

AFFORDABLE HOUSING AGREEMENT
(455 Palm Avenue)

by and between

IMPERIAL BEACH HOUSING AUTHORITY,

Authority,

and

WAKELAND IBNCA LP,

Developer

_____, 20__

TABLE OF CONTENTS

[TO BE REVISED]

	Page
Article I. SUBJECT OF AGREEMENT.....	1
Section 1.01 Purpose of the Agreement.....	1
Section 1.02 Definitions.....	1
Section 1.03 The Property.....	10
Section 1.04 The Authority.....	11
Section 1.05 The Developer.....	11
Section 1.06 Assignments and Transfers.....	11
Article II. LEASE OF PROPERTY TO DEVELOPER.....	13
Section 2.01 Condition of the Property.....	13
Section 2.02 Long-Term Lease of the Property by the Developer.....	13
Article III. FINANCING.....	14
Section 3.01 Method of Financing.....	14
Section 3.02 Authority Assistance.....	14
Section 3.03 Evidence of Financing.....	15
Article IV. DEVELOPMENT OF THE PROPERTY.....	16
Section 4.01 Land Use Approvals.....	16
Section 4.02 Hazardous Materials.....	16
Section 4.03 Scope of Development.....	16
Section 4.04 Construction Drawings and Related Documents.....	Error! Bookmark not defined.
Section 4.05 City Approval of Plans, Drawings and Related Documents.....	Error! Bookmark not defined.
Section 4.06 Cost of Construction.....	17
Section 4.07 Schedule of Performance.....	17
Section 4.08 Local, State and Federal Laws.....	18
Section 4.09 Nondiscrimination During Construction.....	19
Section 4.10.....	Error! Bookmark not defined.
Section 4.11.....	Error! Bookmark not defined.
Section 4.12 Indemnification and Insurance.....	19
Section 4.13 Disclaimer of Authority Responsibility.....	22
Section 4.14 Permits.....	23
Section 4.15 Rights of Access.....	23
Section 4.16 Taxes, Assessments, Encumbrances and Liens.....	23
Section 4.17 Rights to Plans.....	23
Section 4.18 Release of Construction Covenants.....	24

Article V.	USE OF THE PROPERTY	25
Section 5.01	Use As Affordable Housing.....	25
Section 5.02	Management Plan; Annual Project Budget; Quarterly Report	25
Section 5.03	Property Maintenance	26
Section 5.04	Obligation to Refrain from Discrimination.....	27
Section 5.05	Equal Employment Opportunity	29
Section 5.06 Error! Bookmark not defined.	
Section 5.07	Effect and Duration of Covenants.....	29
Section 5.08	Enforcement of Covenants.....	29
Section 5.09	Monitoring	30
Section 5.10	Agreement Containing Covenants	30
Article VI.	DEFAULTS AND REMEDIES	30
Section 6.01	Defaults - General	30
Section 6.02	Institution of Legal Actions	32
Section 6.03	Applicable Law	32
Section 6.04	Acceptance of Service of Process	32
Section 6.05	Rights and Remedies are Cumulative.....	32
Section 6.06	Damages.....	32
Section 6.07	Specific Performance	32
Section 6.08	Termination by Either Party.....	33
Section 6.09	Termination by Developer	33
Section 6.10	Termination by Authority	33
Section 6.11	Limited Recourse Obligations	34
Article VII.	GENERAL PROVISIONS	35
Section 7.01	Notices	35
Section 7.02	Conflicts of Interest.....	36
Section 7.03	Nonliability of Authority Officials and Employees.....	36
Section 7.04	Force Majeure	36
Section 7.05	Inspection of Books and Records	36
Section 7.06	Approvals.....	37
Section 7.07	Real Estate Commissions.....	37
Section 7.08	No Third Party Beneficiaries	37
Section 7.09	Authority to Sign.....	37
Section 7.10	No Partnership	37
Section 7.11	Compliance With Law	38
Section 7.12	Binding Effect.....	38
Section 7.13	Incorporation by Reference.....	38
Section 7.14	Counterparts.....	38
Section 7.15	Construction and Interpretation of Agreement	38
Section 7.16	Entire Agreement, Waivers and Amendments.....	39
Section 7.17	Time for Acceptance of Agreement by Authority	39

ATTACHMENTS

ATTACHMENT NO. 1	-	SITE MAP
ATTACHMENT NO. 2	-	LEGAL DESCRIPTION
ATTACHMENT NO. 3	-	METHOD OF FINANCING
ATTACHMENT NO. 4	-	SCHEDULE OF PERFORMANCE
ATTACHMENT NO. 5	-	PROJECT BUDGET
ATTACHMENT NO. 6	-	NOTICE OF AFFORDABILITY RESTRICTIONS
ATTACHMENT NO. 7	-	AGREEMENT CONTAINING COVENANTS
ATTACHMENT NO. 8	-	LMIHAF NOTE
ATTACHMENT NO. 9	-	AUTHORITY DEED OF TRUST
ATTACHMENT NO. 10	-	ASSIGNMENT OF RENTS
ATTACHMENT NO. 11	-	ASSIGNMENT OF AGREEMENTS
ATTACHMENT NO. 12	-	ENVIRONMENTAL INDEMNITY
ATTACHMENT NO. 13	-	DISBURSEMENT AGREEMENT
ATTACHMENT NO. 14	-	CITY FEES DEFERRAL NOTE
ATTACHMENT NO. 15	-	CITY DEED OF TRUST

AFFORDABLE HOUSING AGREEMENT

(455 Palm Avenue)

THIS AFFORDABLE HOUSING AGREEMENT (this “**Agreement**”), dated as of _____, 20__, is entered into by and between the IMPERIAL BEACH HOUSING AUTHORITY, a public body, corporate and politic (“**Authority**”) and WAKELAND IBNCA LP, a California limited partnership (“**Developer**”). Authority and Developer agree as follows:

ARTICLE I. SUBJECT OF AGREEMENT

Section 1.01 Purpose of the Agreement

The purpose of this Agreement is to provide for the Authority’s assistance in financing the development and operation of fifty (50) affordable rental housing units for Extremely Low Income, Very Low Income, and Low Income Senior Citizen Households on the real property illustrated on the “Site Map” attached hereto, labeled Attachment No. 1 and incorporated herein by this reference, and legally described in the “Legal Description attached hereto, labeled Attachment No. 2 and incorporated herein by this reference (the “Property”). The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Imperial Beach and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements. Pursuant to and conditioned upon the terms of this Agreement, the Authority will assist Developer in paying the cost of acquiring a long-term leasehold interest in the Property and constructing the Improvements (as defined below), the City will defer the payment of certain fees imposed to reimburse City for certain staff time costs in review of the Project (defined herein as the City Fees Deferral) and the Developer will construct, develop, operate, maintain and repair the Improvements on the Property.

Section 1.02 Definitions

For purposes of this Agreement, the following capitalized terms will have the following meanings:

“**Acquisition and Development Costs**” means the total cost of acquiring the long-term leasehold interest in the Property and developing, and constructing, the Improvements thereon, as set forth in the Project Budget. Acquisition and Development Costs may also include capitalized operating reserves required by lenders and investors and reasonably approved by the Authority Executive Director and fees and costs related to the Permanent Loan that may be due prior to Conversion (such as commitment fees or rate lock fees etc.).

“**Affiliate**” means any Person directly or indirectly controlling, controlled by or under common control with another Person. The term “control” as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board of directors. It will be a presumption that control with respect to a corporation or limited liability

company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, each general partner will be considered an “Affiliate” of Developer.

“**Affordable Rent**” has the meaning set forth in California Health and Safety Code Section 50053. Rents for the Units will not exceed the respective amounts set forth in the Agreement Containing Covenants.

“**Agreement Containing Covenants**” means the Agreement Containing Covenants (Including Rental Restrictions), substantially in the form attached to this Agreement as Attachment No. 7.

“**Annual Project Budget**” has the meaning given in paragraph c of Section 5.02.

“**Anti-Terrorism Laws**” means all laws relating to terrorism or money laundering, including, without limitation, the Currency and Foreign Transactions Reporting Act of 1970, Pub. L. No. 91-508, 84 Stat. 1305 (1970), as amended from time to time.

“**Assignment of Agreements**” means a document substantially in the form attached to this Agreement as Attachment No. 11, which is incorporated herein by this reference.

“**Assignment of Rents and Leases**” means a document substantially in the form attached to this Agreement as Attachment No. 10, which is incorporated herein by this reference.

“**Authority**” means the Imperial Beach Housing Authority, California, a public body, corporate and politic, and any assignee of or successor to its rights, powers and responsibilities.

“**Authority Deed of Trust**” means the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Developer is the Trustor and Authority is the Beneficiary, which secures the Authority’s LMIHAF Loan, substantially in the form attached to this Agreement as Attachment No. 9.

“**City**” means the City of Imperial Beach, California.

“**City Deed of Trust**” means the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Developer is the Trustor and City is the Beneficiary, which secures the City Fees Deferral Note, substantially in the form attached to this Agreement as Attachment No. 15.

“**City Fees Deferral**” means the City’s deferral of certain staff time based fees, excluding specific development impact fees and third party consultant review costs, not to exceed the total

amount first approved in writing by the City and included in such amount in the Authority approved Project Budget.

“City Fees Deferral Note” means the Promissory Note evidencing the City Fees Deferral, substantially in the form attached to this Agreement as Attachment No. 14.

“Completion” means the point in time when all of the following will have occurred: (1) issuance of a permanent certificate of occupancy by the City of Imperial Beach; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification by the project architect that construction and rehabilitation of the Improvements (with the exception of minor “punchlist” items) has been completed in a good and workmanlike manner and substantially in accordance with the approved Plans; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop notices that have been delivered; and (5) the time for Developer’s contractor, suppliers and subcontractors to file a claim pursuant to Civil Code Sections 3115-3117 has expired.

“Conditions” means, with respect to the Property, the condition of the soil, geology, the presence of known or unknown faults or defects, or Hazardous Substances, the suitability of the Property for its intended uses, or the condition of any related public improvements.

“Construction Financing Event” means the point in time when (i) all conditions precedent to the Construction Financing Event as set forth in the Method of Financing (Attachment No. 3) have been satisfied; and (ii) the Construction Loan Deed of Trust and other Construction Loan documents are recorded.

“Construction Financing Event Date” means the date on which the Construction Financing Event is scheduled to take place.

“Construction Loan” means the Construction Period loan to be made to Developer by an institutional lender acceptable to the Authority (**“Construction Lender”**) at the time of the Construction Financing Event, secured by the Construction Loan Deed of Trust.

“Construction Loan Deed of Trust” means the first priority leasehold deed of trust securing the Construction Loan.

“Construction Period” means the period of time commencing upon the Construction Financing Event and ending at Conversion.

“Conversion” means the point in time when the Permanent Loan has been funded and the Construction Loan has been repaid in full.

“Developer Equity” means funds provided by Developer for payment of Acquisition and Development Costs and does not include the Construction Loan, the Permanent Loan, the Authority’s LMIHAF Loan, the City Fees Deferral or any other borrowed funds, and includes the

Deferred Developer Fee (as defined in the Method of Financing), the Limited Partner Capital Contribution and other funds of the Developer.

“Disbursement Agreement” means an agreement substantially in the form attached to this Agreement as Attachment No. 13 or in such other form and substance that is mutually acceptable to the Authority, Developer and Construction Lender. The Construction Lender will not be obligated to execute the Disbursement Agreement, and such agreement is subject to modification to the extent reasonably requested by Construction Lender and reasonably approved by Authority Executive Director and Developer.

“Environmental Indemnity” means an instrument substantially in the form attached to this Agreement as Attachment No. 12.

“Escrow Agent” means an escrow agent mutually acceptable to Authority and Developer.

“Extremely Low Income” means household income that does not exceed the maximum income set forth in California Health and Safety Code Section 50106.

“Force Majeure” or **“Force Majeure Event”** means the following events, provided that they actually delay and interfere with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such interference: War; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism, epidemics; pandemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the Authority will not excuse performance by the Authority); the imposition of any applicable moratorium by a Governmental Authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events will constitute a Force Majeure Event unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay will deliver such written notice within fifteen (15) days after it obtains actual knowledge of the event.

“Force Majeure Delay” means any delay in taking any action required by this Agreement, proximately caused by the occurrence of any Force Majeure Event.

“Governmental Approvals” means and includes any and all general plan amendments, zoning approvals or changes, required approvals and certifications under the California Environmental Quality Act, tentative and final tract maps, variances, conditional use permits, demolition permits, excavation/foundation permits, grading permits, building permits, inspection

reports and approvals, certificates of occupancy, and other approvals, permits, certificates, authorizations, consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever required from any Governmental Authority in order to commence and complete the construction of the Project.

