Carson Terrace - City Loan Documents

Owner Participation Agreement

ORIGINAL

By and Between

CARSON REDEVELOPMENT AGENCY

("Agency"),

and

CARSON TERRACE, L.P.
a California limited partnership

("Developer")

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OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into by and between the CARSON REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and CARSON TERRACE, L.P., a California limited partnership ("Developer"). Agency and Developer agree as follows:

ARTICLE 1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement. The purpose of this Agreement is to effectuate the provisions of the Housing Element of the General Plan of the City of Carson ("City") and the Community Redevelopment Law by providing for the development of very low, lower, and moderate income senior citizen housing on a site owned by Developer and agreeable to Agency (the "Site"). The proposed development of the Site ("Project") pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Carson, California (the "City") and the health, safety, and welfare of its residents will effectuate Agency's Redevelopment Plan, as amended, by providing housing for elderly persons, of low income, Carson Redevelopment Project Area No. 1 and Merged Areas, adopted by Ordinance No. ____ on _____, 19___, and is in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

1.2 The Site. The "Site" is a parcel of land described as:

> Parcel 1: The easterly 50 feet of the westerly 277 feet of Lot 34 of Tract 2982, in the City of Carson, County of Los Angeles, State of California, as per map recorded in Book 35, page 31, of Maps, in the office of the County Recorder of Los Angeles County, California.
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> Parcel 2: The easterly 100 feet of the westerly 377 feet of Lot 34 of Tract 2982, in the City of Carson, County of Los Angeles, State of California, as per map recorded in Book 35, page 31, of Maps, in the office of the County Recorder of Los Angeles County, California,

and is more commonly known as 632 East 219th Street, Carson, California.

1.3 Parties to the Agreement.

1.3.1 The Agency. Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency for purposes of this Agreement is 701 East Carson Street, Carson, California 90745. "Agency", as used in this Agreement, includes the Carson Redevelopment Agency, and any assignee of or successor to its rights, powers and responsibilities. Agency is a public body authorized to acquire property by eminent domain pursuant to applicable laws.

1.3.2 The Developer. Developer is Carson Terrace, L.P., a California limited partnership. The principal office of Developer for purposes of this Agreement is 515 South Figueroa Street, Suite 940, Los Angeles, California 90071, or such other address as Developer may designate from time to time in writing. Developer is or will be a limited partnership comprised of the Los Angeles Housing Partnership, Inc., a California public benefit non—profit corporation ("LAHP"), as general partner, and Edison California Housing Investments, a California corporation, ("Edison"), as a limited partner.

ARTICLE 2. AGENCY CONSTRUCTION LOAN

2.1 Agency Construction Loan. Agency agrees to loan the Developer Two Million Two Hundred Five Thousand Dollars ($2,205,000.00), or so much thereof as is necessary (the "Agency Construction Loan"), for the purposes of (a) retiring an existing pre-development loan in the original principal sum of $290,000.00 made by Agency to Developer, together with all unpaid interest accrued thereon; (b) retiring an existing pre—development loan in the original principal sum of $290,000.00 made by Developer's limited partner, or an affiliate of Developer's limited partner, to Developer, together with all unpaid interest accrued thereon; (c) paying to Developer the sum of $100,000 as an advance to Developer against the Developer Fee provided for in the project budget; (d) providing sufficient funds to pay the ordinary and necessary closing costs of the Agency Construction Loan and the bond issue which will provide the ultimate senior financing for the Project, including the fees of the issuer's counsel, such costs being estimated at approximately $200,000; and (e) constructing the improvements described herein (the "Improvements") on the Site, pro tanto, and for the payment of costs and expenses related to the development of the Project. Said loan shall be evidenced by a promissory note (the "Agency Loan Promissory Note") in the form attached hereto as Attachment No. 1 and secured by a deed of trust in the form attached hereto as Attachment No. 2.

2.2 Funding of Agency Construction Loan and Disbursement of Agency Loan Proceeds. Concurrently herewith, and as a condition hereto, as set forth in Section 2.3.1 hereof, Developer is obtaining a construction loan in an amount not less than $3,500,000.00 (the "Construction Loan" herein) from an institutional private lender ("Construction Lender") reasonably acceptable to Agency. Developer shall use its best efforts to cause the Construction Lender to enter into an agreement to disburse the net proceeds from the Agency Construction Loan, as well as the proceeds from the Construction Loan, on terms and conditions mutually agreeable to Agency, Developer and the Construction Lender. As used herein, the "net proceeds" of the Agency Construction Loan shall mean the gross amount of said loan less (a) all closing costs and fees, if any, and (b) the amount required to retire the existing loan in favor of Agency referred to in Section 2.1(a) hereof. If the Construction Lender fails or refuses to enter into an agreement to disburse the net proceeds from the Agency Construction Loan, then Agency (or a recognized builder's control agency employed by Agency at the expense of Developer) shall disburse the proceeds from the Agency Construction Loan to Developer in accordance with the terms and conditions of the "Disbursement Schedule," attached hereto and incorporated herein as Attachment No. 3. The funds available to fund construction, after payment of the matters set forth in subsection (a) through (d) above, shall be deposited with the Construction Lender referred to in Section 2.3.6 hereof to be disbursed on a dollar for dollar basis with funds being disbursed by the Construction Lender from the Construction Loan for hard and soft construction costs (other than payments of interest or loan fees or charges to Construction Lender) or from deposits made by Developer or its affiliates to the end that half of funds which make up each disbursement pro tanto will come from funds deposited by Agency and half will come from funds provided by Construction Lender or by Developer or its affiliates.

2.3 Conditions to Funding Agency Construction Loan. The following conditions precedent must be satisfied or waived by Agency before Agency shall be obligated to fund the Agency Construction Loan in accordance with this Agreement:

2.3.1 Developer's having obtained approval of all entitlements necessary or appropriate to the construction of the improvements on the Site, including but not limited to all Conditional Use Permits, site approvals, zoning changes, building permits, and the like, from the City of Carson and from any other governmental agency of competent jurisdiction.

2.3.2 Approval by the City of Carson, and by all other governmental agencies of competent jurisdiction, of the plans and specifications for the construction of the project.

2.3.3 Submission to Agency of budgets for the construction and equipping of the project (including consultant's costs and costs of financing), demonstrating that the available

financing will be sufficient to complete the project. The aggregate costs reflected by such budgets shall not exceed $7,000,000.00. Any such budget shall include a contingency account in an amount reasonably calculated to offset the costs of any unforeseen circumstances. The construction budget shall be accompanied by a written review made by an independent third party, such as a licensed architect or licensed general contract or, familiar with the site and experienced in the construction of similar improvements, acceptable to Agency, certifying that, based on the plans and specifications, the sums set forth in the budget are adequate to fund the construction.

2.3.4 Approval by Agency of the identity, integrity and experience of the licensed general contractor undertaking the supervision of the construction of the improvements, such approval not to be unreasonably withheld. It is acknowledged, however, that a disapproval based on the lack of experience of such contractor in the construction of affordable housing or on creditable evidence of a lack of integrity shall not be deemed unreasonable.

2.3.5 Delivery to Agency of a faithful performance bond and a lien and completion bond in favor of Agency, guarantying lien free completion of the Improvements in accordance with the approved plans and specifications, such bonds to be in a penal sum of not less than 100% of the budgeted costs of construction.

2.3.6 Developer having obtained a binding commitment from an institutional lender ("Construction Lender") of Developer's choice committing to make a Construction Loan in an original principal sum not to exceed $3,500,000.00 to Developer for construction of the Improvements, on terms and conditions acceptable to Developer in Developer's reasonable discretion, and approved by Agency provided that Agency's approval shall not be unreasonably withheld if the Construction Loan documentation contains provisions giving Agency the rights set forth in Section 3.8 hereof and if the terms and conditions are consistent with the prevailing rates, fees and requirements of commercial lenders at the time the Construction Loan is made. The Construction Loan shall close prior to or concurrently with the closing of the Agency Construction Loan. If requested by the Construction Lender, Agency will execute a CLTA standard form Subordination Agreement, provided that, under no circumstances, shall Agency be required to subordinate to a loan which has a principal balance of which is, or could become, greater than $3,500,000.00, plus accrued interest and advances to protect security.

2.3.7 Developer having obtained a binding commitment from the Bank of America FSB or from any other institutional lender acceptable to Agency committing to make a permanent loan to Developer in the sum of not less than $2,500,000.00 on the due date of the Construction Loan, or

earlier, on terms and conditions acceptable to Developer in Developer's reasonable discretion, and approved by Agency provided that Agency's approval shall not be unreasonably withheld if such terms and conditions are consistent with the prevailing rates, fees and requirements of commercial lenders at the time the loan is made (the "Permanent Loan"). As used herein, "institutional lender" shall mean a bank, savings bank, or savings and loan association, life insurance company, or other entity which is regularly engaged in the business of making and servicing loans secured by commercial real property.

2.3.8 Submission by Developer to Agency of evidence satisfactory to Agency, that Developer has contributed or will contribute not less than $280,752.00 toward the cost of construction of the Improvements, together with evidence satisfactory to Agency identifying the source and availability of all funds required to fund the construction of the Improvements in excess of the amounts being provided under the Construction Loan and the Agency Construction Loan.

2.3.9 Developer's submission to Agency of a pro forma operating budget demonstrating the viability of the project, subject to the subsidies, the assumptions upon which such subsidy figures are based, and the sources upon which such assumptions are made.

2.3.10 Developer's submission of evidence satisfactory to Agency that it has obtain a commitment for site management by an entity experienced in the operation and management of similar housing for the elderly. Such information shall include the identity of the proposed manager, a resume´ of such operator's experience and qualifications, and a statement of the costs of such management, which costs shall be consistent with the pro forma budget.

2.3.11 Agency's approval, within fifteen days after receipt thereof, of a preliminary title report covering the Site, which approval shall not be unreasonably withheld or delayed. At closing, Developer, at Developer's sole cost and expense, shall provide an LP10 Lender's form policy of title insurance in an amount equal to the agreed principal balance of the Agency Construction Loan, guarantying the lien of Agency's deed of trust to be senior and superior to all liens and encumbrances on the Site other than (i) the Construction Loan, in an amount not to exceed the limitation stated above, (ii) real property taxes a lien not yet payable, (iii) any matters shown on the preliminary title report and not disapproved by Agency, and (iv) the Regulatory Agreement referred to in Section 2.3.14 hereinbelow.

2.3.12 Payment by Developer of, or agreement by Developer to pay at closing, all costs of documenting, recording and disbursing the Agency Construction Loan, including without limitation the cost of the title policy referred to in Section

2.3.11 hereof and the costs of any construction cost disbursement inspections. Such payments shall be made from the proceeds of the Agency Construction Loan.

