the County of San Bernardino Neighborhood Stabilization Program (**NSP3**) Agreement ("Property Loan Agreement") dated February 11, 2014, for the purpose of developing the new construction of affordable housing project to be named Siena Apartments (the "Property") located at 7807 and 7833 Juniper Ave., Fontana, County of San Bernardino. All terms used and not defined herein shall have the meaning set forth in the property Loan Agreement.

1. The term of this Note is fifty-five (55) years commencing on the date of recordation of the Deed of Trust. The Affordability Period for the sixteen (16) NSP3-assisted units is the statutory minimum twenty (20) years under HUD NSP3 Regulations, and an additional County imposed Affordability Period of thirty-five (35) years, for a total affordability term of fifty-five (55) years from the date of recordation of the Notice of Completion.

Interest accrues on the unpaid principal balance hereof at the rate of three percent (3%) simple interest per annum. Commencing upon the recordation of the Notice of Completion, Borrower shall make payments out of Residual Receipts (as defined in the Property Loan Agreement). Borrower shall have the right to retain twenty five percent (25%) of the Residual Receipts in a particular year, as such amount is determined by the Annual Financial Statement, with the remainder to be paid to the various subordinate lenders, which may include the County, CalHFA (MHSA) and the City of Fontana, split proportionately according to the initial amount of the loans provided by each lender.

Residual Receipt payments will commence on the first April 1st of the year following the issuance of a Certificate of Occupancy for the Project. Borrower shall have the right to retain twenty five percent (25%) of the Residual Receipts in a particular year, as such amount is determined by the Annual Financial Statement, with the remainder to be paid to the various subordinate lenders, which shall include the County, CalHFA (MHSA) and the City of Fontana, split proportionately according to the amount of the loans provided by each lender. On or before each annual payment date, Borrower shall submit the Annual Financial Statement to the County for the preceding fiscal year. County shall review and approve such statement, or request revisions, within forty-five (45) days of receipt. In the event the County fails to approve or disapprove the **Annual** Financial Statement within the forty-five (45) day period, Borrower may request a written determination of approval or disapproval following the expiration of such period. In the event the County fails to provide a written determination to Borrower within ten (10) days following the receipt of Borrower's request for determination; the Annual Financial Statement shall be deemed approved. In the event the County determines that there is an understatement in the amount and payment of Residual Receipts due to County, Borrower shall promptly pay to the County such understated amount, but in any event, within twenty (20) days of notice of such understatement.

In the event the County determines that there is an overpayment in the amount and payment of the Residual Receipts due to the County, County shall promptly pay to Borrower the amount of the overpayment, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest.

Once the amount of Residual Receipts has been finally determined, the residual Receipts shall be paid towards the County NSP3 Loan. Any payments made by Borrower shall be applied first to pay current annual interest due, if any, then the cumulative interest owed, if any, then to reduce the principal amount of the Loan. In any event all principal owed and all current and accrued interest on the NSP3 Loan shall be due and payable as provided above.

2. Borrower will promptly pay all taxes, levies and assessments on the Property for the term of this Note and Affordability Period.

3. If Lender has not received a payment required herein by the end of fifteen (15) calendar days after the payment is due, Lender may collect a late charge in the amount of seven percent (7%) of the overdue amount of payment.

4. Borrower agrees that the Property shall be kept insured against loss by fire and/or other hazards in a sum of not less than the amount of all indebtedness on the Property including but not limited to, the original balance of said Loan Agreement. The Lender shall be named in the loss payable clause of the policy and shall be provided with a current copy of the policy during the term of this loan.

5. Borrower or his/her representatives must notify Lender in writing prior to the sale, conveyance, or transfer of the Property in accordance with the terms and conditions of the Loan Agreement.