“Governmental Authority” means the United States, the State of California, the County of San Diego, the City of Imperial Beach or any other political subdivision in which the Property is located, and any court or political subdivision, authority or instrumentality having jurisdiction over the Property.

“Hazardous Substances” has the meaning set forth in the Environmental Indemnity.

“Improvements” means the residential development to be constructed on the Property, consisting of 40 studio units, 9 one-bedroom units, 1 two or three-bedroom manager’s unit, and ancillary facilities, as described in the Plans approved for the Project by the City. The unit mix of the Improvements may change, subject to the approval of the Authority Executive Director and Plans approved for the Project by the City. The Improvements do not include the Neighborhood Center except for any facilities, easements, rights of way, improvements and/or equipment needed for the operation of the Project and for access to the Project by pedestrians and vehicles. The Neighborhood Center will also be constructed by Developer, at the sole cost and expense of Developer, adjacent to the Property pursuant to plans approved by the City, and then leased and/or transferred/sold to Developer or an Affiliate thereof as contemplated in the Ground Lease entered into between the owner of the Property and Developer or an Affiliate thereof. The Ground Lease shall be subject to the prior reasonable approval of the Authority Executive Director for consistency with this Agreement and its attachments.

“Investor Limited Partner” means any Person who will be an limited partner in Developer’s limited partnership pursuant to the Limited Partnership Agreement and who will be allocated the Low Income Housing Tax Credits and own at least a 99% interest in the Developer, and any successor and assign thereof as permitted by the Limited Partnership Agreement.

“Leasehold Interest” means the long-term leasehold interest in the Property that shall be acquired by the Developer from the existing owner of the Property.

“Legal Description” means the legal description of the Property attached to this Agreement as Attachment No. 2.

“Limited Partner Capital Contribution” means the Developer Equity provided from the allocation of the Low Income Housing Tax Credits as set forth in the Method of Financing.

“Limited Partnership” means the single purpose entity referred to herein as “Developer”, formed for the syndication of the Low Income Housing Tax Credits and ownership of the Project.

“Limited Partnership Agreement” means the limited partnership agreement governing the Limited Partnership and includes the Limited Partnership Agreement as amended and restated on the admission of the Investor Limited Partner.

“LMIHAF” means the Low and Moderate Income Housing Asset Fund, established and maintained by the Authority pursuant to California Health and Safety Code Sections 34176 and 34176.1.

“LMIHAF Loan” means the loan made by the Authority to Developer pursuant to this Agreement, in the amount set forth in the final approved Project Budget, which is evidenced by the LMIHAF Note and secured by the Authority Deed of Trust and the other LMIHAF Loan Documents having a lien on the Property that is junior in priority to the lien of the Senior Loan Deed of Trust.

“LMIHAF Loan Documents” means the instruments described as such in the Method of Financing attached hereto as Attachment No. 3.

“LMIHAF Note” means the Promissory Note evidencing the LMIHAF Loan, substantially in the form attached to this Agreement as Attachment No. 8.

“Low Income” means the maximum income given to “lower income” households in California Health and Safety Code Section 50079.5.

“Maintenance Program” has the meaning given in Section 5.03.

“Management Plan” has the meaning given in paragraph a. of Section 5.02.

“Managing General Partner” means Wakeland IBNCA LLC, a California limited liability company, and its successors and assigns permitted under the terms of this Agreement. Wakeland IBNCA LLC, is an Affiliate of Wakeland Housing and Development Corporation.

“Method of Financing” means Attachment No. 3 to this Agreement.

“Notice of Affordability Restrictions” means the Notice of Affordability Restrictions on Transfer of Real Property, substantially in the form attached to this Agreement as Attachment No. 6.

“Permanent Loan” means the permanent loan to be made to Developer by an institutional or governmental lender reasonably acceptable to the Authority Executive Director (**“Permanent Lender”**) following Conversion, secured by the Permanent Loan Deed of Trust.

“Permanent Loan Deed of Trust” means the first priority leasehold deed of trust securing the Permanent Loan.

“Permanent Period” means the period of time commencing at Conversion.

“Permitted Transfer” means any of the following, provided (except for subsection f. below) Developer or a general partner of Developer, or an Affiliate of such general partner, retains day-to-day control over management and operations of the Property and the Improvements and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws:

- a. An assignment of this Agreement and Developer’s interests in the Property to an Affiliate or a conveyance back from the Affiliate to Developer;
- b. A conveyance of a security interest in the Property or any portion thereof or interest therein, in connection with a Senior Loan or other loan funding costs related to the Project, approved by the Authority;
- c. The inclusion of equity participation in the Project by addition of limited partners to the Limited Partnership or similar mechanism, and any transfers of limited partnership interests in Developer’s partnership;
- d. The lease for occupancy of all or any part of the Improvements on the Property in accordance with this Agreement;
- e. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement;
- f. The withdrawal, removal and/or replacement of a general partner of the Limited Partnership pursuant to the terms of the Limited Partnership Agreement, or a conveyance of Developer’s interest in the Property and the Improvements and a transfer of limited partnership interests to a general partner pursuant to the option provided to that partner in Developer’s partnership agreement, will not constitute a default under this Agreement or any of the LMIHAF Loan Documents, nor will such actions accelerate the maturity of the LMIHAF Loan, provided that, unless the substitute general partner is an entity directly or indirectly controlled by Wakeland Housing and Development Corporation, any required substitute general partner is reasonably acceptable to the Authority, as evidenced by the Authority’s prior written consent, and is selected with reasonable promptness; and
- g. Any transfer approved in writing by Authority’s Executive Director or designee, at his or her sole discretion.

Transfers described in clauses a, b, or c will be subject to the reasonable approval of the Authority Executive Director or designee; provided that, the Authority approves the transfer of limited partner interests in Developer’s partnership, so long as such transfer is not a result of a resyndication of the Low Income Housing Tax Credits and does not otherwise result in increased equity participation in Developer, and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws. The Authority further hereby approves the lease and transfer/sale of the Neighborhood Center to Developer or Ground Lessor or an affiliate of Developer or an Affiliate of Ground Lessor as contemplated in the Ground Lease, as

amended, subject to the reasonable approval of the Ground Lease by Authority Executive Director for consistency with this Agreement and its attachments.

“**Person**” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

“**Plans**” means the architectural and construction plans and drawings prepared by Developer and approved by the City for the Project.

“**Prohibited Person**” means any of the following:

- a. a Person that is listed in or is otherwise subject to the prohibitions of, any Executive Order relating to money laundering or anti-terrorism;
- b. a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in or is otherwise subject to the prohibitions of, any Executive Order relating to money laundering or anti-terrorism;
- c. a Person or entity with whom Developer or Investor Limited Partner is prohibited from dealing or otherwise engaging in any transaction by Anti-Terrorism Laws;
- d. a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control of the U.S. Treasury Department.

“**Project**” means the financing, planning, construction, use and operation of the Property and the Improvements as provided in this Agreement and also includes the demolition of existing improvements by Developer and the excavation and grading of the Property by Developer. The Project does not include the Neighborhood Center except for any facilities, easements, rights of way, improvements and/or equipment needed for the operation of the Project and for access to the Project by pedestrians and vehicles.

“**Project Budget**” means the schedule of sources and uses attached to this Agreement as Attachment No. 5.

“**Property**” means the real property described in the legal description attached to this Agreement as Attachment No. 2. The Property does not include the Neighborhood Center except for any facilities, easements, rights of way, improvements and/or equipment needed for the operation of the Project and for access to the Project by pedestrians and vehicles.

“**Quarterly Report**” has the meaning given in paragraph d of Section 5.02.

“**Release of Construction Covenants**” means the certificate to be issued by the Authority in accordance with Section 4.14 of this Agreement.

“Restricted Period” means the period commencing at recordation of the Agreement Containing Covenants and continuing until the date that is fifty-five (55) years after the “Effective Date” of the Agreement Containing Covenants.

“Schedule of Performance” means the document attached to this Agreement as Attachment No. 4.

“Senior Citizen Household” means a household where at least one person in residence is at least fifty-five (55) years old and qualifies for occupancy under the California Tax Credit Allocation Committee’s regulations applicable to the Project and intends to reside in the unit as his or her primary residence on a permanent basis, and where any other person residing in the unit is a “qualified permanent resident” or a “permitted health care resident” as provided in the Unruh Civil Rights Act, California Civil Code Section 51 *et seq.*, or the Federal Fair Housing Act 42 USC Section 3607, and such household’s occupancy is in compliance with all applicable federal, state and local laws and regulations governing the use and occupancy of the Project. All of the units shall be rented to Senior Citizen Households. If required by other Project lenders or funders, and subject to the prior written approval of the Authority Executive Director, Senior Citizen Household may include other senior or elderly households consistent with such funding requirements and applicable fair housing laws. The Senior Loan will also include any other financing secured by a Senior Deed of Trust reasonably approved in writing by the Authority Executive Director.

“Senior Lender” means the maker of a Senior Loan, and an approved construction lender, credit enhancer or construction period guaranty facility.

“Senior Loan Deed of Trust” means, during the Construction Period, the Construction Loan Deed of Trust, and during the Permanent Period, the Permanent Loan Deed of Trust, and any other loan during either period of time reasonably approved by the Authority Executive Director as a Senior Loan.

“Senior Loan” means, during the Construction Period, the Construction Loan, and during the Permanent Period, the Permanent Loan and any other loan during either period of time reasonably approved by the Authority Executive Director as a Senior Loan.

“Senior Loan Documents” means, as applicable, the Construction Loan Deed of Trust, the Permanent Loan Deed of Trust, deeds of trust executed in connection with other Senior Loans, if any, loan agreements, promissory notes, financing statements, guaranties, security agreements, assignments, and similar documents and instruments to be executed by Developer in connection with a Senior Loan.

“Site Map” means the document which is attached to this Agreement as Attachment No. 1.

“Subordination Agreement” means an instrument in a form agreed to by the Authority Executive Director or designee and Senior Lender, consistent with the subordination provisions of Section 8 of the Method of Financing (Attachment No. 3), which subordinates the Authority’s

LMIHAF Loan, but not (unless and to the extent otherwise approved in writing by the Authority Executive Director or designee) the Agreement Containing Covenants, to a Senior Loan, and is mutually acceptable to the Senior Lender involved, the Authority Executive Director and Developer.

“**Title Company**” means a title insurance company mutually acceptable to Authority and Developer.

“**Title Insurance Policy**” means and include the ALTA extended coverage policy of title insurance issued by the Title Company, as a lender’s policy of title insurance in favor of Authority, together with such endorsements as Authority may reasonably require, insuring the lien of the Authority Deed of Trust in the cumulative amount of the Authority’s LMIHAF Loan (the “Authority’s Title Policy”).

“**Transfer**” means:

a. the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein (including, without limitation, a beneficial interest), whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project.

b. “Transfer” also includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of an interest in Developer, or a conversion of Developer to an entity from other than that of Developer at the time of execution of this Agreement, except that, a cumulative change in ownership interest of a general partner of the Developer of forty-nine percent (49%) or less will not be deemed a “Transfer” for purposes of this Agreement.

“**UCC-1**” means a UCC-1 Financing Agreement naming the Authority as creditor and Developer as debtor.

“**Very Low Income**” means household income that does not exceed the maximum income set forth in California Health and Safety Code Section 50105.

Section 1.03 The Property

The “Property” is that property in the City of Imperial Beach as illustrated on the “Site Map” (attached hereto as Attachment No. 1) and as described in the “Legal Description of the Property” (attached hereto as Attachment No. 2). The Property is currently owned by South District Union of the California-Pacific Annual Conference of the United Methodist Church and will be long-term leased to Developer in a manner consistent with the terms and conditions of this Agreement on or before the Construction Financing Event as a condition precedent to the performance by Authority of its obligations hereunder and the making of the LMIHAF Loan. As used in this Agreement, the Property, Project and Improvements do not include the Neighborhood Center and underlying land identified in the Site Map, except for any facilities, easements, rights

of way, improvements and/or equipment needed for the operation of the Project and for access to the Project by pedestrians and vehicles.

Section 1.04 The Authority

a. The Authority is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Housing Authorities Law of the State of California. The address of the Authority for purposes of receiving notices pursuant to this Agreement will be 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, Attn: Executive Director.

b. “Authority” as used in this Agreement includes the Housing Authority of the City of Imperial Beach and any assignee or successor to its rights, powers and responsibilities.