2.3.13 Agency's approval of the soils and seismic studies of the Site and of an environmental assessment of the Site, the nature and extent of which shall be designated by Agency. Both types of test are to be accomplished at the sole expense of the Developer. In the event that Agency shall disapprove the environment assessment, based on the existence of toxic waste or other hazardous materials on the Site, Developer, or one of its constituent partners, shall have a reasonable time, not to exceed six months, within which to remediate the contamination to the reasonable satisfaction of Agency and its consultants. Should Developer refuse to remediate such condition or fail to cause such remediation to be executed within said reasonable time, then Agency shall have the right to terminate this Agreement on five days' written notice to Developer.

2.3.14 The Site shall be restricted by a Regulatory Agreement heretofore recorded against the Site and an Amendment to Regulatory Agreement in the form attached hereto and incorporated herein as Attachment No. 7, or other appropriate means reasonably acceptable to Agency, for use of senior citizens (defined herein) of very low, lower, or moderate income (defined herein) for thirty (30) years from issuance of the Certificate of Occupancy. The ownership and operation of the Project shall be subject to, and governed by, the terms and conditions of the Regulatory Agreement. Such Amendment to Regulatory Agreement shall be recorded concurrently with the recordation of the Agency's Construction Loan and the Regulatory Agreement, as amended, shall be senior and superior to all other liens and encumbrances on the Site.

2.3.15 Execution and delivery to Agency by Developer of the Agency Construction Note, the Agency Construction Deed of Trust, an environmental indemnity in form and content reasonably satisfactory to Agency, a construction fund disbursement agreement, and such other certificates and documents as are typical to such transactions and as shall reasonably be required by Agency.

2.4 Interest on, and Maturity of, Agency Construction Loan. The principal balance of the Agency Construction Loan from time to time outstanding shall bear three percent (3%) simple interest from the date of disbursement until date of payment. Interest shall be payable monthly from an interest reserve. Principal and any accrued and unpaid interest shall be due and payable on the date the Construction Loan matures or is otherwise repaid, whichever is the earlier.

ARTICLE 3. AGENCY LONG TERM LOAN

3.1 Agency Long Term Loan. Subject to satisfaction of the conditions precedent set forth in Section 3.2 hereof, Agency agrees to loan to Developer an amount not to exceed the unpaid balance of principal of the Agency Construction Loan, on the terms and conditions set forth hereinbelow, said loan to be evidenced by a promissory note (the "Agency Long Term Promissory Note") in the form attached hereto as Attachment No. 4, a deed of trust and assignment of rents substantially in the form attached hereto as Attachment No. 5, and a security agreement in the form attached hereto as Attachment No. 6 and a Financing Statement (UCC 1) covering personal property used in connection with the operation of the Project.

3.2 Conditions Precedent. Agency's obligation to make the Agency Long Term Loan is expressly conditioned on satisfaction of each of the following:

3.2.1 Completion of the Improvements and the equipage of the Project (i) free and clear of all liens and claims of contractors, subcontractors, material suppliers, and laborers, (ii) in accordance with the approved plans and specifications and budgets, and (iii) otherwise, to the reasonable satisfaction of Agency.

3.2.2 Prior or concurrent recordation of the Permanent Loan referred to in Section 2.3.7 hereof, which loan shall comply with the applicable requirements of Section 3.8 hereof.

3.2.3 Entry by the Developer and the manager approved by Agency pursuant to Article 2 hereof into a management contract incorporating the matters set forth in Section 2.3.10 hereof and otherwise reasonably satisfactory to Agency.

3.2.4 Issuance of an ALTA Lenders form policy of title insurance (under the LP10 policy) in an amount equal to the principal balance of the Agency Long Term Loan, guarantying the lien of Agency's deed of trust to be senior and superior to all liens and encumbrances on the Site other than (i) the Permanent Loan in an amount not to exceed $2,500,000.00, (ii) real property taxes a lien not yet payable, (iii) any matters shown on the preliminary title report referred to in Section 2.3.11 and not disapproved by Agency, and (iv) the Regulatory Agreement referred to herein below.

3.2.5 Payment by Developer of, or agreement by Developer to pay, all costs of documenting, recording and disbursing the Agency Permanent Loan, including without limitation the cost of the title policy referred to in Section 3.2.5 hereof.

3.2.6 There having occurred no event or circumstance which, had it or they been known to Agency prior to approval by Agency of the operating budget referred to in Section 2.3.9 would have adversely affected Agency's decision to approve such budget.

3.2.7 Submission by Developer of evidence satisfactory to Agency, that Developer's contribution to the cost of constructing the Improvements and equipping the Project is not less than $508,862.00 (including the sum of $280,752.00 referred to in Section 2.3.8 hereof).

3.2.8 Issuance by Agency of a Certificate of Completion, as provided hereinbelow.

3.2.9 Issuance by the City of Carson of a Certificate of Occupancy for the Improvements.

3.2.10 There exists at the date of closing no uncured event of default on the part of Developer under this Agreement or under the Agency Construction Loan or any disbursement agreement entered into pursuant hereto, excluding any curable event of default with respect to which Developer is diligently pursuing a cure.

3.2.11 Execution and delivery to Agency by Developer of the Agency Long Term Note, the Agency Long Term Deed of Trust, the Security Agreement and a supporting Financing Statement (UCC-1), the Regulatory Agreement, an environmental indemnity in form and content reasonably satisfactory to Agency, and such other certificates and documents as are typical to such transactions and as shall reasonably be required by Agency.

3.2.12 Recordation of the Regulatory Agreement as an encumbrance against the Site.

3.2.13 The Developer's payment concurrent payment of all accrued, unpaid interest Construction Loan.

3.3 Interest On, and Maturity of, Agency Long Term Loan. The Agency Long Term Loan shall bear interest at the rate of five percent (5%) per annum, and all principal and unpaid interest shall be due and payable thirty (30) years after the date of issuance of the Certificate of Occupancy.

3.4 Repayment of Agency Long Term Loan.

3.4.1 Annual Payments. Developer shall make annual payments ("Annual Payments") during the term of the Agency Long Term Loan equal to fifty percent (50%) (the "Agency's Percentage") of "Positive Net Cash Flow" (defined in Section 3.5g below) derived from the operation of the Project, and Developer shall be entitled to retain the remainder of such Positive Net Cash Flow. The first Annual Payment shall be calculated from the

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earlier of (a) issuance of a Certificate of Occupancy for the Improvements, or (b) commencement of the first tenancy in the Project occurs until the next June 30, and shall be due and payable on September 30 of that year. Thereafter, the Annual Payment shall be calculated on the Net Cash Flow from July 1 to June 30 of each year and shall be due and payable on the anniversary of the date upon which the first Annual Payment fell due. Any such Annual Payments shall be applied first to accrued but unpaid interest on the Agency Long Term Loan, and the remainder, if any, shall be applied in reduction of the principal balance of the Agency Long Term Loan. Positive Net Cash Flow shall be deposited monthly into an interest bearing account and interest earned thereon shall be added to such Positive Cash Flow. Notwithstanding the foregoing, from the date of issuance of the Certificate of Occupancy through the first anniversary of issuance of the Certificate of Occupancy, Positive Net Cash Flow (and accrued interest thereon) may be expended for Total Project Costs (as defined in Section 4.18); thus, the first Annual Payment from such Positive Net Cash Flow shall be reduced in an amount equal the product of Agency's Percentage times the amount of Positive Net Cash Flow expended through the first anniversary of the issuance of the Certificate of Occupancy to pay some or all of the Total Project Costs. Developer shall pay the Agency's Percentage of such Positive Net Cash Flow annually, and Developer shall retain the remainder of such Positive Net Cash Flow. Agency shall not be entitled to receive any portion of the Positive Net Cash Flow following repayment in full of the Agency Long Term Loan and all accrued but unpaid interest thereon.

3.4.2 Refinancing Payments. In the event of any "Refinancing" (defined below), Developer shall pay the Agency's Percentage of the "Excess Proceeds" (defined below) derived from such Refinancing, to the extent that the Agency Long Term Loan, and all accrued but unpaid interest thereon, have not previously been paid in full, and Developer shall be entitled to retain the remainder of such Excess Proceeds. Any payment made to Agency from such Excess Proceeds (a "Refinancing Payment") shall be made at the close of the refinancing and shall be applied first to accrued but unpaid interest on the Agency Long Term Loan, and the remainder, if any, in reduction of the principal balance of the Agency Long Term Loan.

3.4.3 Appreciated Value Payments. In the event of any "Sale" (defined below), Developer shall pay the Agency's Percentage of the Excess Proceeds from such Sale, to the extent that the Agency Long Term Loan, and all accrued but unpaid interest thereon, have not previously been paid in full, and Developer shall be entitled to retain the remainder of such Excess Proceeds. Any payment made to Agency from such Excess Proceeds (an "Appreciated Value Payment") shall be made at the close of the Sale and shall be applied first to accrued but unpaid interest on the Agency Long Term Loan, and the remainder, if any, in reduction of the principal balance of the Agency Long Term Loan.

3.4.4 Developer's Right to Encumber. Subject to the limitations of this Subsection 3.4.4, Developer may, at any time and from time to time, with Agency's consent first had and obtained, which consent shall not be unreasonably withheld, mortgage, hypothecate, grant control of, or encumber all or a specific portion of the Site, the Project, the Improvements, Developer's interest in this Agreement or any of the foregoing, or any interest in Developer or any partner of Developer. Notwithstanding the foregoing, Developer shall not enter into any Refinancing transaction which (i) would cause the aggregate amount of indebtedness (the repayment of which is secured by an interest in the Site, the Project, the Improvements, or the Developer's interest in any of the foregoing) to exceed 95% of the fair market value of the property so encumbered during the term of the Agency Construction Loan and 80% of the fair market value of the property thereafter, or (ii) cause Developer's net operating income derived from the operation of the Project (computed without deduction for debt service) to be less than 110% of all debt service which will be payable following such Refinancing transaction. The foregoing 80% limitation shall not apply to the first refinance of the Construction Loan into the initial Permanent Loan.

3.4.5 Limitation on Payments. Notwithstanding anything to the contrary contained herein, Developer shall not be required to make any payments hereunder (including without limitation the Annual Payments, the Refinancing Payments, or the Appreciated Value Payments described in this Section 3.4) to the extent that the outstanding principal balance of the Agency Long Term Loan, and all accrued but unpaid interest thereon, has previously been paid in full.