6. Should Borrower agree to or actually sell, convey, transfer, or dispose of the real property described in the Deed of Trust securing this Note, or any part of it, or any interest in it or should a transfer of the Property occur by operation of law, (except as provided for in the Property Loan Agreement) the entire remaining principal balance may become immediately due and payable as determined in writing by the Lender. Notwithstanding the generality of the foregoing, however, certain transfers permitted under the County NSP3 Loan Agreement and the withdrawal, removal and/or replacement of a general partner shall not constitute a default hereunder or under the County NSP3 Loan Agreement and any such action shall not accelerate the maturity of this Note providing that any transferee is either a permitted transferee as defined in the County NSP3 Loan Agreement or that any required substitute general partner is reasonably acceptable to the Lender and is selected with reasonable promptness and that any substitute general partner agrees to be bound by any and all instruments in favor of the Lender.

7. This is a non-recourse obligation of the Borrower, except as described herein. No deficiency amount may be recovered from Borrower under the provisions of this Note or the Loan Agreement, except as may be provided herein. The personal liability of Borrower or any partner of Borrower to pay the principal of and interest on the debt evidenced by this Note shall be limited to the following: (i) the real property which is encumbered by the deed of trust securing this Note (the "Deed of Trust"), and (ii) any personal property pledged under the said Deed of Trust. Lender shall not seek (a) any judgment for a deficiency against Borrower or any partner of Borrower, or Borrower's or any of Borrower's partners members, managers, officers, directors, legal representatives, successors or assigns, in any action to enforce any right or

remedy under the Deed of Trust securing this Note or under the County NSP3 Loan Agreement, or (b) any judgment on this Note, except as may be necessary in any action brought under the Deed of Trust or under the County NSP3 Loan Agreement to enforce the lien against the Property or to exercise any remedies against the Property under the County NSP3 Loan Agreement. Notwithstanding the generality of the foregoing, Borrower and any general partner of Borrower shall be personally liable in the amount of any loss, damage or cost (including, but not limited to, reasonable attorneys' fees) resulting from one or more of the following: (aa) fraud or intentional misrepresentation by Borrower in connection with obtaining the loan evidenced by this Note or with the County NSP3 Loan Agreement, (bb) intentional bad faith waste of the Property encumbered by the Deed of Trust which secures this Note, and (cc) losses resulting from Borrower's failure to maintain insurance as required under the provisions of the Deed of Trust securing this Note and under the County NSP3 Loan Agreement. Borrower's obligation to indemnify the Lender as aforesaid shall be a personal, recourse obligation of Borrower, and in the event of any breach such obligation, the Lender shall have the right to proceed directly against Borrower to recover any and all such loss, damage or cost (including reasonable attorneys' fees and expenses) resulting from such breach.

8. Borrower agrees to comply with all laws, regulations, covenants, conditions and restrictions affecting the Property.

9. Borrower agrees that Lender is not to be held liable for any deficiency in the workmanship or materials supplied by any contractor(s) performing any work on the Property at any time. Lender DISCLAIMS ALL WARRANTY LIABILITY THAT ANY WORK UNDERTAKEN BY ANY CONTRACTOR(S) AT ANY TIME WILL PROPERLY CORRECT HOUSING CODE VIOLATIONS OR MINIMUM STANDARDS OF FITNESS OR MERCHANTABILITY, expressed or implied.

10. Subject to the provisions of paragraph seven (7) above, Borrower shall indemnify, defend and hold harmless Lender, its officers, agents, employees and volunteers from any and all claims, losses or legal actions arising from any and all of the actions of Borrower, its employees, agents, contractors, subcontractors, tenants and volunteers arising out of this Note.

11. If any provision of this Note is found to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue with full force and effect without being impaired or invalidated in any way.

12. No waiver by either party of any of the herein terms and conditions shall constitute a continuing waiver of such terms or conditions.

13. The provisions of this Note supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Note which is not contained herein or in the Deed of Trust executed herewith, shall be valid or binding on either of the parties.

14. Borrower agrees to comply with the terms of this Note, the related Deed of Trust and the County NSP3 Loan Agreement. Should Borrower fail to comply with the terms of this Note, County NSP3 Loan Agreement or of the accompanying Deed of Trust, Borrower will be in default and the entire Loan shall immediately become due and payable subject to the conditions

outlined above.

15. Borrower agrees that the improved property shall not be converted to for-sale condominium units during the term of the Note and/or County NSP3 Loan Agreement.