SECTION 1.05 The Developer

a. Developer is Wakeland IBNCA LP, a California limited partnership. Wakeland IBNCA LP, is an Affiliate of Wakeland Housing and Development Corporation. The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

Wakeland IBNCA LP
Attn: Wakeland IBNCA LLC
c/o Wakeland Housing and Development
Corporation
1230 Columbia Street, Suite 950
San Diego, CA 92101

b. Whenever the term “Developer” is used herein, such term means and includes: (1) the Developer as of the date hereof; and (2) any assignee of or successor to its rights, powers and responsibilities approved by the Authority or permitted by this Agreement.

Section 1.06 Assignments and Transfers

a. The qualifications and identity of the Developer are of particular concern to the Authority. It is because of those qualifications and identity that the Authority has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer will acquire any rights or powers under this Agreement except as expressly set forth herein.

b. The Developer will not assign all or any part of this Agreement without the prior written approval of the Authority. The Authority agrees to reasonably give such approval if, in the reasonable determination of the Authority, the proposed assignee is comparable in all material respects (including experience, character and financial capability) to the Developer. Any such change (or assignment of this Agreement in connection therewith) will be by instruments satisfactory to the Executive Director (or his designee), and be subject to the approval by the

Executive Director (or his designee) of evidence of the proposed assignee's qualifications to meet the obligations of the Developer under this Agreement.

c. For the reasons cited above, except for any Permitted Transfer as set forth in subsection f. in the definition of "Permitted Transfer" above, Developer represents and agrees for itself and any successor in interest that without the prior written approval of the Authority, which will not be unreasonably withheld, there will be no cumulative change in ownership interest of any general partner of greater than 49%, by any method or means.

d. Developer will promptly notify the Authority of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the Authority, and the Authority may exercise its remedies pursuant to the LMIHAF Loan Documents, if there is any significant change (voluntary or involuntary) in membership, executive management or control of Developer (other than such changes occasioned by the death or incapacity of any individual or a Permitted Transfer). "Significant change" as used in the preceding sentence is any change that results (directly or indirectly) in a change of the day to day management of Developer following the date of this Agreement.

e. The Developer will not, except for Permitted Transfers or as permitted by this Agreement, make or attempt to make a Transfer, without prior written approval of the Authority, except as expressly permitted by this Agreement and the other LMIHAF Loan Documents. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. Proposed transferees must have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Authority, to fulfill Developer's obligations undertaken in this Agreement. A proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the Authority must expressly assume all of Developer's obligations under this Agreement and agree to be subject to all conditions and restrictions applicable to the Developer in this Agreement. There must be submitted to the Authority for review all instruments and other legal documents proposed to affect any such transfer; and if approved by the Authority its approval will be indicated to Developer in writing.

f. In the absence of specific written agreement by the Authority, no Transfer, or approval thereof by the Authority, will be deemed to relieve Developer or any other party from any obligations under this Agreement.

g. Notwithstanding section 106.b., Developer will have the right to execute deeds of trust and other instruments granting a security interest in the Property for the purposes of financing the Acquisition and Development Costs, as described in Article III of this Agreement and the Method of Financing attached hereto as Attachment No. 3.

ARTICLE II. LEASE OF PROPERTY TO DEVELOPER

Section 2.01 Condition of the Property

a. Developer acknowledges that neither the Authority nor any person acting on behalf of the Authority has made any representation, agreement, warranty, guarantee or promise regarding the zoning, construction, physical condition or other status of the Property, except as otherwise expressly provided in this Agreement.

b. Developer acknowledges and agrees that, except as expressly set forth in this Agreement, the Authority makes no representations and warranties, express or implied, as to the Property. It is understood and agreed that with respect to the physical condition of the Property, and as between the Authority and the Developer, it is being developed, used and operated under this Agreement on an “as is,” “where is” and “with all faults” basis and is subject to any condition which may exist. Other than the representations and warranties set forth in this Agreement, Developer hereby expressly acknowledges and agrees that it is relying solely upon its inspections, examination, and evaluation of the Property in developing the Property on an “as is,” “where is” and “with all faults” as between Developer and Authority only.

c. It will be the sole responsibility of Developer, at no expense to Authority, to investigate and determine all conditions of the Property and its suitability for the uses to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the responsibility and obligation of Developer, following the Construction Financing Event, without cost to the Authority, to take such action or cause such action to be taken, as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

Section 2.02 Long-Term Lease of the Property by Developer

a. The Developer or its Affiliate has acquired a long-term leasehold interest in the Property and all improvements, buildings, fixtures and appurtenances pertaining to the Property on or before the time required in the Schedule of Performance, and shall pay therefor a rental not to exceed the amount set forth for acquisition of the Property in the approved final Project Budget. The term of such long-term lease shall be for the Restricted Period or longer.

b. The timely long-term lease of the Property by Developer as and when required by this Agreement shall be a condition precedent to the performance by Authority of any of its obligations in this Agreement.

ARTICLE III. FINANCING

Section 3.01 Method of Financing

The Acquisition and Development Costs of the Project will be financed with a combination of sources of financing as provided in the Method of Financing, attached to this Agreement as Attachment No. 3. None of the funds to be provided by the Authority pursuant to this Agreement and its attachments, including without limitation the LMIHAF Loan, nor any of the fee deferrals to be provided by the City, including without limitation the provisions of the City Fees Deferral Note and City Deed of Trust, shall be expended for or applied to the planning, construction, development or operation of the Neighborhood Center.

Section 3.02 Authority Assistance

a. LMIHAF Loan. In accordance with and subject to the terms and conditions of this Agreement, including the Method of Financing, the Authority agrees to lend to the Developer, and the Developer agrees to borrow from the Authority, the LMIHAF Loan, as described in the Method of Financing attached hereto as Attachment No. 3. In addition, the Developer agrees to repay the City the deferral of City fees (defined herein as the City Fees Deferral). At or prior to the Construction Financing Event, but to be effective as of the Construction Financing Event, the Authority and Developer will execute and deliver such instruments and documents as may be necessary to evidence and secure the LMIHAF Loan, consistent with the terms of this Agreement and the Method of Financing, and each in a form that is acceptable to the Authority Executive Director or designee, including without limitation the LMIHAF Note (Attachment No. 8), the Authority Deed of Trust (Attachment No. 9) and the Assignment of Rents (Attachment No. 10). In addition, consistent with the terms of this Agreement and the Method of Financing, and each in a form that is acceptable to the City Manager or designee, Developer will execute and deliver the City Fees Deferral Note (Attachment No. 14) and the City Deed of Trust (Attachment No. 15). The Agreement Containing Covenants, Authority Deed of Trust and the City Deed of Trust shall only encumber that portion of the Property upon which the Neighborhood Center is constructed to the extent any facilities, easements, rights of way, improvements and/or equipment are needed for the operation of the Project and for access to the Project by pedestrians and vehicles.

b. Gap Assistance. The parties acknowledge that the LMIHAF Loan is intended to be “gap” financing, not to exceed the amount needed to bridge the gap between the total Acquisition and Development Costs (as further described in the Method of Financing) and the maximum loans obtainable by Developer plus an agreed amount of Developer’s Equity, but in no event greater than the amount set forth in the approved final Project Budget. The proceeds of the LMIHAF Loan will be used exclusively to pay Acquisition and Development Costs identified in the Project Budget (which is attached to this Agreement as Attachment No. 5 and incorporated herein by this reference). The LMIHAF Loan is subject to the terms and provisions of the LMIHAF Loan Documents, including but not limited to the LMIHAF Note (Attachment No. 8), the Authority Deed of Trust (Attachment No. 9) and the Assignment of Rents (Attachment No. 10).

c. Senior Loan and Tax Credits. Authority agrees that the lien of the Authority Deed of Trust and the City Deed of Trust will be subordinate to the lien of the Construction Loan Deed of Trust and the Permanent Loan Deed of Trust and other Senior Loan Documents. Authority agrees that the Authority Executive Director will execute such estoppel certificates as may reasonably be requested by the Construction Lender, the Permanent Lender the Investor Limited Partner and other Senior Lenders, provided that such certificates are consistent with the terms of this Agreement and do not materially adversely affect the receipt of any material benefit by Authority hereunder. The Authority Executive Director will execute such subordination agreements regarding the LMIHAF Loan, but not the Agreement Containing Covenants or the Notice of Affordability Restrictions except as reasonably required by a Senior Lender to the extent reasonably approved by the Authority Executive Director, as may reasonably be requested by the Construction Lender and Permanent Lender and any other Senior Lender, provided that such subordination agreements will provide the Authority with all rights under California Civil Code Section 2924b and 2924c and Health and Safety Code Section 33334.14(a)(4).

Section 3.03 Evidence of Financing

a. Prior to the scheduled Construction Financing Event Date, Developer will submit to the Authority draft documents containing evidence satisfactory to the Authority that Developer has obtained the financing necessary for the development of the Property in accordance with this Agreement. Developer shall submit final documents containing such evidence prior to the scheduled Construction Financing Event Date. Such evidence of financing will include the following:

1. A copy of all loan documents relating to the Construction Loan, including a final project budget approved by the Construction Lender, certified by the Developer to be a true and correct copy or copies thereof;
2. Documentation acceptable to the Authority Executive Director or designee of sources of capital sufficient to demonstrate that the Developer has adequate equity funds committed to provide the amount of Developer Equity required by the Method of Financing;
3. A copy of the Permanent Loan commitment; and
4. A copy of the contract between the Developer and the general contractor and contracts with major subcontractors for the construction and rehabilitation of the Improvements, certified by the Developer to be a true and correct copy thereof.

b. The Authority will approve or disapprove such evidence of financing within the time established in the Schedule of Performance. Such approval will not be unreasonably withheld or delayed. If the Authority will disapprove any such evidence of financing, the Authority will do so by written notice to the Developer stating the reason(s) for such disapproval.

ARTICLE IV. DEVELOPMENT OF THE PROPERTY

Section 4.01 Land Use Approvals

a. It is the responsibility of the Developer, without cost to Authority, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Property and construction and rehabilitation of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement.

b. The following will be conditions precedent to the Construction Financing Event: (A) Developer will submit and Authority Executive Director or designee will approve one hundred percent (100%) complete construction drawings; and (B) Developer will obtain all entitlements, approvals, variances and all other land use approvals and permits required by any Governmental Authority necessary for the construction and operation of the Improvements.

c. Nothing contained herein will be deemed to entitle Developer to any City of Imperial Beach permit or other City approval necessary for the construction, development and operation of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City of Imperial Beach in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any City laws, codes, rules or regulations. This is not a Development Agreement under Government Code Section 65864.

Section 4.02 Hazardous Materials

a. Prior to the Construction Financing Event, Developer will deliver to the Authority a true and complete copy of any environmental assessments Developer has made of the Property. Developer agrees to perform, or cause to be performed, any and all clean-up of any Hazardous Substances on, in, under or within the Property, without cost or expense to the Authority, required by any Governmental Authority and/or applicable law. Developer will defend, indemnify and hold harmless the Authority and its officers, agents, employees, contractors and attorneys from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required cleanup of hazardous substances, and the cost of reasonable attorneys' fees) which may be sustained as the result of Hazardous Materials relating to the Property. As a condition precedent to the Construction Financing Event, Developer will execute and deliver to the Authority the Environmental Indemnity to be effective as of the Construction Financing Event (Attachment No. 12).

Section 4.03 Scope of Development

The Property will be developed in accordance with and within the limitations, conditions and other requirements established in that certain Resolution No. 2022-98 approved by the City Council of the City on November 16, 2022 approving Coastal Permit, Design Review, Site Plan

Review and Conditional Use Permit for the Project (and any amendments that may be made thereto), Plans to be approved by the City for the Project, and permits issued by the City. It is anticipated that Developer will contract for performance of specific activities, including but not limited to activities such as relocation services (if necessary), site inspections, and management of the Units. Such contracts will not in any way diminish or waive Developer's obligations under this Agreement. The identity and qualifications of the general contractor must be approved by the Authority. Developer must also submit to the Authority for approval copies of the proposed contract with the general contractor and copies of any proposed subcontracts for mechanical, electrical, plumbing, framing and other trades requested in writing by the Authority, which approval will not be unreasonably withheld or delayed.

Section 4.04 Cost of Construction

a. The cost of acquiring the Property and developing and constructing the Improvements thereon will be the responsibility of the Developer, as provided in the Method of Financing. The Acquisition and Development Costs are set forth in the Project Budget (Attachment No. 5), which will be subject to change from time-to-time as provided in the Method of Financing. Developer will establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. In addition, the Neighborhood Center shall be constructed by Developer at the sole cost and expense of Developer

b. Developer has proposed, and the Authority has approved, the Project Budget appended to this Agreement as Attachment No. 5. Developer acknowledges that the Authority is relying on Developer's experience and expertise in establishing the Acquisition and Development Costs for the Project and Developer represents and warrants that the Project Budget is based on Developer's best, good faith estimate of the costs to be incurred.