3.5 Definitions. As used herein, the following terms shall have the meanings ascribed below:

a. "Refinancing" shall mean any act or process by which Developer borrows any funds, credit or allowance, repayment or reimbursement of which is secured in whole or in part by Developer's interest in the Site or the Project, or by any direct or indirect interest in Developer. Refinancing shall include any so-called "convertible mortgage", pursuant to which any person or entity receives an option or right to acquire any interest in the Site, the Project, the Improvements, or Developer's interest therein in lieu of repayment. Refinancing shall not include (i) any Sale or other transfer of all or any part of the Site, the Project, the Improvements, Developer's interest in any of the foregoing, or any interest in Developer or any partner of Developer (including any transfer of limited partnership interests or transfers to facilitate the syndication of interests in the Developer or the Project) except as collateral securing the performance of any obligation, or (ii) the Construction Loan.

b. "Excess Proceeds" with respect to any Refinancing shall mean (i) any and all proceeds, credits, offsets and allowances directly or indirectly received by or allowed to Developer from or by any source in any way, relating to any Refinancing, minus (ii) the sum of (x) Deductible Expenses relating to such Refinancing, and (y) the sum of principal and interest paid from the proceeds of such refinancing on account of any and all loans made by any person or entity (other than a governmental or quasi-governmental entity), repayment of which is secured by a mortgage or deed of trust encumbering all or any part of the Improvements, the Site or any interest therein. A loan under multifamily housing revenue bonds shall not be deemed to constitute a loan by a governmental or quasi—governmental agency.

c. The term "Excess Proceeds" with respect to any Sale shall mean (i) the Gross Sales Proceeds, minus (ii) the sum of (x) Deductible Expenses relating to such Sale, and (y) the sum of principal and interest paid with the proceeds of such Sale on account of any and all loans made by any person or entity (other than a governmental or quasi-governmental entity), repayment of which is secured by a mortgage or deed of trust encumbering all or any part of the Improvements, the Site or any interest therein. A loan under multifamily housing revenue bonds shall not be deemed to constitute a loan by a governmental or quasi—governmental agency.

d. "Deductible Expenses" shall mean reasonable, customary and usual expenses actually paid by or on behalf of Developer in connection with any Refinancing or Sale, including without limitation reasonable (1) mortgage brokerage or sale commissions, (2) legal fees, (3) title insurance and survey fees, (4) escrow fees, (5) transfer and recording taxes and fees, (6) loan commitment fees, (7) points and/or (8) prepayment penalties.

e. "Gross Sales Proceeds" shall mean in the case of a Sale, the gross sales consideration (adjusted for customary prorations and security deposit credits) realized from the Sale; provided, however, that if the Sale involves any seller financing, then the Appreciated Value Payment attributable to payments made pursuant to such seller financing shall be paid to Agency only as and if Developer actually receives such payments (i.e., Agency agrees that Developer shall not be responsible for making any Appreciated Value Payment from a portion of Gross Sales Proceeds which might otherwise be attributable to any payment made pursuant to the terms of any purchase money financing until and unless Developer actually receives such payment).

f. "Fair Market Value" shall mean the appraised fair market value of the Site based on an all-cash sale of the Site, as of a date not earlier than 30 days prior to the Maturity Date, performed by an MAI appraiser selected by

Developer and Agency. Such appraiser shall have not less than 10 years experience in appraising residential rental apartment properties in the geographic market area in which the Site is situated. In the event that Developer and Agency are unable to agree upon such MAI appraiser within 10 days after request is made for such agreement, Developer and Agency shall each designate in writing within five days thereafter an MAI appraiser experienced in appraising residential apartment properties in such geographic market area, and the two appraisers so designated shall, within 10 days after such designation, choose another appraiser meeting the qualification requirements set forth above, which third appraiser shall perform such appraisal. If either Developer or Agency shall fail to designate an appraiser within the applicable time period, then the single appraiser designated shall perform the appraisal. The appraiser, however selected, shall complete the appraisal no later than 60 days after the date of request therefor, and such appraisal shall be binding and conclusive upon the parties.

g. "Positive Net Cash Flow" shall mean the revenues (without regard to the source, including, without limitation, withdrawals from operating reserves and replacement reserves) derived from the operation of the Project minus (i) all real estate and personal property taxes and assessments, insurance premiums and reasonable costs of maintenance, operation and management (including without limitation the management fee provided for in Section 6.5) incurred by Developer in connection with the operation and maintenance of the Project, (ii) the costs of servicing the Construction Loan or the Permanent Loan, as the case may be, or other sources of Agency-approved financing, (iii) contributions to operating reserves and replacement reserves as required by lenders or investors and as approved in writing by Agency, (iv) payment to the limited partner of Developer of an LP Asset Management Fee of $10,000 per year, and to the general partner of Developer of a GP Asset Management Fee of $15,000 per year, and (v) payment to the general partner of Developer of any portion of the Development Fee (as defined in Section 4.18 hereof) which has not been paid previously. The LP Asset Management Fee and the GP Asset Management Fee may increase, annually, by three percent (3%) of the prior year's fee. All loans or other sources of financing shall be commercially reasonable and shall be subject to Agency's approval in accordance with this Agreement.

h. "Sale" shall mean any sale, land sale contract, ground lease or any transfer of fee title to all or any part of the Site, the Project or the Improvements. The term Sale shall not include (i) encumbrance of the Site pursuant to the Construction Loan, the Permanent Loan or any Refinancing, (ii) any transfer of all or any part of the Site, the Project, the Improvements, Developer's interest in any of the foregoing, or any interest in Developer or any partner of Developer as collateral securing performance of any obligation, or (iii) any transfer of limited partnership interests or transfers to

facilitate the syndication of interests in the Developer or the Project.

3.6 Security for Agency Long Term Loan. The amounts loaned by Agency as provided in Section 3.1 above shall be evidenced by a promissory note and secured deed of trust and by a security agreement and financing statement in the form attached hereto and incorporated herein as Attachments Nos. 4, 5, and 6.

3.7 Subordination of Agency Deed of Trust. Agency shall, upon Developer's reasonable request, subordinate the lien of the Agency's Deeds of Trust to the lien of a deed of trust securing repayment of the Construction Loan and the deed of trust securing any Permanent Loan, subject to the terms and conditions set forth in Section 3.8 hereof.

3.8 Required Provisions of Construction and Permanent Loan Documents.

3.8.1 The deed of trust securing the Construction Loan and/or the Subordination Agreement between Agency and the Construction Lender shall contain provisions giving Agency the rights set forth in Subsections 4.16.2, 4.16.3 and 4.16.4 hereof.

3.8.2 The Construction and Permanent Lenders' deeds of trust and/or the Subordination Agreement between Agency, on one hand, and the Construction or Permanent Lender, as the case may be, on the other hand, shall also provide that:

a. Agency shall have the right, but not the obligation, to do any act or thing required of Developer in connection with such loan, following a default by Developer thereunder and Developer's failure to cure same within 30 days after Developer's receipt of notice of such default (except in the case of emergency, in which case Agency may act within a reasonable time following the notice of default),

b. Upon any default by Developer (and/or any successors of Developer to the Site) of any or all of its obligations with respect to the repayment by Developer of the loan, the Lender shall provide written notice of said default to Agency, and Agency shall be given the right (but shall have no obligation) to cure the default prior to the expiration of the statutory period to cure defaults; such notice shall be delivered to Agency within the earlier of (A) thirty (30) days after the date Developer fails to pay any amount due under the applicable Construction or Permanent Loan (as the case may be), or (B) concurrently with delivery of any notice of default delivered to Developer,

c. Lender shall negotiate with Agency for up to thirty (30) days following receipt by Agency of the written notice of default described above, regarding the

obligations of Agency in curing or otherwise satisfying the default,

d. If title to the Site and Improvements is taken by Agency, whether by voluntary or involuntary transfer, and if Agency timely cures any default on the loan within the period provided above following a default by Developer on the loan, then the Lender shall refrain from exercising any right it may have to accelerate the loan by reason of the transfer of title to Agency,

e. Agency shall have the right to take title of the Site and Improvements from Developer at any time after a default on the loan which continues beyond any applicable cure period without triggering any due on sale provision in such deed of trust, and may take title to the Site and Improvements subject to the Lender's deed of trust and other loan documents, and

f. Agency's acquisition of the Site and Improvements shall not be a default on the loan, and any due on transfer provision in the Lender's loan documents shall not apply to a transfer of the Site and Improvements to Agency.

ARTICLE 4. DEVELOPMENT OF THE SITE

4.1 Development of the Site by Developer.

4.1.1 Scope of Development. Developer shall develop the Site within the time limits established in the Project Development Schedule attached hereto and incorporated herein as Attachment No. 8 and in accordance with and within the limitations established in the "Scope of Development" attached hereto and incorporated herein as Attachment No. 9, and plans approved by Agency pursuant hereto. The Improvements shall consist of sixty-two (62) apartment units (including a manager's unit which shall not be rented), with each unit, other than the manager's unit, averaging approximately 550 square feet. The Site shall be developed with the number of parking spaces approved by the Planning Commission and City Council of the City of Carson. Provisions shall be made for ingress and egress by physically disabled persons in accordance with state and local law. Developer shall have complete and sole discretion with respect to the selection of each architect, subcontractor, engineer, consultant or other professional engaged to perform work in connection with the development of the Site. Agency shall have the right to approve the general contractor selected by Developer which approval shall not be unreasonably withheld.

4.1.2 [Intentionally Omitted]

4.1.3 Landscaping and Finish Grading Plans. Developer shall prepare and submit to Agency for its approval

preliminary and final landscaping and finish grading plans for the Site. The landscaping plans shall be prepared by a professional landscape architect, and the finish grading plans by a registered civil engineer, either or both of whom may be in the same firm as Developer's architect. These plans shall be prepared, submitted, and approved within the times established therefor in the Project Development Schedule as it may be amended from time to time by agreement of Agency and Developer.

4.1.4 Construction Drawings and Related Documents. Developer shall prepare and submit final Schematic Design Development Documents and Construction Documents to Agency for review and written approval (including, but not limited to, architectural approval) as and at the times established in the Project Development Schedule. Such documents shall be consistent with the preliminary Schematic Design Development Documents heretofore approved by the Agency and may be approved by the Executive Director of Agency.

(a) Schematic Design Development Documents are hereby defined as drawings and other documents to fix and describe the size and character of the entire development, including but not limited to plans, sections, and elevations, exterior material samples, and landscape plans with outline specifications or material lists to establish final scope and preliminary details for landscape work.

(b) Construction Documents are hereby defined as drawings and other documents setting forth in detail the requirements for construction, bidding and contracting for the construction of the Improvements, and obtaining building permits for the Improvements.

Approval of progressively more detailed drawings and specifications will be promptly given by Agency if they substantially conform to drawings or specifications theretofore approved. Any items so submitted and approved in writing by Agency shall not be subject to subsequent disapproval.

4.1.5 Coordination Between Agency and Developer. During the preparation of all drawings and plans, Agency and Developer shall hold regular progress meetings to coordinate the preparation and review of construction plans and related documents. Agency and Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to Agency can receive prompt and speedy consideration. If any revisions or correction of plans approved by Agency shall be required by any governmental official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, Developer and Agency shall cooperate in efforts to enable Developer to develop a mutually acceptable modification or alternative to any required revision or correction.