16. Borrower agrees not to discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, State or local housing assistance program or, except for a housing project for elderly persons, on the basis that the tenants have a minor child or children who will be residing with them, for at least fifty-five (55) years beginning on the date of the recordation of the Notice of Completion.

17. If any action at law or in equity is brought to enforce or interpret the provisions of this Note, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which it may be entitled.

18. Borrower acknowledges that Lender has furnished Borrower with a true copy of this document.

19. This Note shall be governed by the laws of the State of California.

TO WITNESS the representations and obligations contained in this Note, the undersigned has executed this Note as of the date and year first-above written.

**Borrower: Fontana Siena Partners LP,
a California limited partnership**

By: PC Fontana II Developers, LLC, a California limited liability company
its administrative general partner

By: Palm Communities, a California corporation
Its sole member/manager

By: _____
Todd A. Deutscher, President

DO NOT DESTROY THIS ORIGINAL NOTE: when paid the original Note, together with the original deed of trust securing this Note, must be surrendered for cancellation and retention.

EXHIBIT D-2

When recorded mail to:
County of San Bernardino
Department of Community Development and Housing
385 N Arrowhead Ave, Third Floor
San Bernardino, CA 92415-0140

Title No.
Escrow No.

DEED OF TRUST WITH ASSIGNMENT OF RENTS

This DEED OF TRUST, made this [REDACTED] day of [REDACTED], 2014 between Fontana Siena Partners LP, herein called TRUSTOR, whose address is 15635 Alton Parkway, Suite 375, Irvine CA 92618.

FIRST AMERICAN TITLE COMPANY, a California corporation, herein called TRUSTEE, and The County of San Bernardino, Department of Community Development and Housing, herein called BENEFICIARY

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale that property in the County of San Bernardino, State of California, described as follows:

APN: 0190-141-02-0-000 and 0190141-03-0-000, also known as 7807 and 7833 Juniper Ave., Fontana, CA

Parcel A

All that portion of farm lot 642, of the lands belonging to the semi-tropic land and water company, in the City of Fontana, County of San Bernardino, State of California, according to Plat therof recorded in Book 11, Page 12 of maps, in the office of the County Recorder of said County, described as follows:

Beginning at a point on the center of Juniper Street where said center line of Juniper street intersects the north line of said farm lot 642, extended west, a distance of 30 feet; thence south along the center line of Juniper street, 173 feet; thence east 660 feet, thence North 173 feet, thence West along the North line of said farm lot 642 and its extension Westerly, a distance of 660 feet to the point of beginning.

Saving and excepting therefrom, that portion lying within Juniper Avenue.

Parcel B

That portion of farm lot 642, according to map showing subdivisions of lands belonging to semi-tropic land and water company, in the City of Fontana, County of San Bernardino, State of California, as per map recorded in book 11, pages(s) 12 of maps, in the office of the County Recorder of said County.

Described as Follows:

Beginning at a point in the center line of Juniper Street, 173 feet South of the North line of said lot, extending Westerly;

Thence east 660 feet to the East line of the West ½ of said lot;

Thence South to the North line of the South ½ of said lot;

Thence West 660 feet to the center line of Juniper Street;

Thence North to the point of beginning.

Except that portion lying within the boundaries of Juniper Street.

All that certain real property situated in the County of San Bernardino, State of California, described as follows: Parcel 2 of Parcel Map 8726, in the County of San Bernardino, State of California, as per Map recorded in Book 89, Page(s) 23 of Parcel Maps, in the Office of the County Recorder of said County.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING (1) payment of the sum of \$2,700,000.00 Dollars with interest thereon according to the terms of a promissory note or notes of even date herewith made by TRUSTOR, payable to order of BENEFICIARY, and extensions or renewals thereof; (2) the performance of each agreement of TRUSTOR incorporated by reference or contained herein or reciting it is so secured; (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his or her successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, and with respect to the property above described, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of the law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

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

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him or her in the same manner and with the same effect as above provided for disposition or proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to Deed of Trust

declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability or any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to making any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his or her own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the Deed of Trust

owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(9) The Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obliged to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.