Section 4.05 Schedule of Performance

a. Developer and Authority will perform all acts respectively required of such party in this Agreement within the times provided in the Schedule of Performance appended to this Agreement as Attachment No. 4. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing by Developer and the Authority Executive Director in accordance with the provisions of this Agreement and the Schedule of Performance.

b. After the Construction Financing Event, Developer will promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided in this Agreement. Developer will begin and complete all construction and development within the times specified in the Schedule of Performance, with such reasonable extensions of said times as may be granted by the Authority, including any Force Majeure Delays, provided that the Authority Executive Director finds that the Developer is diligently proceeding in good faith with the performance of its obligations under this Agreement.

c. During periods of construction, Developer will submit to the Authority a written report of the progress of the construction when and as requested by the Authority. The report will

be in such form and detail as may be reasonably required by the Authority and will include a reasonable number of construction photographs (if requested) taken since the last report by Developer. Developer will meet with the Authority as requested during construction to discuss the resolution of any concerns the Authority might have. Representatives of the Authority will have the right to participate in periodic construction meetings and will have the right to approve proposed finishes, colors, fixtures, and like matters.

d. The Authority acknowledges the purposes and intent of the Affordable Housing Incentives of the Housing Element approved by the City Council of the City and of the statutes governing the Authority as activated by the City Council to expedite the construction of affordable housing, and that the Authority intends to administer the Schedule of Performance in light of such purposes and intent. Program 5 of the City's Housing Element provides that "To encourage and facilitate affordable housing development in Imperial Beach, ...the City will provide ... incentives to private developers: permit fast-tracking...prioritizing [affordable housing projects]..." and "As needed to enhance project feasibility, provide relaxed development standards...". Section 34201(c) of the California Health and Safety Code states that with respect to housing authorities, providing affordable housing "are governmental functions of state concern; that it is in the public interest that work on such projects be commenced as soon as possible... ."; and Section 34312 authorizes housing authorities to "Provide for the construction" of affordable housing, and that housing authorities "are the local entities with primary responsibility for providing" affordable housing. Accordingly, consistent with such purposes and intent and the specific facts and circumstances of the development required by this Agreement, the Executive Director of the Authority is authorized in their sole discretion to make certain written extensions of time for City building permits and related approvals as set forth in the Schedule of Performance.

Section 4.06 Local, State and Federal Laws

a. Developer will carry out development, construction (as defined by applicable law) and operation of the Improvements on the Property, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, the requirement to pay state or federal prevailing wages, if applicable).

b. Developer hereby expressly acknowledges and agrees that neither the City of Imperial Beach nor the Authority has ever previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. Developer hereby agrees that Developer will have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. Developer will indemnify, protect, defend and hold harmless the Authority, the City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Authority and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert

witnesses) (collectively, the “Claims”) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law.

c. It is agreed by the parties that, in connection with the development, construction (as defined by applicable law) and operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer will bear all risks of payment or non-payment of state prevailing wages and/or Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, and/or any other similar law. “Increased costs” as used in this Section 4.06 will have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time.

d. The foregoing indemnity will survive termination of this Agreement and will continue after Completion.

Section 4.07 Nondiscrimination During Construction

Developer, for itself and its successors and assigns, agrees that during the construction of the Improvements provided for in the Agreement, Developer will not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any employees, contractors or consultants. Developer understands and agrees that violation of this clause will be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. This language must be incorporated into all contracts between Developer and any contractor or consultant, and all contracts with any subcontractor, sub-consultant, vendor or supplier.

Section 4.08 Indemnification and Insurance

a. Developer agrees to and will, to the fullest extent permitted by law, defend, indemnify and hold the Authority, the City of Imperial Beach and their respective officers, employees, contractors and agents (“Indemnitees”) harmless from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of, in whole or in part, any of the following: (1) any act or omission of Developer or its architect, engineer, contractors, suppliers, or vendors, of any contracting tier, or anyone directly or indirectly employed by any of them, or anyone for whose acts Developer may be liable, in connection with the performance or nonperformance of this Agreement, including but not limited to the development, rehabilitation, marketing or use of the Property in any way, and any plans or designs for improvements prepared by or on behalf of Developer, including without limitation any

errors or omissions with respect to such plans or designs; (2) the breach of any obligations of Developer hereunder; and (3) the use of any products, material or equipment furnished by Developer or its contractors, suppliers, or vendors, of any contracting tier. Such obligation to indemnify will not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.08. The foregoing indemnification will include claims relating to Developer and/or its architect, contractors, suppliers, or vendors, of any contracting tier, or anyone directly or indirectly employed by any of them, or anyone for whose acts Developer may be liable. Indemnitees will be entitled to recovery of attorney's fees incurred as a result of Developer's failure to provide the defense and indemnity required by this Section 4.08. This Section 4.08 will survive the expiration or termination of this Agreement.

b. Prior to the Construction Financing Event, Developer will furnish or cause to be furnished to the Authority evidence of the following policies of insurance, naming Developer as insured and the Authority and the City as additional insureds and including a primary insurance and waiver of contribution clause, a separation of insureds clause and a cancellation notice clause, in the form provided by the Authority. The insurance described in paragraph (ii) will be obtained prior to the initial rent-up of the apartments.

(i) Fire Policies: Developer will maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property or the Improvements and all property of an insurable nature located upon the Property, resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies. Such insurance will be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements, as defined herein in paragraph d.

(ii) Rental Income Insurance: Developer will maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils of fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount that is acceptable to Developer and the Authority.

(iii) Liability Insurance: Developer will maintain or cause to be maintained commercial general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer or its sublessees, or any person acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or its tenants, or any person acting for Developer, or under its control or direction. Such property damage and personal injury insurance will also provide for and protect Authority

against incurring any reasonable legal cost in defending claims for alleged loss. Such personal injury and property damage insurance will be maintained in full force and effect during the term of the LMIHAF Loan in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000); and per occurrence of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) of bodily injury and property damage insurance. Developer agrees that provisions of this paragraph as to maintenance of insurance will not be construed as limiting in any way the extent to which Developer may be held responsible for the indemnification of Authority or the payment of damages to persons or property resulting from Developer's activities, activities of its tenants or the activities of any other person or persons for which Developer is otherwise responsible. Developer will require its insurer to waive its subrogation rights against the Authority and the City and will provide endorsements evidencing same.

(iv) Workers' Compensation Insurance: Developer will maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance will cover all persons employed by Developer in connection with the Property and will cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee will deliver to Authority evidence that such self-insurance has been approved by the appropriate State authorities. If Developer is required to maintain Workers' Compensation Insurance under this paragraph, Developer will furnish the Authority with a certificate of waiver of subrogation under the terms of the Workers' Compensation Insurance. Developer will require its general contractor to waive subrogation and will require that its subcontractors waive subrogation to the extent that such a waiver is commercially available.

c. All policies hereunder will not be subject to cancellation or non-renewal except after notice in writing will have been sent by mail addressed to the Authority and the City not less than 30 days in advance of the cancellation date, except for cancellation for nonpayment of premium, in which event notice will be given not less than ten days in advance of the cancellation date. All policies will include the Developer as named insured and, where applicable, the Authority as additional insured and/or loss payee where applicable.

d. The term "full insurable value" as used in this Section 4.08 means the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the Improvements on the Property immediately before such casualty or other loss, including hard and soft costs of construction, such as architectural and engineering fees, inspection, and supervision. To ascertain the reasonable amount of coverage required, Developer will review the full insurable value on an annual basis.

e. All insurance provided under this Section 4.08 will be for the benefit of Developer, Authority and City. Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit policies of all insurance required by this Section 4.08, or certificates and endorsements evidencing the existence thereof, to Authority prior to the Construction Financing Event, indicating compliance with the contractual liability imposed hereby. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, will be submitted to Authority. All insurance herein provided for under this Section 4.08 will be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California reasonably approved by Authority.

f. Developer must cause all contractors and subcontractors performing work relating to the Project to maintain, at a minimum, the liability insurance and workers compensation insurance described in this Section 4.08. Developer must also cause its architects and engineers to maintain Architects and Engineers Professional Liability (Errors and Omissions) insurance on a “claims made basis” in an amount of not less \$1,000,000. When coverage is provided on a “claims made basis”, Developer must cause all contractors and subcontractors to continue to renew the insurance for a period of three (3) years after the end of the Construction Period. Such insurance must have the same coverage and limits as the policy that was in effect during the Construction Period, and cover Developer for all claims made by the Authority arising out of any acts or omissions of Developer, or its officers, employees or agents during the Construction Period.

g. If Developer fails or refuses to procure or maintain insurance as required by this Agreement, Authority will have the right, at Authority’s election, and upon ten (10) days prior notice to Developer, to procure and maintain such insurance. The premiums paid by Authority will be treated as a loan, due from Developer, to be paid on the first day of the month following the date on which the premiums were paid. Authority will give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

Section 4.09 Disclaimer of Authority Responsibility

Except as expressly provided in this Agreement, the Authority neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the Property, whether with respect to the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Project, any person furnishing the same or otherwise. Developer and all third parties will rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the Authority or the City in connection with any such matter is for the public purpose of providing affordable housing, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. Neither may Developer or any third party assert such review, inspection, supervision,

exercise of judgment or information supplied to Developer or to any third party as a defense to the indemnification obligation set forth in 4.08 of this Agreement.

Section 4.10 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Developer will, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other Governmental Authority affected by such construction, development or work.

Section 4.11 Rights of Access

Commencing upon the Construction Financing Event, representatives of the Authority and the City will have the reasonable right of access to the Property, upon two (2) business days' written notice to Developer (except in the case of an emergency, in which case Authority will provide such notice, if any, as may be practical under the circumstances), without charges or fees, 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 the Authority or the City will be those who are so identified in writing by the Executive Director of the Authority.

Section 4.12 Taxes, Assessments, Encumbrances and Liens

Commencing upon the Construction Financing Event, Developer will pay prior to delinquency all real estate taxes and assessments assessed and levied on or against its leasehold interest in the Property. Prior to Completion, Developer will not place, or allow to be placed, on title to the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Developer will remove, or will have removed, any levy or attachment made on title to the Property (or any portion thereof), or will assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained will be deemed to prohibit the Developer from contesting the validity or amount of any tax assessment, encumbrance or lien, or to limit the remedies available to the Developer in respect thereto.

Section 4.13 Rights to Plans

a. Subject to the rights of the beneficiary of the Construction Loan Deed of Trust, and the beneficiaries of the deeds of trust evidencing other Senior Loans, if any, all work product prepared pursuant to this Agreement, including (but not limited to), all Plans, construction documents, soils tests and similar reports, permits and other entitlements are hereby assigned to the Authority as security for Developer's obligations hereunder, effective as of the Construction Financing Event. In the event that this Agreement is terminated by the Authority, Developer will, within ten (10) business days of such termination, transmit all such work product to the Authority.

b. To effectuate the assignment described in paragraph a., on or before the Construction Financing Event, Developer will execute and deliver to the Authority an Assignment of Agreements (the "Assignment"), substantially in the form attached to this Agreement as Attachment No. 11, granting to the Authority all of Developer's rights to: (1) the Plans prepared pursuant to this Agreement; (2) the contract between Developer and its architect; (3) all permits relating to the Project; and related reports, rights and property interests.