4.1.6 Agency Approval of Plans, Drawings and Related Documents. Subject to the terms of this Agreement, Agency shall have the right of reasonable review and approval of all plans and submissions, including any changes therein. Developer shall have the obligation to timely submit all plans and submissions, including any changes therein, for Agency's review and approval and to clearly indicate in a transmittal document the date by which Agency approval or disapproval is required under the Project Development Schedule. Agency shall approve or disapprove the plans, drawings and related documents referred to in Subsections 4.1.2 through 4.1.4 of this Agreement and any proposed changes therein within the times established in the Project Development Schedule. Failure by Agency to either approve or disapprove within the times established in the Project Development Schedule and in the body of this Agreement shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval. Developer, upon receipt of a disapproval based upon powers reserved by Agency hereunder, shall revise the plans and drawings and related documents and shall resubmit such revised documents to Agency within thirty (30) days after receipt of the notice of disapproval.

4.1.7 Agency Approval. Whenever herein the requested approval is reserved by Agency, such approval shall not be unreasonably withheld or delayed.

4.2 Construction Contract. The Project shall be built under a negotiated fixed price or guaranteed maximum construction contract with a general contractor chosen by Developer and approved by Agency. The contractor shall be bonded as provided in Section 4.7 unless the Agency's attorney approves a Letter of Credit arrangement to insure completion of the Project.

4.3 [Intentionally Omitted]

4.4 Plans and Drawings for Off-site Improvements. Developer shall prepare and submit for Agency and City approval detailed plans and drawings for all reasonably necessary and customary off-site improvements, in accordance with the terms hereof. Such plans and drawings shall be prepared in conformance with the technical specifications of the City and any other public agencies that have jurisdiction thereof. Except as otherwise expressly provided for herein, upon approval of such plans and drawings and as part of development of the Site, Developer shall construct or cause to be constructed all such off-site improvements.

4.5 [Intentionally Omitted]

4.6 Compliance with Project Development Schedule. After the conveyance of title to the Site, Developer and Agency shall each promptly begin and thereafter diligently prosecute to completion all work to be done by each party, respectively, pursuant to this Agreement. In addition, Developer and Agency

shall begin and complete all construction and development within the times specified in the Project Development Schedule or such extension of said dates as may be agreed upon between Developer and Agency; provided, however, regardless of the Project Development Schedule, after commencement of such work any cessation of the work for thirty (30) consecutive days shall be a breach hereof. The Project Development Schedule is subject to revision from time-to-time as mutually agreed upon in writing between Developer and Agency. The parties expressly acknowledge that their mutual performance hereunder is dependent upon timely performance by the other party of its duties and obligations as described in this Agreement and in the Project Development Schedule. In the event that either party is delayed or is unable to perform his or its duties and obligations on a timely basis, the other party is likely to experience delays in completing the work which such other party is obligated to perform pursuant to this Agreement, and the Project Development Schedule shall be revised to reflect such delays. In addition, such delays by either party may cause the other party to incur certain costs and expenses (including, by way of example and not limitation, unanticipated interest costs, additional office overhead costs and unexpected loan fees). On or before 20 business days prior to the date on which either party is to have completed performance of any task, in accordance with the requirements of this Agreement and the Project Development Schedule, the other party shall deliver notice of the estimated costs and expenses which such other party anticipates are likely to be incurred in the event that the party receiving such notice is delayed in completing such tasks on a timely basis; provided, however, that any such notice shall constitute an estimate only, and shall not be binding as to the nature, extent and amount of such costs and expenses. Promptly following receipt of written request therefor, accompanied by reasonable evidence of expenditure, the party responsible for any delay shall reimburse the other party for all reasonable costs and expenses actually incurred by the other party as a reasonable result of such delay provided the party responsible for any delay has been furnished the notice required by this Section 4.6.

4.7 Lien and Completion Bonds. Prior to the commencement of construction of the Improvements by Developer at the Site, Developer shall obtain or cause its general contractor to obtain a "Performance Bond" and a "Labor and Material Payment Bond" or other instruments of assurance as approved by Agency in the amount of the cost of completion of the Improvements, naming the Agency as a co-obligee. The terms of such bonds or instruments of assurance shall be subject to approval by the Executive Director of the Agency. The cost of such instrument of assurance shall be included in Total Project Costs, and shall be funded from the Construction Loan.

4.8 Bodily Injury and Property Damage Insurance. Prior to the commencement of construction on the Site or any portion thereof, including, without limitation, any preliminary

work, Developer and/or general contractor shall maintain and have in full force and effect a "Broad Form Comprehensive General Liability Policy" in a combined single limit of not less than $5,000,000.00 and which shall contain a contractual liability endorsement and a "Builders and Theft policy" in an amount not less than the agreed costs of constructing the Project as shown in the Development Pro Forma (as amended from time to time). Such insurance shall be maintained and kept in force and copies of such policies, or other evidence thereof satisfactory to Agency shall be on file with Agency at all times until Agency has issued its Certificate of Completion for the entire Site. Thereafter, Developer shall maintain the insurance coverage required by the Deed of Trust securing the Agency Construction Loan until the full reconveyance of such Deed of Trust. Agency shall be named an additional insured on any such policies of insurance required by this Section 4.8. Such insurance policies shall contain an endorsement providing that the policy shall not be canceled or the coverage reduced without a prior 30 day written notice to Agency.

4.9 City and Other Governmental Agency Permits. Before commencement of construction or development by Developer, its general contractor and sub-contractors of any buildings, structures or other work of improvement upon the Site, Developer shall secure or cause to be secured any and all permits which may be required by the City or any other governmental agency having jurisdiction over such construction, development or work. Developer shall pay costs of engineers and others necessary to prepare applications for permits. Agency shall provide all proper assistance to Developer in securing such permits. The costs of such permits (and the costs and fees of engineers and others incurred in connection therewith) shall be a cost of construction.

4.10 Rights of Access. Representatives of Agency and the City shall have the right of reasonable access to the Site or any part thereof without charge or fee, at normal construction hours during the period of construction, for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the Improvements. Such representatives of Agency or the City shall be those who are so identified in writing by the Executive Director of Agency.

4.11 Local, State and Federal Laws. Developer shall carry out the construction of the Improvements in conformity with all applicable laws, including all applicable federal and state labor standards and prevailing wage laws.

4.12 Nondiscrimination During Construction. Developer for itself, its successors and assigns, agrees that in the construction of the Improvements on the Site provided for in this Agreement, Developer will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, or national origin or ancestry.

4.13 Waiver of Governmental Fees. Agency agrees to cooperate with Developer to obtain waivers of any fees which do not result in a reduction of the revenues or funds of the City of Carson. Agency shall waive any fee or charge which it might otherwise impose in connection with the permits referred to in Section 4.9, and shall cooperate with Developer to request any other governmental or quasi-governmental entity having jurisdiction to waive its or their fees or charges in connection therewith; provided, however, that no fee or charge payable to, or for the benefit of the City shall be waived, and Developer shall be responsible for paying all such City fees and charges (which fees and charges shall be included in Total Project Costs hereunder). For example, if school fees can be waived because this is a senior citizens' project and such waiver does not result in a monetary loss to the City, then Agency agrees to use its best efforts to obtain such a waiver.

4.14 Taxes and Assessments. Developer shall pay when due all real estate taxes and assessments on the Site assessed and levied subsequent to conveyance of fee title to the Site to Developer, which shall be funded from the proceeds of the Agency Loan prior to the issuance of a Certificate of Occupancy and shall be paid from the gross income of the Project thereafter. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Developer in respect thereto.

4.15 Notice of Default to Edison: Right to Cure. Whenever Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer in construction of the Improvements, Agency shall at the same time deliver a copy of such notice or demand to Edison. Notwithstanding anything to the contrary contained in the Loan Documents, Edison shall have the right, but not the obligation, to cure defaults of the Developer under any of the Loan Documents and Agency agrees to accept cures tendered by Edison as follows: (a) with respect to any monetary default under any of the Loan Documents, Agency shall notify Edison in writing of the monetary default and Edison shall have 30 days after the receipt of said notice of such monetary default to cure such monetary default; and (b) with respect to any nonmonetary default under any of the Loan Documents, Edison shall be deemed to be curing defaults if it has commenced and is diligently proceeding to cure the default or to remove the general partner pursuant to the Partnership Agreement of the Developer, subject to any delays imposed by bankruptcy, injunction or similar proceeding of the general partner(s) which prevents Edison from proceeding with such removal; provided, however, that (i) in all events such delays shall not exceed 180 days, and (ii) if after 90 days of Edison's receipt of notice of the nonmonetary default, Agency reasonably determines that Edison has not been diligently proceeding to cure the default and equitable relief is necessary to prevent irrevocable and irreparable harm to the security, Agency shall

have the right, upon 10 days' prior written notice to Edison, to seek equitable relief based on the nonmonetary default, including, without limitation, injunctive relief, appointment of receiver and relief from a bankruptcy stay, and to pursue nonjudicial or judicial foreclosure proceedings, or both, on condition that Agency does not cause to be conducted a nonjudicial foreclosure sale or obtain a foreclosure judgment prior to the expiration of the 180 day maximum delay period. The provisions of this section shall not be applicable, and Agency shall have the right to proceed with all of the remedies provided in the loan documents if, in Agency's good faith judgment, the deferral of Agency action would prejudice its rights or ability to cure any default under any obligation secured by a lien on the Site senior in priority to that held by Agency.

4.16 Security Financing; Rights of Holder.

4.16.1 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holder; Right to Cure. Whenever Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer in construction of the Improvements, Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement, of which Agency has written notice. Each such holder shall (insofar as the rights of Agency are concerned) have the right at its option within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien securing its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize any such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements already constructed) without first having expressly assumed by written agreement satisfactory to Agency all of Developer's obligations to Agency, with respect to the Site, including, but not limited to, this Agreement and all agreements attached hereto, incorporated herein, or implementing the provisions hereof. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder executing such assumption, shall succeed to Developer's rights with respect to construction of the improvements and the remaining proceeds of the Agency Construction Loan and upon properly completing such improvements in accordance with the terms and conditions of this Agreement shall be entitled, upon written request made to Agency, to a Certificate of Completion from Agency with respect to such improvements.

4.16.2 Failure of Holder to Complete Improvements. In any case where, sixty (60) days after default

by Developer in construction of improvements under this Agreement, neither Edison nor the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon any portion of the Site has exercised the option referred to in Subsection 4.15 or 4.16.1 or has not proceeded diligently with construction, Agency may purchase the mortgage, deed of trust or other security interest, by paying to the holder the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site has vested in the holder, Agency, if it so desires, shall be entitled to a conveyance from the holder to Agency upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of any rentals and other income received during foreclosure proceedings);

(b) All reasonable expenses incurred with respect to foreclosure, not to exceed the amounts provided in Civil Code Section 2924c;

(c) The net expenses, if any (exclusive of general overhead) incurred by the holder as a direct result of any subsequent management of the Site;

(d) The costs of any improvements made by such holder, provided such improvements are in accordance with the plans, drawings and related documents approved by the Agency pursuant to Section 6.1;

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts in (a), (b), (c) and (d) above become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

Agency shall exercise such right to purchase the Site from the holder within 180 days after the holder's acquisition of fee title to the Site, and if Agency does not tender the required amounts within such 180 day period, Agency shall thereafter no longer have any right to purchase the Site.