//

(10) The Beneficiary agrees and acknowledges that the development of the Project will be financed in part with the proceeds of an equity investment made by one or more limited partners of the Trustor (collectively, the "Limited Partner") in connection with the allocation of federal and/or state low income housing tax credits to the Trustor. Notwithstanding anything to the contrary set forth in this Deed of Trust, the following provisions shall apply at all times during which a Limited Partner is a partner of the Trustor:

a). Removal of General Partner. The withdrawal, removal and/or replacement of Trustor's general partner(s) for cause in accordance with Trustor's Amended and Restated Agreement of Limited Partnership shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. If a Limited Partner exercises its right to remove a general partner of Trustor, Beneficiary shall not unreasonably withhold its consent to the substitute general partner. Notwithstanding the foregoing, the substitute general partner shall assume all of the rights and obligations of the removed general partner under all of the Loan Documents.

b) Notice and Cure Rights. The Beneficiary hereby agrees that any cure of any default made or tendered by a Limited Partner shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor. Copies of all notices which are sent to Trustor under the terms of the Loan Documents shall also be sent to each Limited Partner at an address to be provided to Beneficiary in writing by said Limited Partner.

c) Insurance and Condemnation Proceeds. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project, or any part thereof, Trustor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefore, provided that (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Project in a manner that provides adequate security to Lender for repayment of the Loan, or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no continuing material default then exists by Trustor under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to County for repayment of the remaining balance of the Loan.

d) Extended Use Agreement. Beneficiary acknowledges that Trustor and the California Tax Credit Allocation Committee (CTCAC) intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code (IRC), as amended. As of the date hereof, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure. In the event the extended use agreement required by CTCAC is recorded against the Property, the Beneficiary agrees to comply with the provisions set forth in IRC Section 42(h)(6)(E)(ii).

//

//

//

//

//

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him or her at his or her address hereinbefore set forth.

Beneficiary requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Beneficiary at 385 N. Arrowhead Ave., Third Floor, San Bernardino, CA 92415, as provided by Section 29246 of the California Civil Code.

Fontana Siena Partners LP, a California limited partnership

By: PC Fontana II Developers, LLC, a California limited liability company
its administrative general partner

By: Palm Communities, a California corporation
Its sole member/manager

By: _____
Todd A. Deutscher, President

State of _____

County of _____

On _____ before me, _____, (here insert name and title of the officer), 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)

DO NOT RECORD
REQUEST FOR FULL RECONVEYANCE

To FIDELITY NATIONAL TITLE COMPANY

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidence of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated

Please mail Deed of Trust, Note(s) and Reconveyance to:

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

EXHIBIT D-3

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

COUNTY OF SAN BERNARDINO
Department of Community Development and Housing
385 North Arrowhead Ave, Third Floor
San Bernardino, CA 92415-0140

ATTN: HOUSING DEVELOPMENT

EXEMPT PER GOVERNMENT CODE 6103

**Request for Notice
UNDER SECTION 2924b CIVIL CODE**

In accordance with Civil Code, section 2924b, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded concurrently herewith, official Records of San Bernardino County, California, and describing land therein as:

See "EXHIBIT A"

Executed by _____ **Fontana Siena Partners LP** _____, as trustor
in which _____ **County of San Bernardino,** _____ is named
_____ **Department of Community Development and Housing (CDH)** _____ as
Beneficiary,
be mailed to _____ **County of San Bernardino, Department of Community Development and Housing**
At _____ **385 North Arrowhead Ave., Third Floor, San Bernardino, CA 92415-0043**

NOTICE: **A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request, if your address changes, a new request must be recorded.**

Date _____ **Dena Fuentes**

**STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

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

WITNESS my hand and official seal

Escrow No. _____

Signature _____

Title Order No. _____

EXHIBIT E-1

INITIAL CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

Fontana Siena Partners LP hereby certifies that it will comply with all applicable, ongoing NSP3 program requirements for the Property's Affordability Period which has been determined to twenty (20) years under HUD NSP3 Regulations, and an additional County imposed Affordability Period of thirty-five (35) years, for a total affordability term of fifty-five (55) years from the date of recordation of the Notice of Completion for the above-described project as follows:

Sixteen (16) units being made available to income qualifying households earning fifty percent (50%) or less than the AMI.