Section 4.14 Release of Construction Covenants

a. Promptly after Completion of the Improvements, as generally and specifically required by this Agreement and Plans approved for the Project by the City, the Authority will furnish Developer with a Release of Construction Covenants upon written request therefor by Developer. The Authority will not unreasonably withhold such Release of Construction Covenants and such Release of Construction Covenants will be issued so long as Developer has constructed and developed the Property in accordance with this Agreement and substantially in accordance with the Plans approved by the Authority pursuant hereto. Such Release of Construction Covenants will be, and will so state, conclusive determination of satisfactory completion of all of the construction required by this Agreement.

b. The Release of Construction Covenants will be in such form as to permit it to be recorded in the official records of San Diego County. No Release of Construction Covenants will be recorded for less than the completed Improvements and development of the entire Property.

c. If the Authority refuses or fails to furnish a Release of Construction Covenants for the Property after written request from Developer, the Authority will, within thirty (30) days of the written request, provide Developer with a written statement of the reasons the Authority refused or failed to furnish a Release of Construction Covenants. The statement will also contain the Authority's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, and/or minor items, the Authority will issue its Release of Construction Covenants upon the posting of a bond by Developer with the Authority in an amount representing a fair value of the work not yet completed. If the Authority will have failed to provide such written statement within said 30-day period, Developer will be deemed to have received the Release of Construction Covenants.

d. The Release of Construction Covenants will not constitute evidence of compliance with or satisfaction of any obligation of Developer to the beneficiary of the Construction Loan Deed of Trust or any other Person. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

ARTICLE V. USE OF THE PROPERTY

Section 5.01 Use As Affordable Housing

a. Developer covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof or any interest therein) that Developer, its successors and assigns will use the Property exclusively for the development of fifty (50) dwelling units to provide affordable housing for Extremely Low Income, Very Low Income, and Low Income Senior Citizen Households (except for one staff/manager's unit), in conformance with the Agreement Containing Covenants (Attachment No. 7), including common areas associated therewith. No change in the use of the Property will be permitted without the prior written approval of the Authority.

b. The Authority and its successors and assigns will have the right to monitor and enforce the covenants contained in this Section 5.01. Developer covenants that it will comply with the monitoring program established by the Authority to enforce said covenants. In complying with such monitoring program, Developer or its agent will prepare and submit to the Authority an annual occupancy report, financial information and income verification documents for each tenant and all supporting documentation, on forms provided by the Authority, setting forth the required information for the preceding year. On an annual basis, Developer or its agent will additionally submit to the Authority evidence of each tenant's continuing eligibility to occupy the unit. The Authority will review such reports for certification of continuing affordability of Units and eligibility of tenants.

c. Tenant occupancy reports shall reflect compliance with the tenant selection preferences set forth in the Agreement Containing Covenants.

Section 5.02 Management Plan; Annual Project Budget; Quarterly Report

a. Within the time set forth therefor in the Schedule of Performance, Developer will submit to the Authority Executive Director a Management Plan reasonably acceptable to the Authority Executive Director, describing the proposed plan for managing and operating the Property, including policies and procedures to assure accessibility to persons with disabilities, and to assure compliance with the tenant selection process and preferences set forth in this Agreement and the Agreement Containing Covenants. The Authority will provide Developer a draft Management Plan which Developer shall use to prepare the final Management Plan submitted to the Authority. Developer will manage and operate the Property in accordance with the approved Management Plan, including such amendments as may be approved in writing from time to time by the Developer and the Authority Executive Director or designee, for the entire Restricted Period.

b. Within the time set forth therefor in the Schedule of Performance, Developer will submit for Authority approval copies of contracts with the architect, the property manager (which must contain a provision allowing Developer's termination of the management agreement without

cause, upon thirty (30) days prior written notice), and other consultants and service providers identified by the Authority.

c. In addition, the Developer will submit on or before the first day of each fiscal year of the Restricted Period an estimated annual budget for management of the Property (the “**Annual Project Budget**”) in accordance with the Management Plan. The Annual Project Budget will include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amount required for insurance and all other expenses incident to the operation of the Project; and will show the expected revenues to pay such expenses, including annual debt service requirements and reserve fund deposits and balances. The Annual Project Budget, including any amendments proposed by the Developer, will be subject to the approval of the Authority Executive Director, which approval will not be unreasonably withheld or delayed.

d. Beginning on the date of first occupancy, for each fiscal year of the Restricted Period, Developer will also submit on a quarterly basis a quarterly report for the management of the Property (the “**Quarterly Report**”) in a form that is reasonably acceptable to the Authority Executive Director. The Quarterly Report will include a profit and loss statement, budget to date figures, and occupancy report. Developer’s failure to timely submit the Quarterly Reports, after the Authority has provided written notice to Developer and at least seven business days to cure such failure, will cause the imposition of a monetary penalty of \$500 to be paid to the Authority. The Authority Executive Director, in his sole discretion may waive the requirement of the Quarterly Report for one or more quarterly reporting periods. However, such waiver will not operate to waive any subsequent requirement of the Quarterly Report for the Restricted Period upon written notice to Developer by the Authority Executive Director.

e. The Agreement Containing Covenants will contain appropriate provisions implementing this Article V.

Section 5.03 Property Maintenance

a. Within the time set forth therefor in the Schedule of Performance, the Developer will prepare and submit to the Authority Executive Director or his designee for review and approval a program (the “**Maintenance Program**”) for the exterior and interior maintenance of the Property and the Improvements. The Authority will provide Developer a draft Maintenance Program which Developer shall use to prepare the final Maintenance Program submitted to the Authority.

b. The Maintenance Program will describe in reasonable detail the standards to be followed in maintaining the interior and exterior of the Improvements, including a schedule indicating the proposed frequency of each element of maintenance, and will include, at a minimum, the following: periodic cleaning of the interior and exterior of the Improvements, including windows; removing graffiti; removing debris and waste materials and otherwise maintaining indoor and outdoor areas of the Property; maintaining any lawns, plants, shrubs and trees or other landscaping planted on the Property; performing inspections of all exterior features to determine

whether repairs are required; conducting periodic protective treatments such as rust removal and caulking; conducting repairs to facades, roof, doors, windows and other exterior features; maintaining fencing and other security devices and systems; periodic repainting of the exterior; periodic repainting of the interior units and common areas; periodic replacing of the interior unit carpets; checking building systems, including, but not limited to the heating and cooling systems, smoke alarms and water heaters; checking interior unit appliances; and monitoring interior unit bathrooms for mold/mildew. The Maintenance Program, including any amendments proposed by the Developer, will be subject to the reasonable approval of the Authority Executive Director.

c. At all times during the Restricted Period, the Developer will maintain the Property and the Improvements in accordance with the approved Maintenance Program. To implement this requirement, Developer agrees to budget sufficient funds to pay for all reasonably anticipated costs (as indicated in the Annual Project Budget). In the event the Developer fails to maintain the Property and the Improvements in accordance with the approved Maintenance Program, and does not cure such failure within thirty (30) days following notice from the Authority, with such additional time as may be reasonably necessary to cure such default provided that Developer has commenced to cure within such thirty (30) day period and is diligently prosecuting the cure to completion, the Authority will have the right, but not the obligation, to enter the Property, correct any violation, and hold the Developer responsible for the cost thereof, and such cost, until paid, will constitute a lien on the Property. Prior to undertaking any work to correct any such maintenance deficiency, the Authority will provide written notice that the Developer must correct the deficiency within a reasonable time. The Developer will have a reasonable time in which to comply following such notice from the Authority.

d. The Agreement Containing Covenants will contain appropriate provisions implementing this Section 5.03.

Section 5.04 Obligation to Refrain from Discrimination

a. Developer covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there will be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor will Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

b. All deeds, leases or contracts will contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there will be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d)

of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor will the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants will run with the land.”

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status will not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code will also apply to the preceding paragraph.

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

That there will be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor will the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status will not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code will also apply to the preceding paragraph.

3. In contracts: There will be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d)

of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor will the transferee itself or any person claiming under or through him or her, 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.”

Nothing in this Section 5.04 is intended to prohibit the use of the Neighborhood Center for religiously affiliated events and purposes.

Section 5.05 Equal Employment Opportunity

During the term of this Agreement, Developer agrees as follows:

a. Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. Developer will include the provisions of paragraphs a. and b. of this Section 5.05 in every contract or purchase order related to the Project, so that such provisions will be binding upon each contractor or vendor providing services related to the Project.

Section 5.06 Effect and Duration of Covenants

The covenants established in this Agreement will run with the land, without regard to technical classification and designation, and will be for the benefit and in favor of Authority, its successors and assigns, and the City. The covenants described in this Article V will commence upon the Construction Financing Event and will be set forth in the Agreement Containing Covenants and will remain in effect for the Restricted Period.

Section 5.07 Enforcement of Covenants

The Authority and the City are deemed beneficiaries of the terms and provisions of this Agreement and the covenants herein, both for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The Authority will

have the right if the covenants contained in this Agreement are breached and such breach is not cured within the time periods set forth in Section 6.01, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings, including but not limited to an action for specific performance, to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants are entitled.

Section 5.08 Monitoring

The parties acknowledge that, due to the Authority's use of Low and Moderate Income Housing Asset Fund, this Agreement is subject to the provisions of Health and Safety Code section 33418 (as applied by Health & Safety Code section 33476.1), which provides in pertinent part:

“(a) An Authority will monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, an Authority will require Developers or managers of the housing to submit an annual report to the Authority. The annual reports will include for each rental unit the rental rate and the income and family size of the occupants... The income information required by this section will be supplied by the tenant in a certified statement of a form provided by the Authority.”

Developer will submit to the Authority on an annual basis the report required by Section 33418. The annual report will include for each residential unit the rental rate and the income and family size of the occupants. The income information will be supplied by the tenant in a certified statement on a form provided by the Authority. Developer will provide for the submission of such information in its lease or occupancy agreement with tenants.

Section 5.09 Agreement Containing Covenants

Concurrently with the Construction Financing Event, Developer and Authority will execute and deposit with the Escrow Agent an Agreement Containing Covenants substantially in the form attached to this Agreement as Attachment No. 7.

ARTICLE VI. DEFAULTS AND REMEDIES

Section 6.01 Defaults - General

a. Subject to the Force Majeure Delay, as provided in Section 7.04 and the cure periods provided herein, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must immediately commence to cure, correct or remedy such failure or delay and will complete such cure, correction or remedy with reasonable diligence.

b. The injured party will give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice will not constitute a waiver of any default, nor will it change the time of default. Except as

otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default will not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies will not 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.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party will give the party in default written notice of such default. The party in default will have a period of ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party will give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the party in default will have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default will have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but not to exceed a maximum cure period of ninety (90) days.

e. If Developer fails to take corrective action or cure the default within the cure periods required by this Section 6.01, and subject to the terms of the Limited Partnership Agreement, the Investor Limited Partner may take such action, including removing and replacing the general partner or managing member of the Developer with a substitute general partner or member, who will effect a cure in accordance with the foregoing provisions. The Authority agrees to accept cures tendered by any Senior Lender or Investor Limited Partner within the cure periods provided herein. Additionally, in the event the Senior Lender or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Developer or the general partner of Developer, the Authority agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or Investor Limited Partner is so precluded from acting, not to exceed ninety (90) days, provided such Investor Limited Partner and Senior Lender are otherwise in compliance with the foregoing provisions. In no event will the Authority be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

f. Authority will send to the Investor Limited Partner a copy of all notices of default and all other notices that Authority sends to Developer, at the address for the Investor Limited Partner provided in the LMIHAF Note. The Authority agrees to accept cure by the Investor Limited Partner on behalf of Developer of any default hereunder on the same terms as cure by Developer.

Section 6.02 Institution of Legal Actions

Subject to the notice and cure provisions of Section 6.01, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

Section 6.03 Applicable Law

The laws of the State of California will govern the interpretation and enforcement of this Agreement, without reference to the principles relating to conflicts of laws.

Section 6.04 Acceptance of Service of Process

a. If legal action is commenced by the Developer against the Authority, service of process on the Authority will be made by personal service upon the Executive Director of the Authority, or in such other manner as may be provided by law.

b. If legal action is commenced by the Authority against the Developer, service of process on the Developer will be made by personal service upon the Developer (or upon a general partner, managing member or officer of the Developer) and will be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 6.05 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 6.06 Damages

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.01 and the non-recourse provisions of Section 6.11, the defaulting party will be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default.

Section 6.07 Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.01, the non-defaulting party, at its option, may, after

such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 6.08 Termination by Either Party

Prior to the Construction Financing Event, either party will have the right to terminate this Agreement in the event (i) the other party is in default of any term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 6.01 or (ii) the parties mutually determine in writing that, despite using good faith commercially reasonable efforts, Developer will be unable to obtain the necessary financing for the Project.

Section 6.09 Termination by Developer

Prior to the Construction Financing Event, subject to the notice and cure provisions of Section 6.01, Developer will have the right to terminate this Agreement, by providing written notice to the Authority, in the event of an uncured default by Authority pursuant to this Agreement.