4.16.3 Right of Agency to Cure Default Under Mortgage, Deed of Trust, Other Security Interest or Other Conveyance for Financing. In the event of a default or breach by Developer of a mortgage, deed of trust or other security instrument with respect to the Site or any part thereof prior to the completion of development of Improvements thereon Agency may (but shall not be obligated to) cure the default prior to the completion of any foreclosure. In such event, Agency shall be entitled to reimbursement from Developer of all sums paid and all costs and expenses incurred by Agency in curing the default.

Agency shall be subrogated to all the benefits of the superior lien upon the Site (including the lien of the superior lien holder) to the extent of such costs and disbursements paid by Agency.

4.16.4 Right of Agency to Satisfy Other Liens on the Site. Developer agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the Site and prior to the recordation of a Certificate of Completion for the construction and development of the Project and that Developer will keep the Site free and clear of all mechanic's liens and other liens on account of work done for Developer or persons claiming under it. If Developer shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, which claim arises in connection with work performed prior to the recordation of a Certificate of Completion for the construction and development of the Project, Developer shall within sixty (60) days after the filing of such claim either (i) pay and satisfy the same, or (ii) provide Agency with adequate security for the value, or in the amount, of the claim, plus estimated costs and interest thereon, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If Developer fails to either pay or satisfy such lien, or provide Agency with security to protect the Site against such claim of lien, Agency shall have the right (but not the obligation) to pay the amount of any such lien or encumbrance, and add the amount so paid to the amount of the indebtedness secured by the deed of trust then held by Agency; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site (or any portion thereof) to forfeiture or sale.

4.16.5 Certificate of Completion. Promptly after completion of all construction and development to be completed by Developer on the Site, as required by this Agreement, Agency shall furnish Developer with a certificate of completion (the "Certificate of Completion") upon written request therefor by Developer. Agency shall not unreasonably withhold the Certificate of Completion. Such Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement on the Site but shall not constitute a waiver of Agency's right to require correction of defects in labor, materials or equipment furnished. The Certificate of Completion shall be in such form as to permit it to be recorded in the Recorder's Office of Los Angeles County, California.

After the recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any

obligation or liability pursuant to, or under, this Agreement with respect to the construction or other development of the Project. Notwithstanding the foregoing, such party shall be bound by any covenants and obligations contained in this Agreement or the Regulatory Agreement, deed, lease, mortgage, deed of trust, contract, any applicable CC&R's or other instrument of transfer not related to construction and development of the Project.

If Agency refuses or fails to furnish a Certificate of Completion after written request from Developer, Agency shall, within thirty (30) days of the written request, provide Developer with a written statement of the reasons Agency refused or failed to furnish a Certificate of Completion and the action Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to specific items or materials for landscaping and the estimated cost thereof shall not exceed $20,000, Agency will issue its Certificate of Completion upon the posting of a bond by Developer with Agency in an amount representing a fair value of the work not yet completed. If Agency fails to respond to Developer's first request for such Certificate of Completion within thirty (30) days after written request therefor, Developer shall have the right to deliver a second request for such Certificate of Completion to Agency; provided, however, that if Agency fails to provide Developer with a Certificate of Completion (or fails to provide Developer with a written statement of the reasons for such failure) on or before the expiration of such second thirty (30) day period, then Developer shall be deemed to be entitled to, and Agency shall be deemed to have executed, such Certificate of Completion. If Developer fails to deliver the second request described in this Subsection, then Developer shall not be deemed to be entitled to, and Agency shall not be deemed to have executed, such Certificate of Completion but developer shall not be precluded from requesting a Certificate of Completion at any future date, in which event the terms and conditions of this Subsection 4.16 shall once again apply.

4.17 Collateral Assignment of Disposition and Development Agreement and Agency Consent Thereto. Developer may be required to execute a "Collateral Assignment of Owner Participation Agreement" as a condition of obtaining the construction or permanent financing necessary to complete the Improvements required herein. The Collateral Assignment of Owner Participation Agreement and Consent to Assignment shall be in the general form contained in Attachment No. 12 hereof subject to reasonable modifications as may be required by the Construction Lender. Agency agrees to consent to such assignment to a Construction Lender approved by Agency if such Construction or Permanent Lender agrees to the provisions of Section 3.8 hereof.

4.18 Developer Fee and Payment Thereof. The General Partner of Developer shall be entitled to a fee (the "Developer Fee") equal to an amount that is no greater than the amount which

the responsible state agency allows to be included in the eligible basis for the Project. Of said fee, $100,000 shall be paid at closing, by a disbursement from the Agency Construction Loan; $175,000 shall be paid at completion of construction; and the balance, if any, shall be repayable, with interest at the Applicable Federal Rate, from Project cash flow and, in any case, within ten years after the Project is placed in service. Except as provided herein with respect to the portion of the fee payable at closing, Agency shall have no responsibility for the payment of such any Developer Fees.

4.19 [Intentionally Omitted]

4.20 Cost Savings. Any cost savings based upon the Construction Contract negotiated by Developer and approved by Agency and resulting from the development of the Project pursuant to this Agreement shall be applied to the principal of Agency Construction Loan or, if the Agency Construction Loan has been retired, to the Agency Long Term Loan; provided, however, that Developer may, with the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed, determine to expend any such cost savings on improvement of the Project. Any such expenditure of savings shall constitute a portion of the Total Project Costs.

4.21 Governmental Approvals. Nothing herein is intended to indicate that the Project is not to be subject to the same Planning Commission and City Council review and approval procedures as are applicable to developments similar to the Project. Approval of any aspect of the Project is not to be inferred from any provision of this Agreement, or any Attachment hereto.

4.22 Cost Certification/Agency Audit.

4.22.1 Within 60 days after the date on which a Certificate of Occupancy is issued for the Improvements, Developer shall deliver to Agency a Preliminary Cost Certification in a form reasonably acceptable to Agency and Developer together with pertinent materials relating to Total Project Costs then incurred and an estimate of costs, if any, to be incurred and paid subsequent to the issuance of the Certificate of Occupancy. Prior to the release of any funds retained pursuant to Section 4.18 hereof, Developer shall deliver to Agency a Final Cost Certification for the Project. Agency shall have the right to audit or cause an audit to be made (the "Agency's Audit") of all accounts, books and records of Developer respecting the development of the Project, in order to ascertain the actual amount of the Total Project Costs. Developer shall reasonably cooperate with and assist in such audit, and make all of its accounts, books and records respecting the development of the Project available to Agency or its auditor for inspection and copying in accordance herewith. Agency agrees to cooperate with Developer in scheduling and conducting Agency's Audit, if any, so

as not unreasonably to interfere with Developer's business operation.

4.22.2 Developer shall pay the reasonable cost and expense of Agency's Audit if Agency's Audit discloses (or, in the event that Developer contests Agency Audit, if the independent certified public accountant determines) that the Total Project Costs for the Project as certified by Developer were overstated by more than four percent (4%) of the actual amount of such Total Project Costs. In all other cases Agency shall be solely responsible for the cost and expense of Agency's Audit.

4.22.3 If Agency's Audit discloses (or, in the event that Developer contests the Agency's Audit, if the independent certified public accountant determines) that Agency has overpaid or underpaid the Developer's Fee, Agency shall promptly notify Developer of such fact. If Agency has underpaid the Developer Fee, then at the time Agency delivers such notice Agency shall also pay Developer the amount necessary to correct any such prior underpayment. If Agency has overpaid the Developer Fee, Developer shall promptly (but in no event more than 30 days) pay Agency the amount necessary to correct such prior overpayment.

4.22.4 Developer shall have the right to contest, at Developer's sole cost and expense, the accuracy of Agency's Audit. If Developer in its reasonable discretion determines to contest Agency's Audit, Developer must deliver to Agency written notice of its intent to contest within 20 business days after Agency notifies Developer of the results of the Agency's Audit. If Developer fails to deliver such contest notice to Agency within such 20 business day period, then Developer shall be deemed to have waived its right to contest the Agency's Audit. If Developer timely delivers such contest notice to Agency, then the issue of the amount and accuracy of Agency's Audit shall be submitted to an independent certified public accountant mutually acceptable to Agency and Developer, with reasonable experience in audits similar to Agency's Audit in scope, complexity and subject matter, and the finding of such accountant shall be final. The estimated cost of the independent certified public accountant selected by the parties shall be split equally between the parties and each party shall pay his or its share in advance to the independent certified public accountant and shall pay his, or its, remaining share, if any, not covered by the advance payment to the independent public accountant promptly upon receiving a bill therefor.

4.22.5 If the independent certified public accountant so selected by the parties determines that the Total Project Costs for the Project as certified by Developer were overstated by four percent (4%), or less, of the actual amount of such Total Project Costs, then Agency shall promptly reimburse Developer for the reasonable fees and expenses paid by Developer

in contesting Agency's Audit, including Developer's share of the costs and expenses of the independent certified public accountant. If the independent certified public accountant so selected by the parties determines that the Total Project Costs for the Project as certified by Developer were overstated by more than four percent (4%) of the actual amount of such Total Project Costs, then Developer shall promptly reimburse Agency for the reasonable fees and expenses paid by Agency in defending Agency's Audit, including Agency's share of the costs and expenses of the independent certified public accountant.

4.23 Liens. Developer agrees that it shall not permit or suffer any mechanic's or materialmen's or other liens of any kind or nature to be recorded and/or enforced against the Site for work done or materials furnished or authorized by Developer, and Developer shall indemnify and hold harmless Agency and the Site from and against any and all liens, claims, demands, costs and expenses related to work done, labor performed or materials furnished in connection with its entry on the Site, including without limitation any attorney fees or costs incurred by Agency in connection therewith.

4.24 Certificate of Occupancy. Upon completion of construction, Developer shall obtain a Certificate of Occupancy from the City of Carson prior to the occupancy of any of the dwelling units of the Project. In the event a Certificate of Occupancy is not issued by September 30, 2000, then any date which is determined and measured from the date of issuance of the Certificate of Occupancy (i.e., for purposes of Sections 4.15, 5.1, 5.2, 5.3 and Subsections 3.2.11, 3.4.1 and 5.4.1) shall be December 31, 2000, instead of the actual date of issuance of the Certificate of Occupancy.

ARTICLE 5. USE AND RENTAL OF THE SITE

5.1 Uses. Developer covenants and agrees for itself, its successors, assignees, and every successor in interest that during construction and thereafter for a period of thirty (30) years from the date of issuance of a Certificate of Occupancy on the Project, Developer, such successors, assignees and successor(s) in interest shall devote the Site only to the uses specified in the Regulatory Agreement, as amended, (which shall incorporate the provisions of Sections 5.1 and 5.2 hereof) and this Agreement.