Borrower will maintain the following records and reports in order to assist the County in meeting its record keeping and reporting requirements:

1. Files on the annual review and certification of tenant income;
2. All information on the qualification of affordable rents;
3. Terms and conditions of all signed leasehold agreements between tenants and Borrower;
4. All legal reports and records required by County.

Fontana Siena Partners LP, a California limited partnership

By: PC Fontana II Developers, LLC, a California limited liability company
its administrative general partner

By: Palm Communities, a California corporation
Its sole member/manager

By: _____
Todd A. Deutscher, President

EXHIBIT E-2

ANNUAL CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

Fontana Siena Partners LP hereby certifies that it is complying with all applicable, ongoing NSP3 program requirements for the Property's Affordability Period which has been determined to be twenty (20) years under HUD NSP3 Regulations, and an additional County imposed Affordability Period of thirty-five (35) years, for a total affordability term of fifty-five (55) years from the date of recordation of the Notice of Completion for the above-described project as follows:

Sixteen (16) units being made available to income qualifying households earning fifty percent (50%) or less than the AMI.

Borrower are maintaining the following records and reports in order to assist the County in meeting its record keeping and reporting requirements:

1. Files on the annual review and certification of tenant income;
2. All information on the qualification of affordable rents;
3. Terms and conditions of all signed leasehold agreements between tenants and Borrower;
4. All legal reports and records required by County.

Fontana Siena Partners LP, a California limited partnership

By: PC Fontana II Developers, LLC, a California limited liability company
its administrative general partner

By: Palm Communities, a California corporation
Its sole member/manager

By: _____
Todd A. Deutscher, President

EXHIBIT F

NSP3 PROGRAM RENTS
(Based on HOME Program Rents)
Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

U.S. DEPARTMENT OF HUD

STATE: CALIFORNIA

FISCAL YEAR 2013 HOME PROGRAM RENTS

PMSA: RIVERSIDE-SAN BERNARDINO, CA

	Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR
LOW HOME RENT LIMIT	\$586	\$628	\$753	\$871	\$972	\$1072
FOR INFORMATION ONLY:						
FAIR MARKET RENT	\$763	\$879	\$1116	\$1577	\$1924	\$2213
60% RENT LIMIT	\$703	\$753	\$904	\$1045	\$1167	\$1287
120% RENT LIMIT	\$1329	\$1423	\$1710	\$1975	\$2202	\$2431

*Note: Figures above are maximum rents that may be charged for NSP3 Units only if all utilities and appliances are included in the rent. NSP3 program rents are current as of July 2013.

EXHIBIT G

PROJECT BUDGET

Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

Sources	
Tax Credit Equity	13,894,629
Permanent Loan	1,055,368
San Bernardino County NSP3	2,400,000
San Bernardino County Pre-Development Loan	300,000
MHSA Loan	1,750,000
City of Fontana HOME Loan	2,550,000
Impact Fee Waiver	417,014
Deferred Developer Fee	62,447
Total Sources	\$22,429,458

Uses	
Acquisition	\$ 2,400,000
Construction Costs	16,205,599
Soft Costs	1,713,424
Reserves/Lease Up	110,435
Developer Fee	2,000,000
Total Uses	\$22,429,458

EXHIBIT H

SPECIAL TERMS AND CONDITIONS

Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

THE FOLLOWING ARE THE SPECIAL TERMS AND CONDITIONS ASSOCIATED WITH THIS PROJECT:

Electronic Submission of Certified Payrolls.

1. The prime contractor and each subcontractor and every lower-tier subcontractor and all vendors subject to Davis-Bacon and Related Acts, will be required to submit certified payrolls and labor compliance documentations electronically via the software LCP Tracker Inc. Electronic submission will be a web-based system, accessed on the World Wide Web by a web browser. The Prime contractor and subcontractors and lower-tier subcontractors will be given a Log-On Identification and Password to access the County of San Bernardino Community Development and Housing reporting system.