Section 6.10 Termination by Authority

a. Subject to the notice and cure provisions of Section 6.01, the Authority will have the right, prior to the Construction Financing Event, to terminate this Agreement, by providing written notice to Developer, in the event of a default by Developer or failure of any condition precedent to the occurrence of the Construction Financing Event which is in the control of Developer, including but not limited to the following:

1. Developer fails to submit to the Authority evidence of financing or fails to satisfy any other condition precedent to the occurrence of the Construction Financing Event as provided in the Method of Financing within the time established therefor in the Schedule of Performance; or

2. Developer (or any successor in interest) assigns or attempts to assign any of Developer's rights in and to the Property or any portion thereof or interest therein, or this Agreement or any portion hereof, except as permitted by this Agreement; or

3. Except for a Permitted Transfer, there is substantial change in the ownership of the Developer, or with respect to the identity of the parties in control of Developer, or the degree thereof contrary to the provisions of Section 1.06.b. of this Agreement; or

4. Developer fails to submit any of the reports, plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement.

b. After the Construction Financing Event, but before Completion, Authority will have the additional right to terminate this Agreement in the event any of the following defaults will occur:

1. Developer fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 6.01 of this Agreement; or

2. Developer abandons or substantially suspends construction of the improvements and such breach is not cured within the time provided in Section 6.01 of this Agreement; or

3. Developer assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement, and such breach is not cured within the time provided in Section 6.01 of this Agreement; or

4. Developer otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 6.01 of this Agreement.

d. Notwithstanding the foregoing, the Authority will have the right to terminate this Agreement upon a final determination by state or federal court or the California Fair Political Practices Commission, subject to cure rights or appeal, of a criminal, material, and/or repeated violation of local, state, or federal campaign finance laws by Developer or a general partner of Developer or a member of such general partner or an officer or other Person exercising management or control over such member.

Section 6.11 Limited Recourse Obligations

a. Subject to the provisions and limitations of this Section 6.11, the obligation to repay the LMIHAF Loan is a nonrecourse obligation of the Developer. Developer and each general partner or limited partner of Developer will not have any personal liability for repayment of the LMIHAF Loan, except as provided in this Section 6.11. The sole recourse of Authority will be the exercise of its rights against the Property and other security for the LMIHAF Loan, including without limitation exercise of the remedies provided in the Authority Deed of Trust; provided, however, that the foregoing will not (a) constitute a waiver of an obligation evidenced by the LMIHAF Note or the Authority Deed of Trust; (b) limit the right of the Authority to name Developer as a party defendant in an action or suit for judicial foreclosure and sale under the LMIHAF Note or the Authority Deed of Trust or an action or proceeding thereunder so long as no judgment in the nature of a deficiency judgment will be asked for or taken against Developer; (c) release or impair the LMIHAF Note or the Authority Deed of Trust; (d) prevent or in any way hinder the Authority from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the LMIHAF Loan or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder the Authority from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the LMIHAF Loan; (f) relieve Developer of its obligations under an indemnity delivered by Developer to the Authority; or (g)

affect in any way the validity of a guarantee (if any) or indemnity from any person of all or any of the obligations evidenced and/or secured by the LMIHAF Note or the Authority Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Developer and its successors and assigns will have personal liability hereunder for any deficiency judgment, but only if and to the extent Developer, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the mortgaged Property, ordinary and reasonable capital improvements to the mortgaged Property, debt service, real estate taxes in respect of the mortgaged Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Developer in connection with the operation of the mortgaged Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, the Authority may recover directly from Developer or from any other party:

1. damages, costs and expenses incurred by the Authority as a result of fraud or criminal act or acts of Developer or a partner, shareholder, officer, director or employee of Developer, or of a member or general or limited partner of Developer, or of a general or limited partner of such member or general or limited partner;

2. damages, costs and expenses incurred by the Authority as a result of misappropriation of funds provided for the construction of the Improvements, rents and revenues from the operation of the Improvements or proceeds of insurance policies or condemnation proceeds;

3. any and all amounts owing by Developer pursuant to the indemnification regarding Hazardous Substances under the Environmental Indemnity, and

4. all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Authority will pay Developer's reasonable court costs and attorneys' fees if Developer is the prevailing party in such enforcement or collection action).

ARTICLE VII. GENERAL PROVISIONS

Section 7.01 Notices

Formal notices, demands and communications between the Authority and the Developer and Investor Limited Partner will be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Authority and the Developer, as designated in Section 1.04 and Section 1.05 hereof, and to the Investor Limited Partner at the address given in the LMIHAF Note. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 7.01. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, will be deemed delivered

upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt by the recipient; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof.

Section 7.02 Conflicts of Interest

a. No member, official or employee of the Authority will have any personal interest, direct or indirect, in this Agreement nor will any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

b. Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

Section 7.03 Nonliability of Authority Officials and Employees

No member, official, employee or consultant of the Authority will be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

Section 7.04 Force Majeure

In addition to specific provisions of this Agreement, performance by either party hereunder will not be deemed to be in default where delays or defaults are due to Force Majeure Events.

Section 7.05 Inspection of Books and Records

a. Developer will maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the Authority to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

b. The Authority reserves the right to inspect, monitors, and observe work and services performed by Developer at any and all reasonable times.

c. The Authority reserves the right to audit the records of Developer any time during the performance of this Agreement and for a period of five years after final payment is made under this Agreement.

d. Access will be immediately granted to the Authority or any of their duly authorized representatives to any books, documents, papers, and records of Developer or its contractors for the purpose of performing audits and examinations or making copies and transcriptions. This requirement must be included in all contracts and subcontracts.

Section 7.06 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Authority or Developer in this Agreement, including the attachments hereto, will not be unreasonably withheld or delayed. All approvals will be in writing. Except as otherwise expressly provided in this Agreement, failure by either party to approve a matter within the time provided for approval of the matter will not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter will not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of the Authority will be deemed granted upon the written approval of the Authority's Executive Director or designee. Notwithstanding the foregoing, the Executive Director or designee may, in his or her sole discretion, refer to the governing body of the Authority any item requiring Authority approval; otherwise, "Authority approval" means and refer to approval by the Executive Director or designee.

Section 7.07 Real Estate Commissions

Neither the Authority nor the Developer will be liable for any real estate commissions, brokerage fees or finder fees which may arise from this transaction. The Authority and the Developer each represent to the other that it has employed no broker, agent, or finder in connection with this transaction.

Section 7.08 No Third Party Beneficiaries

This Agreement is made solely and specifically between the Authority and Developer and their respective successors and assigns; and, except as expressly provided otherwise in this Agreement, no other person other than the City will have any rights, interest or claims under this Agreement or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 7.09 Authority to Sign

Developer hereby represents that each person executing this Agreement on behalf of Developer has full authority to do so and to bind Developer to perform pursuant to the terms and conditions of this Agreement.

Section 7.10 No Partnership

Nothing contained in this Agreement will be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause Authority to be responsible in any way for the debts or obligations of Developer or any other Person.

Section 7.11 Compliance With Law

Developer agrees to comply with all the requirements now in force, or which may hereafter be in force, of any Governmental Authority, pertaining to the development and use of the Property and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Developer in any action or proceeding, whether Authority be a party thereto or not, that Developer has violated any such ordinance or statute in the development and use of the Property will be conclusive of that fact as between Authority and Developer.

Section 7.12 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 7.13 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 7.14 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, will constitute one single instrument.

Section 7.15 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement will in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction will be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, will be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each other term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there

be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this “Agreement” mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking “herein,” “hereunder,” or “pursuant hereto” (or language of like import) means, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

Section 7.16 Entire Agreement, Waivers and Amendments

a. This Agreement will be executed in three duplicate originals each of which is deemed to be an original. This Agreement will constitute the entire understanding and agreement of the parties.

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

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Authority or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Authority and the Developer. This Agreement and any provisions hereof may be amended by mutual written agreement by the Developer and the Authority.

Section 7.17 Time for Acceptance of Agreement by Authority

If this Agreement, when executed by Developer and delivered to Authority, is not authorized, executed and delivered by Authority within sixty (60) days after date of signature by Developer, Developer may revoke its offer to enter into this Agreement upon written notice to Authority. The effective date of this Agreement will be the date when this Agreement has been executed by Authority.

[SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Authority and Developer have signed this Agreement as of the dates set opposite their signatures.

“AUTHORITY”

IMPERIAL BEACH HOUSING AUTHORITY,
a public body, corporate and politic

Dated: _____, 20__

By: _____
Tyler Foltz, AICP
Executive Director

ATTEST:

By: _____
Jacqueline M. Kelly, MMC
Authority Secretary

APPROVED AS TO FORM:

By: _____
Jennifer Lyon
Authority Counsel

KANE, BALLMER & BERKMAN

By: _____
Authority Special Counsel

“DEVELOPER”

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

Dated: _____, 20__

By: _____

Managing Member

ATTACHMENT NO. 1

SITE MAP

(When finalized show Neighborhood Center as “Not a Part
Except for Connections to housing per Affordable Housing Agreement)

ATTACHMENT NO. 2

LEGAL DESCRIPTION

(When finalized exclude from the description the real property comprising the Neighborhood Center except for connections to housing per Affordable Housing Agreement)



LEGEND

- 1 PROMENADE TO COMMUNITY CENTER
- 2 PROPERTY FENCE - 5' HEIGHT
- 3 SHADE CANOPY
- 4 COVERED TERRACE / COMMUNITY ROOM
- 5 FIREPLACE
- 6 C.I.P. BBQ WALL + COUNTER TOP
- 7 TRASH ENCLOSURE (PER ARCH)
- 8 TREE IN GRATE
- 9 CROSSWALK
- 10 LOADING YARD
- 11 ADA PARKING SPACE
- 12 PRIVATE PATIO (REFER TO ARCH)
- 13 STORMWATER GARDENS
- 14 COMMUNITY CENTER TERRACES
- 15 PARKING STALL (8.5'X18')
- 16 ONE WAY DRIVEWAY
- 17 COMMUNITY COURTYARD
- 18 SEATWALL

THE INFORMATION AND GRAPHIC REPRESENTATIONS CONTAINED HEREIN ARE THE PROPERTY OF STUDIO E ARCHITECTS AND SHOULD NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF STUDIO E ARCHITECTS.

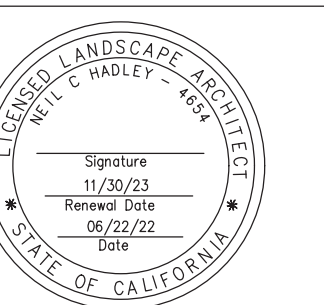
Imperial Beach Neighborhood Center + Housing

455 Palm Avenue, Imperial Beach, CA 91932

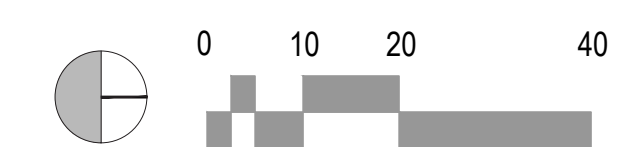
Wakeland Housing

Project 20105

06/24/22 CDP Submittal
08/15/22 CDP Resubmittal



Concept
Plan



L100

Attachment 2

EXHIBIT "A" Legal Description

For [APN/Parcel ID\(s\): 625-230-23-00](#)

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

PARCEL 1:

LOT 6 OF BUTTERFIELD SUBDIVISION, IN CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 8846, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY APRIL 28, 1978, AS [FILE NO. 78-173049 OF OFFICIAL RECORDS](#).

PARCEL 2:

AN EASEMENT AND RIGHT OF WAY FOR INGRESS AND EGRESS, ROAD AND UTILITY PURPOSES, INCLUDING BUT NOT LIMITED TO ELECTRIC POWER, TELEPHONE, GAS, WATER, SEWER AND CABLE TELEVISION LINES AND APPURTENANCES THERETO, TOGETHER WITH THE RIGHT AND POWER TO CONVEY THE SAME TO OTHERS OVER, UNDER, ALONG AND ACROSS THOSE PORTIONS OF LOTS 1 THRU 5 OF BUTTERFIELD SUBDIVISION, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 8846](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, APRIL 28, 1978 AS [FILE NO. 78-173049 OF OFFICIAL RECORDS](#); LYING WITHIN THE "EASEMENT DEDICATED HEREON" AS DELINEATED AND DESIGNATED ON SAID [MAP NO. 8846](#).

ATTACHMENT NO. 3

METHOD OF FINANCING

This is the Method of Financing attached to the Affordable Housing Agreement (the “**Agreement**”) between the Imperial Beach Housing Authority (the “**Authority**”) and Wakeland IBNCA LP (the “**Developer**”), relating to Developer’s development on a leasehold parcel on the Property, to be acquired by Developer, for a 50-unit (including one manager’s unit) senior residential rental project, to be rented at Affordable Rents to Extremely Low Income, Very Low Income, and Low Income Senior Citizen Households.

The Project will be financed by a combination of construction and permanent loans, an LMIHAF Loan, the City Fees Deferral, other state and county affordable housing funds, and Developer Equity derived from the syndication of Four Percent Low Income Housing Tax Credits.

None of the funds to be provided by the Authority pursuant to the Agreement and its attachments, including without limitation the LMIHAF Loan, nor any of the fee deferrals to be provided by the City, including without limitation the provisions of the City Fees Deferral Note and City Deed of Trust, shall be expended for or applied to the planning, construction, development or operation of the Neighborhood Center. The planning and construction of the Neighborhood Center is to be at the sole cost and expense of Developer.