5.2 Rental Restrictions. Developer covenants and agrees for itself, its successors, assignees, and every successor in interest, that rental of the Project shall be restricted as provided in this Section 5.2 for a period of thirty (30) years from the date of issuance of a Certificate of Occupancy on the Project.

5.2.1 Units Restricted to Senior Citizen Rentals. All (except the manager's Unit) of the Units in the

Project ("rentable units") shall be rented exclusively to senior citizens of very low, lower, or moderate income and only such persons shall be entitled to occupy the Units.

5.2.2 Restrictions on Rental of Very Low/Lower Income Units. Thirty (30) of the rentable units shall be rented exclusively to senior citizens of very low, or lower income (as defined in Subsection 5.2.4) and only such persons shall be entitled to occupy such Units. The maximum number of persons who may reside in a Unit, other than the manager's unit, is two.

5.2.3 Restrictions on Rental of Moderate Income Units. The remaining thirty-one (31) rentable Units shall be rented exclusively to senior citizens of moderate income (as defined in Subsection 5.2.4) and only such persons shall be entitled to occupy such Units. The maximum number of persons who may reside in a Unit is two.

5.2.4 Definitions.

(i) "Senior Citizens of very low, lower, or moderate income" means persons whose income do not exceed the amounts set forth in California Health and Safety Code Sections 50105 (very low income), 50079.5 (lower income) and 50093 (moderate income) for persons and families who have incomes not greater than the applicable percent of the area median income (adjusted for family size as appropriate for the Unit) for the very low, lower, or moderate income categories.

(ii) "Area median income" shall mean the area median income for Los Angeles County as published by the Department of Housing and Community Development pursuant to California Health and Safety Code Section 50093.

(iii) "Family size appropriate to the Unit" shall mean a household of two persons for a one-bedroom unit.

(iv) "Affordable rent (including a reasonable utility allowance) for very low, lower, or moderate income person" means the rent determined under California Health & Safety Code Section 50053(b) based upon area median income (adjusted for family size appropriate for the Unit) for the very low, lower, or moderate income household.

(v) The terms defined in this Subsection 5.2.4 are further defined in Title 25 of the California Code of Regulations Section 6910, et seq., as from time to time amended, and any successor regulations thereto. The terms and provisions of California Health and Safety Code Sections 50093, 50105, 50079.5, and 50053 and Title 25 of the California Code of Regulations Section 6910, et seq., as amended, and any successor statutes or regulations thereto, are incorporated herein by this reference.

(vi) For purposes of this Agreement "senior citizens" shall mean persons sixty-two (62) or more years of age, persons fifty-five (55) or more years of age who are residing with persons sixty-two (62) or more years of age, and handicapped persons fifty-five (55) or more years of age.

5.2.5 Initial Rent. The initial rent for the Units of the Project shall be as follows:

(a) The initial rental rates for ten very low income units will be $359.00 per Unit per month, for the remaining five very low income units will be $424.00 per unit per month, and for the fifteen lower income units will be $480.00 per month, unless such rent is lowered by agreement of the parties hereto to comply with the requirements of other financing sources contemplated and permitted by this Agreement. The determination of which of the very low income occupants shall receive the lower rental shall be based on need.

(b) The initial rental rate for each of the thirty-one (31) moderate income Units shall be $576 per month.

(c) The initial rental rate for the manager's unit shall be $750.00 per month.

(d) Initial Rent is based on 1997 calculation. The Initial Rents provided for herein may be increased by the lesser of (x) two percent (2%) per year or (y) the change in the Index, as that term is defined hereinbelow, between January 1, 1998, and the date the project is completed.

5.2.6 Annual Rent Increases. Developer shall submit any request for an increase in the tenant portion of the rents to the staff of the Agency for review and approval (which approval shall not be unreasonably withheld or delayed) sixty (60) days prior to each yearly anniversary of the initial occupancy of the Project ("the Anniversary") and each year thereafter. The Agency shall review the Developer's request and notify Developer of either of the following actions within thirty (30) days after submission: (i) Developer shall be allowed to increase the then current rental rate of the Units by 2% each year; or (ii) Annual increases in the then current rent of the Units in excess of 2% per year shall be allowed if the sum of the percentage increases in the "CPI Adjusted Rent" and the "HUD Factor Adjusted Rent" (each as defined below), respectively, divided by two, exceeds 2% per year in accordance with the following computations:

(a) As used herein, the "CPI Adjusted Rent" shall mean the then existing rent rate for any Unit, plus an amount equal to the product of (A) the then existing rent rate for such Unit, multiplied by (B) the percentage increase, if any, of the Consumer Price Index - All Items (1982-1984=100) - All Urban Consumers - Los Angeles-Anaheim-Riverside, California, as

published by the United States Department of Labor, Department of Labor Statistics ("the Index"). Such percentage increase shall be determined by (i) subtracting the Index for the month which is 15 months prior to the month in which such calculation is to be made, from the Index for the month which is three months prior to the month in which such calculation is to be made, and (ii) dividing the remainder by the Index for the month which is 15 months prior to the month in which such calculation is to be made. An example of the calculation provided for above is as follows: Assume that the rent for a Unit is to be adjusted as of April 1, 1992, and prior to April 1, 1992, the rent for such Unit was $390.00. Further assume that the Index for January, 1991 (15 months prior to the month in which such calculation is to be made) was 139.9 and the Index for January, 1992 (three months prior to the month in which such calculation is to be made) was 144.3. Based upon these assumptions the percentage increase in the Index would be calculated by (i) subtracting the Index for the month of January, 1991 from the Index for the month of January 1992 i.e. 144.3-139.9=4.4, and (ii) dividing 4.4 by 139.9=0.031. The CPI Adjusted Rent would be calculated by multiplying (A) the then existing rent rate ($390.00) by (B) the percentage increase in the Index (.031%), and adding the result to the then effective rent rate ($390.00), i.e., $390.00 multiplied by .031%=$12.09 and $12.09 + $390.00=$402.09; and

(b) As used herein, the "HUD Factor Adjusted Rent" shall mean the product of (i) the then existing rent rate for such Unit, multiplied by (ii) the Automatic Annual Adjustment Factor in effect on the date on which such calculation is to be made for the Los Angeles-Long Beach, California areas, calculated as if the rent for such apartment unit excluded the highest cost utility for such Unit. The Automatic Annual Adjustment Factor shall mean the Annual Adjustment Factors established pursuant to Section 8(c)(ii)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(ii)(A)), as published annually in the Federal Register (24 CFR 888.202). An example of the calculation provided for above is as follows: Assume that the Automatic Annual Adjustment Factor in effect on April 1, 1992 is 1.058. The HUD Factor Adjusted Rent would be calculated by multiplying (i) the then existing rent rate ($390.00) by (ii) the Automatic Annual Adjustment Factor (1.058), i.e., $390.00 multiplied by 1.058=$412.62.

Based upon the examples set forth in (a) and (b) above, the CPI Adjusted Rent ($402.09), added to the HUD Factor Adjusted Rent ($412.62), and the sum then divided by 2, equals $407.36. The increase in rent from $390.00 to $407.36 would be an increase of $17.36, which exceeds 2% of $390.00 ($7.80). Accordingly, in this example of the calculation to be used in determining annual rent increases pursuant to this Subsection 5.2.6, Developer would be allowed to raise the then applicable rent for the subject Unit to $407.36, despite the fact that such increase is in excess of 2%.

Notwithstanding the foregoing, Developer may not increase the annual rent for any unit by more than six percent (6%) in any single year. Annual increases approved by the staff of the Agency may be implemented in full or in part at the Developer's sole discretion and option. Nothing contained herein shall obligate Developer to make annual increases in rent, to the extent that Developer, at Developer's sole and absolute discretion, believes that such increases may be detrimental to the operation of the Project. Permitted rent increases shall be effective on the Anniversary or on the expiration of any rental increase notice period required by law, whichever is later.

5.2.7 Limitation on Rent Increases. Notwithstanding the provisions of Subsection 5.2.6, any rental increase permitted by Subsection 5.2.6 shall not be made if, and to the extent, the rent to be charged any person who is in occupancy of a Unit at the time of a rent increase permitted by Subsection 5.2.6 exceeds the current affordable rent (including a reasonable allowance for utilities) that may be charged for very low, lower, or moderate income persons under Health & Safety Code Section 50053. The rental category (i.e. very low, lower, or moderate income) under which the occupant of the Unit originally qualified to rent the Unit shall govern the "affordable rent" (as defined in Subsection 5.2.4) to be charged for rental of the Unit.

5.2.8 Successor Tenants Rents. The rent for qualified successor tenants (applicants approved for occupancy) upon the vacancy of a Unit shall be equal to the rent paid for such Unit by the tenant immediately prior to the vacancy, provided, however, that if the vacant Unit is to be rented to a senior citizen in a different income category (e.g., from a lower income former tenant to a moderate income successor tenant or vice versa) then the rent to be paid for such Unit by the successor tenant shall be equal to the current rent being paid for Units in the same income category (i.e. very low, lower, or moderate income) at the time the vacancy is filled.

5.2.9 Annual Report. Developer shall submit to Agency annually, on or before June 30 of each calendar year, a report setting forth the rental rate of all Units and the income and number of known occupants of all Units. The income information required by this Section shall be supplied by the tenants of the Units in a certified statement on a form from time to time provided by the Agency.

5.3 Rental Subsidy. Agency agrees to provide a rental subsidy to the Project of $73,320.00 per year, in accordance with the terms and conditions of the Rental Subsidy Program set forth in Section 5.4 hereof. Such subsidy shall continue for a period of thirty (30) years from the date of the issuance of a Certificate of Occupancy on the Project. If requested by Developer six months in advance of each such review, Agency shall review the amount of such subsidy at least once each five years,

commencing no later than the fifth anniversary of the date on which the first Unit is rented, in order to consider whether or not it is appropriate to increase such subsidy to reflect increases in consumer prices or other inflation in the costs of housing; provided, however, that in no event shall the amount of such subsidy decrease and in no event shall Agency be required to increase the subsidy but may do so.

5.4 Rental Subsidy Program.

5.4.1 Payment of Subsidy. Subject to the provisions of the Senior Citizens Rental Assistance Program (which is attached hereto and incorporated herein as Attachment No. 11), Agency agrees to pay, in arrears, a monthly rental subsidy of not more than one-twelfth (1/12th) of the annual subsidy provided for in Section 5.3 with respect to the fifteen (15) very low income units and fifteen (15) lower income units. The subsidy program shall become effective on the date of the issuance of a Certificate of Occupancy on the Project. Subsidies will be computed at $275.00 per unit per month for ten (10) very low income units, $210.00 per unit per month for five (5) very low income units, and $154.00 per unit per month for the fifteen (15) lower income units. No subsidies will be paid for the manager's unit or any unoccupied units. Subsidies for any unit occupied for a portion of a month will be prorated based on a thirty day month. Subsidies will be paid monthly, in arrears, fifteen (15) days after application is made therefor, provided that no application shall be made prior to the first day of the following month.