2. Use of the system may entail additional data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Prime and subcontractors and lower-tier subcontractor's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software. This requirement will be "flowed down" to each lower-tier subcontractor and vendor required to provide labor compliance documentation. Please contact County of San Bernardino Community Development and Housing for approval and log-in instructions for a lower-tier subcontractor(s).

EXHIBIT I
Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

FORM OF CERTIFICATION OF TENANT ELIGIBILITY

Rental Unit _____
Street Address _____
City _____ Unit No _____
Zip Code _____

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

1. Name of Members in the Household	2. Relationship to Head of Household	3. Age	4. Ethnicity	5. Place of Employment

Ethnicity: White Black or African American Asian Asian and White American Indian or Alaska Native
 Native Hawaiian or Other Pacific Islander American Indian or Alaska Native and White
 Black or African American and White American Indian or Alaska Native and Black or African American Other Multi Race
 Hispanic Yes No

Date of Occupancy of Rental Unit by Tenant: _____

Date of Lease Signed for Rental Unit by Tenant: _____

Amount of Rent Paid Per Month: _____

Certification Date (Earlier of Date of Occupancy or Date Lease signed): _____

6. Anticipated Annual Income. The anticipated total annual income from all sources of each person listed in 1 for the twelve month period beginning on the Certification Date listed above, including income described in (a) below, but excluding all income described in (b) below, is
\$ _____.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below): all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);

interest and dividends (including income from assets as set forth in item 7(b) below); full amount of periodic payments received from Social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above: casual, sporadic or irregular gifts; amounts that are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payment (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to student or educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; hazardous duty pay to a member of the household in the armed forces who is away from home exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; income from employment of children (including foster children) under the age of 18 years; foster child care payments; the value of coupon allotments under the Food Stamp Act of 1977; payments to volunteers under the Domestic Volunteer Service Act of 1973; payments received under the Alaska Native Claims Settlement Act; income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes; payments on allowances made under the Department of Health and Human Services' Low-Income Home Assistance Program; and payments received from the Job Partnership Training Act.

7. **Net Family Assets.** If any of the persons described in item 1 above (or any person whose income or contributions were included in item 6) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

(a) the total value of all such assets owned by all such persons: \$ _____, and
(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date:
\$ _____.

8. **Students**

(a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and

students?

Yes _____ No _____

(b) (Complete only if the answer to Question 8(a) is "Yes"). Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _____ No _____

The above information is full, true, and complete to the best of my knowledge. I have no objections to inquiries being made for the purpose of verifying the statements made herein.

I acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance construction of the Project for which application is being made. I consent to the disclosure of such information to the issuer of such bonds, the owners of such bonds, any trustee or agent acting on their behalf and any authorized agent of the Treasury Department or Internal Revenue Service.

Signature: _____ Date _____

FOR COMPLETION BY PROJECT OWNER ONLY:

A. Calculation of eligible income:

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

(2) If the amount entered in 7(a) above is greater than \$5,000, enter \$ _____

(i) the product of the amount entered in 7(a) above multiplied by the current passbook savings rate as determined by HUD: \$ _____

(ii) the amount entered in 7(b) above: \$ _____

(iii) enter the greater of line (i) or line (ii): \$ _____

(3) TOTAL ELIGIBLE INCOME (Line A(1) plus line A(2)(iii)): \$ _____

B. Enter number of family members listed in item 1 above: _____

C. The amount entered in A(3) (Total Eligible Income) is: \$ _____

_____ Less than \$ of median income for the area in which the Development is located, which is the maximum income at which a household may be determined to be a qualifying tenant as that term is defined in the Regulatory Agreement (the "Regulatory Agreement").

_____ More than the above-mentioned amount.

D. Number of units assigned:__

E. Monthly rent: \$_____

F. This unit (was/was not) last occupied for a period of thirty-one (31) consecutive days by a person or persons whose adjusted income, as certified in the above manner, was equal to or less than the amount at which a person would have qualified as a qualifying tenant under the terms of the Regulatory Agreement.