1. **Definitions.** Unless otherwise defined herein, capitalized terms will have the meanings ascribed to them in the Affordable Housing Agreement.

2. **Acquisition and Development Costs.** The parties estimate that the total Acquisition and Development Costs of the Project will be approximately \$43,500,000. The LMIHAF Loan consists of a loan of construction to permanent funds in the amount of \$625,000. The City Fees Deferral is in the maximum amount of \$_____.

3. **Sources of Construction Financing.** The parties anticipate that the Acquisition and Development Costs will be financed during the Construction Period with the following combinations of funds:

- a. The Construction Loan, in the approximate original principal total amount of \$34,000,000, with holdbacks in accordance with the applicable loan documents, to be secured by a first deed of trust.
- b. A City Fees Deferral Note, in the approximate original principal amount of \$_____, to be secured by the City Deed of Trust.
- c. A LMIHAF Loan in the original principal amount of \$625,000, less a \$62,500 hold-back, equal to ten percent (10%) of disbursements during construction.

- d. One or more County of San Diego Loans in the approximate principal amount of \$3,000,000, to be secured by a deed of trust.
- e. Developer Equity consisting of: (i) advances and capital contributions made by Developer's Limited Partner, in the approximate amount of \$2,800,000; and (ii) the deferral of a portion of the Developer Fee in the amount of approximately \$0 ("Deferred Developer Fee"), which will be paid from the net cash flow of the Project. Developer's right to pay the theretofore unpaid balance of the Deferred Developer Fee from the net cash flow of the Project will be prior to the Authority's and City's right to receive Residual Receipts payments.
- f. Developer will be responsible during the Construction Period to provide funds if and as needed to pay for cost overruns and contingencies not otherwise funded by the sources of funds as described herein.

4. **Sources of Permanent Financing.** Developer must make every reasonable effort to structure the terms of the permanent financing in a way that will minimize the amount of the LMIHAF Loan needed to fill the financing gap. The parties anticipate that the Acquisition and Development Costs will be financed during the Permanent Period with the following combinations of funds:

- a. The Permanent Loan, in the principal amount of \$2,700,000, to be secured by a first deed of trust.
- b. The County Housing and Community Development loan in the principal amount of \$14,000,000, to be secured by a deed of trust.
- c. The City Fees Deferral Note described in paragraph 3.b above, secured by a deed of trust.
- d. The LMIHAF Loan described in paragraph 3.c above, secured by a deed of trust.
- e. A County of San Diego Loan in the approximate principal amount of \$6,000,000, to be secured by a deed of trust.
- f. Developer Equity, consisting of (1) the Deferred Developer Fee described in paragraph 3.f above in the approximate amount of \$0 (to be paid to the extent contractually and financially available from the net cash flow of the Project) plus (2) an additional Limited Partner's Capital Contribution in the approximate amount of approximately \$19,000,000.

5. **Project Budget.** The parties anticipate that all Acquisition and Development Costs will be as set forth in the Project Budget attached to the Affordable Housing Agreement as Attachment No. 5, which is incorporated herein by this reference (the "**Project Budget**"). The

Project Budget will be subject to change from time-to-time, subject to the prior written approval of the Authority Executive Director or designee (which approval will not be unreasonably withheld, conditioned or delayed), upon which approval the Project Budget will be replaced by the approved revised Project Budget, and the corresponding amounts set forth herein will be deemed replaced consistent therewith. Within the respective times provided therefor in the Schedule of Performance, the Developer will obtain all approvals needed for the Construction Loan and demonstrate, to the satisfaction of the Authority Executive Director, that all Developer Equity will be available for payment or refinancing of Development Costs when and as required by this Method of Financing. Pursuant to the Affordable Housing Agreement, the Authority Executive Director is authorized to approve a subordination agreement to be executed by the Authority with respect to the Authority Deed of Trust and Agreement Containing Covenants, and will cooperate with the City for the execution of a subordination agreement to be executed by the City with respect to the City Deed of Trust and Agreement Containing Covenants.

6. **Evidence of Financing.** The sum of the sources of financing identified in paragraph 3 above will, at all times, be sufficient to pay all Acquisition and Development Costs as set forth in the most recently approved Project Budget. Prior to the Construction Financing Event, Developer will submit for Authority review and approval evidence of such financing, including: (a) copies of all documents required by the Construction Lender to obtain construction financing; (b) firm commitments for the Permanent Financing and copies of all documents that will be required to obtain the Permanent Financing; and (c) the amended and restated limited partnership agreement upon inclusion of the Investor Limited Partner, including all exhibits thereto, and other documentation evidencing the availability of the Limited Partner Capital Contribution, and such other documentation as may be appropriate to evidence other Developer Equity. The Authority will not unreasonably withhold its approval.

7. **Authority Loan.**

a. In accordance with and subject to the terms and conditions of the Affordable Housing Agreement and this Method of Financing, the Authority agrees to make the LMIHAF Loan to Developer and Developer agrees to borrow such funds for the purpose of paying Acquisition and Development Costs.

b. Developer hereby acknowledges that the LMIHAF Loan is intended to be “gap” financing, not to exceed the amount needed to bridge the gap between the total Acquisition and Development Costs and the maximum Senior Loan obtainable by Developer plus the maximum amount of Developer’s Equity set forth above but in any event not to exceed the dollar amount set forth above. If at any time Developer obtains additional financial assistance, Developer must promptly notify the Authority. The Authority will determine if such additional assistance would result in an over-subsidy of the Project, in which case, the Authority and Developer will mutually agree upon appropriate procedures for reducing the LMIHAF Loan to eliminate the over-subsidy.

c. The LMIHAF Loan will be used exclusively to pay Acquisition and Development Costs identified in the Project Budget.

d. At the Construction Financing Event, the Authority and Developer will execute and deliver such instruments and documents as may be necessary to evidence and secure the LMIHAF Loan, consistent with the terms of the Affordable Housing Agreement and this Method of Financing, and each in a form that is acceptable to the Authority Executive Director or designee, including the following documents, as applicable, which are referred to as the “Authority Loan Documents”:

1. Agreement Containing Covenants;
2. Notice of Affordability Restrictions on Transfer of Property;
3. Promissory Note evidencing the LMIHAF Loan;
4. Authority Deed of Trust securing the LMIHAF Loan;
5. Promissory Note evidencing the City Fees Deferral;
6. City Deed of Trust securing the City Fees Deferral Note;
7. Assignment of Rents and Leases;
8. Assignment of Agreements;
9. Environmental Indemnity;
10. Disbursement Agreement; and
11. UCC-1 Financing Statement.

8. **Subordination.**

a. The liens of the Authority Deed of Trust and the City Deed of Trust, but not (unless and to the extent otherwise approved in writing by the Authority Executive Director or designee) the Agreement Containing Covenants, will be subordinate to the lien created by the Senior Loans and any other of the Senior Loan Documents and all of the terms and conditions contained in the Senior Loan Documents. The lien of the Agreement Containing Covenants shall be subject to a subordination agreement that is mutually acceptable to the Senior Lender involved, the Authority Executive Director and Developer.

b. Prior to the Construction Financing Event, the Authority Executive Director or designee will execute a Subordination Agreement that is consistent with applicable laws and regulations governing subordination of the LMIHAF Loan and is mutually acceptable to the Authority Executive Director or designee, the applicable Senior Lender and Developer, and will cooperate with the City for the for the execution of a subordination agreement to be executed by the City with respect to the City Deed of Trust. The Subordination Agreements will subordinate the Authority Deed of Trust and the City Deed of Trust unless approved by the Authority Executive

Director and the Manager to the Senior Loans and other Senior Loan Documents. The lien of the Agreement Containing Covenants shall be subject to a subordination agreement that is mutually acceptable to the Senior Lender involved, the Authority Executive Director and Developer. The subordination agreements must provide the Authority and the City with all rights under California Civil Code Section 2924b and 2924c and must contain written commitments reasonably designed to protect the Authority's and City's investment in the event of a default. Such written commitments will provide for, but not necessarily be limited to: (i) a right to cure a default on the Senior Loan deed of trust; (ii) a right to negotiate with Senior Lender after notice of default and prior to Senior Lender commencing foreclosure proceedings; and (iii) a right to purchase Developer's interest in the Property at any time after a default (subject to any applicable notice and cure provisions) on the Senior Loan.

9. **Recordation.** Upon the Construction Financing Event, the Title Company will record the recordable Authority Loan Documents in accordance with instructions provided by the Authority, and will be prepared to issue to the Authority and the City ALTA policies of title insurance, insuring the City Deed of Trust as a lien on the Property, and the Authority Deed of Trust as a lien on the Property in amounts and with endorsements as the Authority and City may determine is appropriate.

10. **Disbursement of Authority Loan.**

a. The Authority Loan will be disbursed for the payment of Acquisition and Development Costs in accordance with the Evidence of Financing approved by the Authority and a disbursement agreement among the Authority, Construction Lender and Developer, substantially in the form attached to the Affordable Housing Agreement as Attachment No. 13 or in such other form and substance that is mutually acceptable to the Executive Director, Construction Lender, and Developer (the "**Disbursement Agreement**"). The form of Disbursement Agreement may be modified to remove the Construction Lender as signatory if required by Construction Lender.

b. The Authority Loan will be disbursed based on vouchers for actual expenses incurred or paid, accompanied by contractor/subcontractor invoices and other information and documentation (e.g., lien releases) requested or required by the Authority. The Authority will have the right to condition any disbursement upon receipt and approval of such documentation, evidence or information that it may request, including, but not limited to, vouchers, invoices, and architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed. The Authority will have the right in its sole discretion to make disbursements of funds payable jointly to Developer and third parties entitled to such payment. The Authority will have the right to review and audit all records of Developer pertaining to disbursement of the LMIHAF Loan. Developer must maintain such records for a period of not less than five years after Completion.

c. Disbursements upon Applications for Payment will be subject to a ten percent (10%) retention. Developer may submit a final invoice upon Completion. Final payment, including retention previously withheld, will be made in accordance with the Affordable Housing Agreement and this Method of Financing.

11. **Repayment Terms.** The repayment terms of the City Fees Deferral will be as set forth in the City Fees Deferral Note attached to the Affordable Housing Agreement as Attachment No. 14. The repayment terms of the LMIHAF Loan will be as set forth in the LMIHAF Note attached to the Affordable Housing Agreement as Attachment No. 8.

12. **Conditions Precedent to Construction Financing Event**

The Construction Financing Event is conditioned upon each of the following occurring to the satisfaction of, and in a form approved by, the Authority Executive Director prior to the time for the Construction Financing Event set forth in the Schedule of Performance:

1. Developer submits evidence that the final working drawings have been approved by the City;
2. Developer submits a copy of the general construction contract between the Developer and a licensed general contractor approved by the Authority Executive Director or designee, covering all construction required by the Affordable Housing Agreement and the approved final working drawings;
3. Developer submits for Authority approval copies of the mechanical, electrical, plumbing, and framing subcontracts and subcontracts for other trades identified by the Authority;
4. Developer submits for Authority approval copies of contracts with the architect, the property manager (which must be consistent with the requirements of the Affordable Housing Agreement), and other consultants and service providers identified by the Authority;
5. Developer submits a final Project Budget, current as of the Construction Financing Event date, demonstrating to the satisfaction of the Authority Executive Director or designee the availability of sufficient funds to pay all Acquisition and Development Costs;
6. Developer submits evidence satisfactory to the Authority Executive Director or designee that the Developer has financing commitments sufficient to pay all Acquisition and Development Costs in accordance with the Affordable Housing Agreement, including the Construction Loan, LMIHAF Loan, City Fees Deferral, any HCD Loan, any County Loan, and Developer's Equity (including the Limited Partner Capital Contribution) in the respective amounts set forth in this Method of Financing;
7. Developer submits the Ground Lease between the owner of the Property and the Developer for the reasonable approval of the Authority Executive Director for consistency with the Agreement and its attachments.
8. Developer submits copies of final Construction Loan Documents;

9. Developer submits copies of Amended and Restated Limited Partnership Agreement (admitting Investor Limited Partner) or other final limited partnership agreement and related documents;
10. Developer submits the evidence of insurance policies and the endorsements required by the Affordable Housing Agreement;
11. Developer submits evidence satisfactory to the Authority Executive Director or designee that Developer has satisfied all conditions precedent to the issuance of all Permits necessary for the construction of the Improvements, other than payment of fees (for which funds have been budgeted in the Project Budget) and conveyance of title;
12. Developer submits, if requested by the Authority, and Authority approves, an estimated draw schedule for the LMIHAF Loan;
13. Developer submits the Annual Project Budget for the first year of operation, as required by the Affordable Housing Agreement;
14. Developer, Construction Lender, and Authority agree on a Disbursement Agreement providing for disbursement of the LMIHAF Loan, Developer Equity, and Construction Loan;
15. Developer, Senior Lender, Authority and City agree on Subordination Agreements;
16. Title Insurance Company is prepared to issue the title insurance policies required by the Affordable Housing Agreement;
17. Developer duly executes and delivers to the Authority or into escrow the LMIHAF Loan Documents and the City Fees Deferral Note;
18. Developer submits to the Authority a fully executed agreement to enter into a contract for Project-based HUD Section 8 vouchers for Units to be subsidized by Section 8 as set forth in the Project Budget; and
19. Authority Executive Director determines that Developer is not in default of its obligations to the Authority under the Affordable Housing Agreement.