5.4.2 Accounting for Subsidy Payments. Developer shall provide Agency a certified monthly accounting report showing the rents and periods of time each unit was rented. The report shall include a reconciliation of the total monthly subsidy drawn during the applicable period. The first accounting period for which a monthly report shall be made shall commence on the first day of the month following the month in which any of the Units have been initially rented to the first occupants. An accounting shall be made to Agency within 30 days of such date but in no case prior to the first day of the following month. Developer shall also provide Agency with an annual report of the same matters. Thereafter, an annual accounting shall be made within 30-days of the yearly anniversary of the end of the month for which the first accounting report was made.

Developer shall maintain a complete and accurate rent roll listing all rental units, with the thirty (30) very low/lower units and the thirty-one (31) moderate Units listed separately, the names of all tenants, the dates of their tenancies and the amounts of rents charged and collected. Such records shall be subject to examination by Agency, through its authorized designee, from time to time at reasonable times during business hours.

5.4.3 Effect of Alternate Subsidy Programs. The number of units to be subsidized, as set forth in Section 5.4.1, and the annual rental subsidy set forth in Section 5.3 are maximums and may be reduced by Agency, on a unit-by-unit and/or dollar-for-dollar basis in the event that the Project qualifies and receives subsidies under the federally-funded program commonly known as the "Section 8 Program" or under any similar governmental program(s) for the subsidization or other support of rental housing for seniors, low or very low income persons, the handicapped, or other disadvantaged persons.

5.5 Term of Restrictions; Option to Extend.

5.5.1 The term of the restrictions, as set forth in Sections 5.1 and 5.2, shall continue for the full thirty years notwithstanding the fact that the Agency Long Term Loan may have been fully repaid.

5.5.2 Agency shall have two options to extend the subsidy program and the restrictions set forth in Sections 5.1 and 5.2, each extension to be for a period of five years, provided that the Agency shall give Developer or the then owner of the Project notice in writing of its intent to extend at least six months prior to the expiration of the term or extended term of that subsidy program and the restrictions. Should Agency fail to exercise the first such option in a timely manner, both of said options shall terminate and shall be of no further force or effect.

5.6 Rights of Agency. Agency or the Housing Committee shall have the continuing right during the period provided for in Section 5.2 to verify that the restrictions, limitations and requirements of this Article 5 are being complied with and to establish and/or continue a low and moderate income (as defined in California Health and Safety Code Section 50093) Housing Program at the project in accordance with the "Senior Citizens Rental Assistance Program" as it may be amended from time to time by Agency provided such amendments are consistent with the provisions of this Agreement. The Senior Citizens Rental Assistance Program shall provide inter alia;

(a) that it is to benefit senior citizens over sixty-two (62) years of age, persons fifty-five (55) or more years of age who are residing with persons sixty-two (62) or more years of age, and handicapped persons fifty-five (55) or more years of age.

(b) that senior citizens who have resided in the City of Carson for at least one (1) year prior to occupancy at the Project shall be given a priority in renting the Units,

(c) that senior citizens who have resided in the City of Carson and who are determined by the Agency to be displaced shall be given a priority in renting the Units,

(d) that senior citizens of very low/lower income shall be given a priority in renting the thirty (30) Units referred to in Subsection 5.2.2, and

(e) that senior citizens of moderate income who have incomes not exceeding 120 percent of area median income shall be given a priority in renting the thirty-one (31) Units referred to in Subsection 5.2.3.

Any priority provided for above and in the Senior Citizen Rental Assistance Program shall only be considered if the person to which the priority applies otherwise qualifies under the rental criteria established by Developer and approved by Agency for rental of the Units.

Developer, or its successors in interest, shall be responsible for qualifying all residents in accordance with the standards set forth herein and shall certify to Agency annually and with each monthly request for subsidy payment that all residents and, particularly, each resident for whom a subsidy is sought, fully qualifies for residence in the Project and for the subsidy.

5.7 Obligation to Refrain from Discrimination. There shall be no discrimination against any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer (or any person or entity claiming under or through Developer) covenants and agrees not to establish or permit any such practice or practices of discrimination with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or sublessees of the Site or any part thereof. The Developer also agrees to refrain from any form of discrimination as set forth above pertaining to deeds, leases or contracts.

5.8 Form of Nondiscrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of the Site, or any portion thereof, on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators 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 sex, marital status, race, color, religion, creed, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed or the improvements thereon or to be constructed thereon, nor shall the grantee himself or any person claiming under or through the grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed or such improvements. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

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

3. In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land or the improvements thereon or to be constructed thereon, nor shall the transferee himself or any person claiming under or through the transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land or such improvements."

5.9 Effect and Duration of Covenants. The covenants established in this Agreement shall without regard to technical

classification or designation, be binding on Developer, its successors, assignees, and every successor in interest to the Site, or any part thereof, for the benefit and in favor of Agency, its successors and assigns, and the City of Carson. Except as set forth in the following sentence, the covenants contained in this Agreement shall remain in effect until the expiration of the period set forth in Section 5.2, unless this Agreement provides for their earlier or later termination. The covenants against discrimination set forth in Sections 5.7 and 5.8 shall remain in perpetuity.

ARTICLE 6. MANAGEMENT OF THE PROPERTY

6.1 Operation, Maintenance and Repair. Developer shall have full responsibility for the operation and maintenance of the Improvements throughout the duration of the period provided for in Section 5.2 (as that period may be extended pursuant hereto) and shall perform or cause to be performed all repairs, maintenance and replacements reasonably necessary to maintain and preserve the Improvements in a first class, safe and sanitary condition, in a manner satisfactory to the Agency and in compliance with all applicable laws. Developer's responsibilities shall include, but are not limited to, hiring and discharge of employees, salary of employees, maintenance and repairs including capital expenditures, the financial operations of the Project, the rental of the apartment units and all operational, maintenance and management responsibilities of an owner of a multi-residential housing project.

Developer shall maintain the Improvements and landscaping within the public rights of way which may abut the Site throughout the term of this Agreement without expense to the Agency, and shall perform all repairs and replacements reasonably necessary to maintain and preserve said Improvements and landscaping in a first-class, decent, safe, sanitary, attractive, and healthy condition in a manner reasonably satisfactory to the Agency and in compliance with all applicable laws, and shall keep the Site free from any accumulation of debris or waste materials.

The complete work of any reconstruction or replacement shall be at least equal in value, quality and utility to the condition of the Improvements or landscaping before the event giving rise to the work.

Developer, its successors and assigns, shall, for the entire period set forth in Section 5.2 hereof (as such period may be extended pursuant hereto), establish and maintain an operating reserve account which shall be capitalized at $185,000 and a replacement reserve account which shall be capitalized at $60,000, and there shall be allocated thereto to the replacement reserve account from operating income, annually, an amount equal to $200 per unit. Disbursements may be made from the operating reserve account only to the extent that the normal recurring

income and other funds (e.g., insurance proceeds) available from the Project are insufficient to meet operating and repair and replacement needs of the Project. The amount of the annual contribution may be varied and a maximum aggregate reserve may be established with the prior written consent of the Agency staff if it can be shown to the reasonable satisfaction of Agency staff the either the annual contribution or the aggregate amounts retained in such reserves exceeds the amounts normal in the industry for similar projects, similarly situated.

6.2 Leasing and Occupancy. The leasing and occupancy of the Units shall be in accordance with the approved Management Plan, attached hereto as Attachment 12. Any modifications or changes to the Management Plan shall be submitted to the Executive Director of the Agency for approval. The Management Plan shall include the tenant selection criteria, procedures for tenant selection and the establishment and maintenance of waiting lists, the lease and rental agreement, a copy of the House and Ground Rules adopted for the Project and all policies and procedures to be used to ensure compliance with the age, income, and any other requirements set forth as conditions for eligibility or occupancy in the Project and shall be consistent with the terms and conditions of this Agreement. The units shall be leased under Rental Agreements substantially in the form attached hereto and incorporated herein as Attachment 13, as supplemented by the provisions and requirements of Section 5.7. Any modifications or changes in the Rental Agreements shall be submitted to the Executive Director of the Agency for approval.

Agency shall review and approve all policies and procedures established for the successful management of the Project. Subject to the rights of the occupants of the Units, Agency shall have the right to perform an annual on-site inspection of the Units, common areas and grounds and to perform an annual tenant file review to ensure that Developer is managing the Project in accordance with the eligibility requirements set forth for occupancy.

6.3 Pre-Leasing. Developer shall perform all advertising and related pre-leasing work as set forth in the approved Management Plan.

6.4 Management of Project. Developer shall be completely responsible for the management, administration and operation of the Project including, but not limited to the hiring and discharge of employees, salaries and all other related project expenses, maintenance and repairs, including capital expenditures, the financial operations of the Project, the rental and re-rental of the apartment units in accordance with the occupancy requirements set forth in this Agreement and all operational, maintenance and management responsibilities of an owner in a typical multi-family residential housing project operated as housing for the elderly.

6.5 Management Fee. Developer may employ a management company (the "Management Agency") to perform certain obligations of Developer hereunder with respect to the management and operation of the Project consistent with the Management Agreement attached hereto and incorporated herein as Attachment 16 and any approved amendments thereto. Developer currently anticipates that it will employ Community Housing Management Services, a California non-profit corporation as the Management Agency. Any such employment shall not relieve Developer of any obligation or responsibility imposed upon Developer by this Agreement or the Regulatory Agreement.

As consideration for performing the management tasks described herein, Management Company shall be entitled to receive up to six percent (6%) of monthly gross income (for this purpose the monthly subsidy provided for in Article 5 shall be deemed a part of monthly gross income) derived from the operation of the Project (the "Management Fee"). The Management Fee is intended to cover all of Management Company's office overhead and administration expenses associated with the supervision and oversight of the management of the property, including without limitation, secretarial, accounting, telephone, travel, etc. However, the Management Fee does not include the costs of on-site management expenses, including the cost of an on-site property manager and on-site maintenance and other operational expenses normally associated with the property. The Management Fee may be withdrawn by Management Company monthly as a cost of operation. Management Company shall not be entitled to receive a management fee in excess of the percentage permitted in this Section 6.5 during the period provided for in Section 5.2 and Section 5.5.

6.6 Management Agency's Failure to Perform. In the event the Management Agency appointed by Developer fails to perform the obligations imposed upon Developer by this Article 6 such failure shall constitute a default under Section 7.1 and if Developer or Edison pursuant to its right under Section 4.15 hereof, shall fail to cure such default as provided in Section 7.1, then Agency shall have the right, in addition to any other remedies of Agency, to require Developer to appoint a substitute Management Agency, reasonably acceptable to Agency.

6.7 Public Agency Rights of Access for Construction, Repair and Maintenance of Public Improvements and Facilities. Agency for itself and for the City and/or other public agencies at their respective sole risk and expense, reserves the right to enter the Site or any part thereof, at all reasonable times and with as little interference as possible, for the purposes of inspection, construction, reconstruction, maintenance, repair or service of any public facilities located or to be located on the Site. Any such entry shall be made only after reasonable notice to Developer. Any damages or injury to the Site or to the improvements thereon resulting from such entry shall be the responsibility of the public agency making or in whose behalf the entry is made.