G. Applicant:

 Qualifies as a qualifying tenant.

 Does not qualify as a qualifying tenant.

**CERTIFICATE OF
CONTINUING PROGRAM COMPLIANCE**

The following information with respect to Fontana Siena Apartments, City of Fontana (the "Project"), is being provided by Fontana Siena Partners LP to the County of San Bernardino, Community Development and Housing (the "County"), pursuant to that certain NSP3 Agreement dated as of _____, dated as of _____ and the Affordability Covenant Agreement dated as of _____ (collectively, the "Regulatory Agreement") with respect to the Project:

(A) The total number of residential units which are completed and available for occupancy is _____. The total number of such units occupied is _____.

(B) The following residential units (identified by unit number) have been designated for occupancy by qualified tenants, as described in the Regulatory Agreement (for a total of _____):

(C) The following residential units which are included in (B) above, have been re-designated as units for qualified tenants since _____, 20____, the date on which the last "Certificate of Continuing Program Compliance" was filed with the County by _____:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number

(D) The following residential units are considered to be occupied by qualified tenants based on the information set forth below:

Number of Unit	Date of Unit No.	Name of Tenant	Persons Residing in Unit	Total Adjusted Gross Income	Initial Occupancy

Attach a Separate Sheet if Necessary

(E) [REDACTED] has obtained a "Certification of Tenant Eligibility", from each tenant named in (D) above, and each such Certification is being maintained by Borrower in its records with

respect to the Project. Attached hereto is the most recent "Certification of Tenant Eligibility" for each Tenant named in (D) above who signed such a Certification since [REDACTED], 20[REDACTED], the date on which the last "Certificate of Continuing Program Compliance" was filed with the County by [REDACTED].

(F) In renting the residential units in the Project, [REDACTED] has not given preference to any particular group or class of persons (except for persons who qualify as qualified tenants). All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least _____ months.

(G) The information provided in this "Certificate of Continuing Program Compliance" is accurate and complete, and no matters have come to the attention of the Company which would indicate that any of the information provided herein, or in any "Certification of Tenant Eligibility" obtained from the tenants named herein, is inaccurate or incomplete in any respect.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Company, on this _____ day of _____, 20____.

[REDACTED]

By: _____

Its: _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Department of Community Development and Housing
County of San Bernardino
385 North Arrowhead Ave, Third Floor
San Bernardino, CA 92415-0121
Attn: Community Development and Housing Director

No fee for recording pursuant to
Government Code Section 27383

EXHIBIT J

NSP3
AFFORDABILITY COVENANT AGREEMENT
Fontana Siena Partners LP
7807 and 7833 Juniper Ave., Fontana CA

It is hereby agreed and understood that, in accordance with the provisions of a NSP3 Agreement dated as of February 11, 2014 (the "Agreement"), by and between the County of San Bernardino, California (the "County"), having its principal office located at 385 North Arrowhead Ave, San Bernardino, California 92415-0043, and the Fontana Siena Partners LP ("Borrower"), having its principal office located at 15635 Alton Parkway, Suite 375, Irvine CA, 92618, Borrower has covenanted with respect to the property located in the City of Fontana, California described in Exhibit "A" attached to the Loan Agreement (the "Property"), and does hereby covenant, as follows:

1. Borrower, and such successors and assignees as permitted pursuant to the Agreement, shall utilize no less than sixteen (16) dwelling units, eleven (11) 2-bedroom units and five (5) three-bedroom units, located on the Property solely for the purpose of providing affordable housing to low-income persons as defined in 42 U.S.C §5301 and applicable regulations pursuant to the provisions of the Agreement (the "NSP3 Assisted Units"). In order to maintain conformity with the requirements of this Section during the period of affordability so that the total number of housing units meeting the requirements of this Section remains the same, and each substituted unit is comparable in terms of size, feature and number of bedrooms to the originally designated NSP3 Assisted Unit, all NSP3 Assisted Units shall be designated as "Floating Units", as described in "24 CFR Part 92.253". The following income restrictions apply to occupants of the NSP3 Assisted Units:

Sixteen (16) dwelling units shall be occupied by very low income households whose annual incomes, at the time of initial occupancy, do not exceed 50% of the AMI for San Bernardino County, California. For purposes of this covenant, the AMI for San Bernardino County, California, shall be determined in accordance with 24 CFR §92.216(a)(1) As made available by the U.S. Department of Housing and Urban Development ("HUD").

Annual income shall be determined in accordance with 24 CFR Part 5 as defined at 24 CFR §5.069.

2. Notwithstanding the covenant as contained in Section 1 above, upon foreclosure or transfer in lieu of foreclosure, the NSP3 Assisted Units shall be occupied by very low-income households whose annual incomes do not exceed fifty percent (50%) of the AMI for San Bernardino County, California. Income shall be determined in accordance with 24 CFR Part 5 as defined at 24 CFR §5.069. Said covenant shall continue in effect for the statutory minimum Period of Affordability of fifty-five (55) years after the date of initial compliance with this covenant.

3. Unless otherwise approved by the County in writing, during the Affordability Period (a period of not less twenty (20) years under HUD NSP3 Regulations, and an additional County imposed Affordability Period of thirty-five (35) years, for a total affordability term of fifty-five (55) years from the date of recordation of the Notice of Completion), the rents charged for all NSP3 Assisted Units shall be as follows:

Rents charged for the NSP3 Assisted Units referenced in Section 1 above, including the monthly allowance for the utilities and services (excluding telephone and cable) to be paid by the tenant, shall not be more than the lesser of (1) the Section 8 Fair Market Rent for a comparable unit as established by HUD under 24 CFR § 888.111, or (2) the rent established by HUD under 24 CFR § 92.252 for a unit occupied by a family with less than one hundred twenty percent (120%) of the Area Median Family Income referenced in Section 1 above (the "Low- and Moderate NSP3 Rent").

4. There shall be no discrimination against, or segregation of, any person, or group of persons, on account of race, color, religion, gender, national origin, age, disability or familial status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, and Borrower (itself or any person claiming under or through Borrower) 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, subtenants, sublessees or vendees thereof or any portion thereof.

5. Borrower further covenants that it will carry out all of the provisions of the Agreement, and that all of said covenants set forth above and in the Agreement, shall run with the Property. Except in the case of foreclosure or transfer in lieu of foreclosure under Sections 2 and 4, the covenants contained in Sections 1, 3 and 5 above shall continue in effect for fifty-five (55) years after the greater of (i) the date of initial compliance with the provisions of this Affordability Covenant Agreement as further provided in the Amendment No. 1, or (ii) the completion of the household characteristics in the Disaster Recovery Grant Reporting System maintained by HUD, and subject to any limitations of the Agreement, and the other covenants in the Agreement, shall continue until the Agreement, expires or terminates according to its terms. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership.

6. This Affordability Covenant Agreement is not intended to secure or otherwise obligate any bank, commercial lender or other party providing financing to Borrower with respect to the Property for any financial obligations whatsoever either to HUD or to the County. The intent hereof is solely to assure HUD that the requisite number of residential dwelling units in the Project as constructed upon the Property remain available as NSP3

Assisted Units during the time required hereunder and at the applicable rental rates as the same shall apply separately to (i) Borrower, and (ii) any bank, commercial lender or other party providing financing secured by the Property. Borrower's financial obligations to HUD or the County are contained in the Agreement.

//

//

//

//

//

Copies of the Agreement are available at the offices of the County at Department of Community Development and Housing, 385 North Arrowhead Ave., Third Floor, San Bernardino, California, 92415, and by telephone at (909) 387-4411.

Dated: _____, 2014

COUNTY OF SAN BERNARDINO

By: _____
Gregory C. Devereaux

**Borrower: Fontana Siena Partners LP,
a California limited partnership**

By: PC Fontana II Developers, LLC, a California limited liability company
its administrative general partner

By: Palm Communities, a California corporation
Its sole member/manager

By: _____
Todd A. Deutscher, President