ARTICLE 7. DEFAULTS, REMEDIES AND TERMINATION

7.1 Defaults. The following events shall constitute a default hereunder: failure of either party to timely perform any of the provisions of this Agreement beyond any applicable cure period; or the filing of a petition in bankruptcy by or against Developer or appointment of a receiver or trustee of any property of Developer; or an assignment by Developer for the benefit of creditors, and the failure of Developer to cause such petition, appointment or assignment to be removed or discharged within sixty (60) days; or adjudication that Developer is insolvent by a court; or recordation of a Notice of Default under any mortgage, deed of trust, or security instrument encumbering the Site. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the nondefaulting party may thereafter (but not before) commence such action(s) against the nondefaulting party as it may be entitled to bring under the law.

7.2 Non-Waiver of Rights or Remedies. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of such default, or of any such right or remedies, or deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.3 Legal Actions.

7.3.1 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7.3.2 Service of Process. In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Executive Director or Agency Secretary, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Agency against Developer or its successor or assignee, (i) if Developer or its successor or assignee is a partnership, service of process shall be made by personal service upon any person who is a direct or indirect general partner thereof, or in such other manner as may be provided by law, or by personal service upon any corporate officer of a corporation that is a direct or indirect general partner thereof, or (ii) if Developer or its successor or assignee is a corporation, service of process shall be made by personal service upon a corporate officer of Developer or its successor or assignee, as the case may be, or in such other manner as may be provided by law, whether made within or without the State of California.

7.4 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of each party are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

7.5 Special Rights of Edison. Edison shall have the same right to notice and opportunity to cure defaults hereunder as it is granted under Section 4.15 of this Agreement, subject to the same obligations and requirements set forth in said section. In the event of the occurrence of a noncurable default on the part of Developer or its general partner, Agency will waive such noncurable default provided that Edison shall cure all curable defaults then extant, assume, in writing, all of the obligations of Developer hereunder (and thereafter undertake and carry out such obligations), and remove and replace Developer or its general partner with a substituted party reasonably acceptable to Agency.

ARTICLE 8. GENERAL PROVISIONS

8.1 Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between Agency and Developer shall be given by deposit thereof in a sealed envelope in the United States Mail, postage prepaid, by registered or certified mail, return receipt requested, to the principal offices of Agency or Developer as set forth in Subsections 1.3.1 and 1.3.2 of this Agreement, respectively. A copy of any such notice served upon Developer shall also be served upon Edison in the manner provided herein, addressed to Edison Capital Housing Investments, a California corporation, at 18101 Von Karman, Suite 800, Irvine, California 92612, Attention: Asset Manager--Carson Terrace. Service shall be deemed complete on the date of delivery or first attempted delivery as shown on the U.S. Postal Service Return Receipt. Such written notices, demands and communications may be sent in the same manner to such other addresses as the party to be notified may from time-to-time designate as provided in the first two sentences of this Section 8.1.

8.2 Conflict of Interests. No member, official or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

8.3 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person, including, but not limited to, the City Council of Carson, the Agency, the City of

Carson, or any member, official or employee thereof, any money or other consideration for obtaining this Agreement.

8.4 Nonliability of Agency Officials and Employees. No member, official or employee of Agency or the City of Carson shall be personally liable to Developer, or any assignee or successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or any assignee or successor in interest, or on any obligation under the terms of this Agreement.

8.5 Enforced Delay; Extension of Times of Performance. Performance by either party hereunder shall not be deemed to be in default where delays or failure to perform are due to war, insurrection, strike, lock-out, riot, flood, earthquake, fire, casualty, act of God, act of the public enemy, epidemic, quarantine restriction, freight embargo, lack of transportation, unusually severe weather, inability to secure necessary labor, materials or tools, act of the other party, or any other cause beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause provided that written notice of such cause is given to the other party within ten (10) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement of Agency and Developer. Failure of Developer to obtain financing for the Project or Developer's financial inability to obtain such financing or to perform any act required of Developer hereunder shall not be grounds for excuse or extension.

8.6 Inspection of Books and Records. The Agency has the right at all reasonable times, upon twenty-four hours advance written notice setting forth the reason therefor, to inspect the books and records of Developer pertaining to the Site and development thereof as pertinent to the purposes of this Agreement. The Developer also has the right at all reasonable times to inspect the books and records of Agency pertaining to the Site and development thereof as pertinent to the purpose of this Agreement.

8.7 Approvals by Agency and Developer. Wherever this Agreement requires Agency or Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval, or if appropriate, disapproval, shall be in writing and shall not be unreasonably withheld or delayed.

8.8 Plans and Data. If Developer does not proceed with the purchase or development of the Site, and this Agreement is terminated with respect thereto for any reason, Developer shall deliver to Agency any and all plans, soil tests and data concerning the Site and any proposed improvements thereto, and Agency or any person or entity designated by Agency shall have

the right to use such plans and data without charge by, or obligation to, Developer, subject to any third party contractual limitations. Developer shall use its best efforts to reserve such rights of use in favor of the Agency. Developer's obligation hereunder is subject to Agency's compliance with the requirements of Section 2.3.2 hereof.

8.9 Brokerage Commissions. Agency shall not be liable for any real estate commission or brokerage fees which may arise here from. Each party represents that he or it has engaged no broker, agent, or finder in connection with this transaction. Agency agrees to hold Developer harmless from any claim made by any broker, agent or finder claiming compensation by reason of any dealing with Agency, and Developer agrees to hold Agency harmless from any claim by any broker, agent or finder claiming compensation by reason of any dealing with Developer.

ARTICLE 9. SPECIAL PROVISIONS

9.1 Agency Approval of Covenants, Conditions and Restrictions. Developer shall submit to Agency for approval any proposed covenants, conditions and restrictions ("CC&R's") affecting any and all portions of the Site. Such CC&R's shall incorporate all provisions of this Agreement which run with the land or are binding on Developer's successors, administrators, assigns or lessees pursuant to this Agreement.

9.2 Approvals in Writing. Any approvals required or permitted under the terms of this Agreement shall be in writing and signed by the party hereto against whom such approval is asserted, or its or his designed representative, with the right to approval.

ARTICLE 10. ENTIRE AGREEMENT, WAIVERS AND AMENDMENT

This Agreement is executed in six (6) duplicate originals, each of which is deemed to be an original. This Agreement includes forty-five (45) pages and plus Attachments Nos. 1 through 14 which constitute the entire understanding and agreement of the parties related to the Project. This Agreement supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

ARTICLE 11. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Developer and delivered to Agency, may be withdrawn by the Developer on written notice to Agency if not executed and delivered by Agency within 30 days after the date of submission of the executed Agreement to Agency. The date of this Agreement shall be the date when this Agreement is signed by the Agency.

ARTICLE 12. ASSIGNMENT, TRANSFER AND SALE

12.1 In General. Except as herein provided to the contrary, Developer shall not assign, transfer, or sell this Agreement or the Site any interest in the Site, the Project, the Improvements, or any interest in Developer or any partner of Developer (collectively, a "Transfer"), without Agency's prior written consent first had and obtained. Any attempted Transfer in violation hereof shall be ineffective and void and shall constitute a default and breach of this Agreement by Developer, and shall terminate any further obligations of Agency hereunder.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, (a) Los Angeles Housing Partnership, Inc. ("LAHP") shall have the right to make a one—time transfer of its general partnership interest in Developer to a to—be—formed, non—profit corporation affiliated with LAHP, and (b) Edison may, without the consent of Agency, transfer all or any portion of its limited partnership interests to an affiliate of Edison, including, without limitation, an affiliated limited partnership in which Edison (or an affiliate thereof) is a general partner, and such transfer shall not be deemed an event of default hereunder or under any other Loan Document. Edison shall deliver written notice of such transfer to Agency promptly upon such transfer. If Edison removes the general partner of the Developer in accordance with the terms of the partnership agreement of the Developer, such removal will not constitute a default hereunder or under any of the Loan Documents, provided that within ninety (90) days after the removal of the general partner, Edison shall have selected a substitute general partner approved by Agency, which approval shall not be unreasonably withheld or delayed. If Edison removes the Developer's general partner in order to cure a default by the general partner under the partnership agreement of Developer, then neither Edison nor the substitute general partner shall have any liability for any actions of the replace general partner before such replacement, provided that Edison and the substitute general partner use reasonable efforts to diligently pursue curing any existing default.

12.2 Consent Prior to Issuance of Certificate of Completion. For the period from the date hereof through the date of issuance of the Certificate of Completion, Agency may withhold its consent to any Transfer in Agency's sole and absolute discretion; provided, however, Agency shall not unreasonably withhold its consent to a Transfer by Developer, prior to issuance of a Certificate of Completion, of all of its rights and interest in this Agreement and the Project to any entity controlled, directly or indirectly, by Developer (including without limitation any corporation in which Developer has a controlling interest, or any partnership in which Developer is a general partner, provided that Developer is responsible for the day-to-day management of the partnership), provided that the assignee or transferee assumes all obligations of the Agreement

on Developer's part and delivers a copy of such assumption to Agency, and further provided that Developer shall jointly and severally with such transferee remain responsible for the performance of this Agreement on Developer's part until the issuance of a Certificate of Completion. If the transferee is a limited partnership, then the sale of limited partnership interests in such limited partnership shall not require Agency's prior consent.

12.3 Consent During 5 Years After Issuance of Certificate of Completion. For the period from the issuance of the Certificate of Completion through the date that is five (5) years after issuance of the Certificate of Completion, Agency may withhold its consent to any Transfer in the Agency's sole and absolute discretion.

12.4 Consent After 5 Years After Issuance of Certificate of Completion. For the period from the date that is five (5) years after issuance of the Certificate of Completion through the end of the term hereof, Agency shall not unreasonably withhold its consent to any Transfer.

12.5 Assumption of Obligations. No Transfer permitted by this Article 12 or otherwise made by Developer at any other time, shall be effective unless and until the transferee (or any subsequent assignee(s) or transferee(s)) assumes Developer's obligations and agrees to be bound by the terms of this Agreement in a writing duly executed by such assignee or transferee and delivered to Agency.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the 1st day of June, 1999.

"Agency":

CARSON REDEVELOPMENT AGENCY
a public body, corporate and politic

By: _____
Its Chairperson

Attest:

_____
Its Secretary

Approved as to Form:

RICHARDS, WATSON & GERSHON
Agency Counsel

By: _____
Jeffrey A. Rabin
Assistant Agency Counsel

"Developer":

CARSON TERRACE, L.P.
a California limited partnership

By: Los Angeles Housing Partnership, Inc.
a California non-profit corporation
Its General Partner

By: _____
Louis J. Bernardy
President and Chief Executive Officer

"Developer"