Notwithstanding the foregoing, the Authority, in the sole discretion of the Authority Executive Director, may waive in writing any of the foregoing conditions precedent to the Construction Financing Event. A waiver of any of the foregoing conditions will not operate in any way as a waiver, or estoppel with respect to, any subsequent or other failure to comply with such condition, or any other condition contained in the Affordable Housing Agreement, this Method of Financing, or any of the other LMIHAF Loan Documents. The Authority's approval to record the Authority Deed of Trust will confirm the Authority's approval or waiver of the conditions set forth in this Section 12.

ATTACHMENT NO. 4
SCHEDULE OF PERFORMANCE

1. Submittal - Management Plan and Maintenance Program. Developer will submit to the Authority for approval the Management Plan (including a Tenant Selection and Eligibility Plan) and the Maintenance Program. Prior to the initial lease-up of the Project.
2. Submittal – Affirmative Marketing Plan. Developer will prepare and submit to the Authority for approval the Affirmative Marketing Plan. Prior to the initial lease-up of the Project.
3. Submittal - Annual Project Budget. Developer will submit to the Authority for approval a current Annual Project Budget for the first year of operation. Prior to submittal of the Affordable Housing Agreement to the Authority for approval; revisions to the approved Annual Project Budget must be submitted for approval prior to the scheduled date for the Construction Financing Event.

- | | | |
|----|--|---|
| 4. | <u>Approval of Affordable Housing Agreement by the Authority.</u> The Authority will review and consider approval of the Affordable Housing Agreement, and consider authorizing the execution and delivery of the Affordable Housing Agreement to the Developer. | Within sixty (60) days after submission to Authority of the Affordable Housing Agreement executed by Developer. |
| 5. | <u>Submittal - Final Construction Drawings and Specifications.</u> Developer will prepare and submit to the City for approval the Final Construction Drawings and Specifications. | Within one hundred and eighty (180) days prior to the date scheduled for the Construction Financing Event.. |
| 6. | <u>Approval - Final Construction Drawings and Specifications.</u> The City will approve or disapprove the Final Construction Drawings and Specifications. | Within sixty (60) days after Developer submits for City approval the complete Final Construction Drawings and Specifications. |

- | | | |
|-----|---|--|
| 7. | <u>Submittal – Subcontracts.</u> Developer will submit to the Authority for approval the construction contract subcontracts required by the Affordable Housing Agreement. | Five (5) days prior to the scheduled date for the Construction Financing Event. |
| 8. | <u>Submittal – Environmental Assessments.</u> Developer will deliver to the Authority copies of environmental assessments as required by the Affordable Housing Agreement. | Two weeks prior to the scheduled date for the Construction Financing Event. |
| 9. | <u>Submittal - Evidence of Financing.</u> Developer will submit to the Authority substantially final Construction Loan documents, tax credit documents, and documentation of Developer Equity, as described in the Method of Financing. | Prior to the scheduled date for the Construction Financing Event. |
| 10. | <u>Approval of Financing.</u> The Authority will approve or disapprove the evidence of financing. | Prior to the scheduled date for the Construction Financing Event. |
| 11. | <u>Construction Financing Event.</u> All conditions precedent to the Construction Financing Event will have been satisfied. | Within two (2) years after execution of the Affordable Housing Agreement by the Authority. |
| 12. | <u>Submittal - Tenant Lease Form.</u> Developer will prepare and submit to the Authority for approval the tenant lease form with the lease provisions described in the Agreement Containing Covenants. | Prior to the initial lease-up of the Project. |
| 13. | <u>Approval – Management Plan, Tenant Selection and Eligibility Plan, Maintenance Program, Affirmative Marketing Plan, Tenant Lease Form.</u> The Authority will approve or disapprove Developer’s proposed Management Plan, Tenant Selection and Eligibility Plan, Maintenance Program, Affirmative Marketing Plan, and Tenant Lease Form. | Prior to the initial lease-up of the Project. |

- | | | |
|-----|---|---|
| 14. | <u>Commencement of Construction.</u> Developer will commence construction of the Improvements on the Property. | Within sixty (60) days after the Construction Financing Event. |
| 15. | <u>Completion of Construction.</u> Developer will complete construction and rehabilitation of the Improvements on the Property. | Not later than twenty-four (24) months after the commencement of construction or such later date as may be approved by the Authority. |
| 16. | [Intentionally Deleted] | |
| 17. | <u>Submittal – Rent Schedule.</u> Developer will submit its proposed rent schedule and utility allowance to the Authority for approval. | Thirty (30) days prior to initial rental of the units and on an annual basis thereafter. |

Note 1: The Authority Executive Director may approve in writing extensions of time for the performance of any item required of Developer in this Schedule of Performance provided the Executive Director is reasonably satisfied that Developer is diligently proceeding in good faith to perform the actions required, and further provided that the time for the occurrence of the Construction Financing Event Date shall not be extended for more than an aggregate total period of twelve (12) months.

Note 2: The Authority Executive Director may in their sole discretion approve in writing extensions of time for City building permits and other permits required to be issued or approved by the City for the construction of the development required by this Agreement, provided the Executive Director is satisfied that Developer is diligently proceeding in good faith to proceed with the construction of the development.

Uses of Funds	Version: v2.01 NHTF
----------------------	---------------------

	TOTAL	Res Cost: Res Sq Foot:	100.00%		COST ALLOCATIONS Assuming 266 Election? No			LIHTC ELIGIBLE BASIS		OTHER BASIS & COST ALLOCATIONS					
			Per Unit	Total Residential	Total Non-Residential	Depreciable			Constr./Rehab	Acquisition	Deferred to Completion or Perm Conv.	Land/Basis for 50% Test	Historic Rehab Tax Credit Basis	ITC Tax Credit Basis (Solar PV)	
						Non-Depreciable	Residential	Non-Resid.							Expensed
ACQUISITION COSTS															
Total Purchase Price - Real Estate: 2,000,000															
Land - Imperial Beach Neighborhood Cou	2,000,000	40,000	2,000,000	0	2,000,000	0	0	0	0	0	2,000,000	0	0	0	
Title/Recording/Escrow - Acquisition	5,000	100	5,000	0	5,000	0	0	0	0	0	5,000	0	0	0	
Off-Site Improvements	150,000	3,000	150,000	0	150,000	0	0	0	0	0	150,000	0	0	0	
HARD COSTS															
Total Construction Contract: 21,390,381															
NEW CONSTRUCTION															
Demolition	226,825	4,537	226,825	0	226,825	0	0	0	0	0	226,825	0	0	0	
Hard Costs-Unit Construction	14,306,593	286,132	14,306,593	0	14,306,593	0	0	14,306,593	0	0	14,306,593	14,306,593	0	0	
Personal Property in Construction Contrac	584,984	11,700	584,984	0	584,984	0	0	584,984	0	0	584,984	584,984	0	0	
Site Improvements/Landscape	2,435,836	48,717	2,435,836	0	2,435,836	0	0	2,435,836	0	0	2,435,836	2,435,836	0	0	
Rough Grading	321,522	6,430	321,522	0	321,522	0	0	321,522	0	0	321,522	321,522	0	0	
GC - General Conditions	1,294,611	25,892	1,294,611	0	1,294,611	0	0	1,294,611	0	0	1,294,611	1,294,611	0	0	
GC - Overhead & Profit	1,004,972	20,099	1,004,972	0	1,004,972	0	0	1,004,972	0	0	1,004,972	1,004,972	0	0	
GC - Insurance	297,036	5,941	297,036	0	297,036	0	0	297,036	0	0	297,036	297,036	0	0	
GC - Bond Premium	285,965	5,719	285,965	0	285,965	0	0	285,965	0	0	285,965	285,965	0	0	
Construction - Other - PhotoVoltaic System	432,037	8,641	432,037	0	432,037	0	0	432,037	0	0	432,037	432,037	0	432,037	
Construction - Other - Environmental Remm	50,000	1,000	50,000	0	50,000	0	0	50,000	0	0	50,000	50,000	0	0	
Contingency - Owners Construction	2,139,391	42,786	2,139,391	0	2,139,391	0	0	2,139,391	0	0	2,139,391	2,139,391	2,139,391	0	
REHAB															
SOFT COSTS															
Architecture - Design	750,000	15,000	750,000	0	750,000	0	0	750,000	0	0	750,000	750,000	0	15,148	
Architecture - Supervision	40,000	800	40,000	0	40,000	0	0	40,000	0	0	40,000	40,000	0	808	
Design/Engineering - Civil + Utilities	250,000	5,000	250,000	0	250,000	0	0	250,000	0	0	250,000	250,000	0	0	
Design/Engineering - Soils	30,000	600	30,000	0	30,000	0	0	30,000	0	0	30,000	30,000	0	0	
Design/Engineering - Reimbursibles	30,000	600	30,000	0	30,000	0	0	30,000	0	0	30,000	30,000	0	0	
ALTA Survey	25,000	500	25,000	0	25,000	0	0	25,000	0	0	25,000	25,000	0	0	
Environmental Consulting	120,000	2,400	120,000	0	120,000	0	0	120,000	0	0	120,000	120,000	0	0	
Prevailing Wage Monitor	75,000	1,500	75,000	0	75,000	0	0	75,000	0	0	75,000	75,000	0	1,515	
Owner's Rep / Construction Supervision	125,000	2,500	125,000	0	125,000	0	0	125,000	0	0	125,000	125,000	0	2,525	
Local Development Impact Fees	325,000	6,500	325,000	0	325,000	0	0	325,000	0	0	325,000	325,000	0	0	
Local Permits/Fees	150,000	3,000	150,000	0	150,000	0	0	150,000	0	0	150,000	150,000	0	0	
Utility Connection Fees	100,000	2,000	100,000	0	100,000	0	0	100,000	0	0	100,000	100,000	0	2,020	
Relocation - Permanent	74,000	1,480	74,000	0	74,000	0	0	74,000	0	0	74,000	74,000	0	0	
Real Estate Taxes During Const	100,000	2,000	100,000	0	100,000	0	0	100,000	0	0	100,000	100,000	0	0	
Appraisal	6,000	120	6,000	0	6,000	0	0	6,000	0	0	6,000	6,000	0	0	
Market/Rent Comp Study	6,000	120	6,000	0	6,000	0	0	6,000	6,000	0	0	0	0	0	
Soft Cost - Misc - City Cost Review	25,000	500	25,000	0	25,000	0	0	25,000	0	0	25,000	25,000	0	0	
Soft Cost - Misc - Developer Performance I	7,000	140	7,000	0	7,000	0	0	7,000	0	0	7,000	7,000	0	0	
Soft Cost Contingency	366,650	7,333	366,650	0	366,650	0	0	366,650	0	0	366,650	366,650	0	0	
Construction Loan Interest	2,347,372	46,947	2,347,372	0	1,551,653	0	795,719	1,551,653	0	0	1,551,653	1,551,653	0	28,490	
Title/Recording/Escrow - Construction	85,000	1,700	85,000	0	85,000	0	0	85,000	0	0	85,000	85,000	0	0	
Legal (Owner): Construction Closing	100,000	2,000	100,000	0	100,000	0	0	100,000	0	0	100,000	100,000	0	0	
Organization of Ptntship	7,500	150	7,500	0	7,500	0	0	7,500	0	0	7,500	7,500	0	0	
Syndication - LP	35,000	700	35,000	0	35,000	0	0	35,000	0	0	35,000	35,000	0	0	
Syndication Consulting	106,000	2,120	106,000	0	106,000	0	0	106,000	0	5,000	106,000	106,000	0	0	
Audit/Cost Certification	20,000	400	20,000	0	20,000	0	20,000	20,000	0	0	20,000	20,000	0	0	
TCAC Application/Res/Monitoring Fee	115,363	2,307	115,363	0	115,363	0	0	115,363	115,363	0	115,363	115,363	0	0	
Marketing	75,000	1,500	75,000	0	75,000	0	75,000	75,000	0	0	75,000	75,000	0	0	
Furnishings Not in Contract	1,000,000	20,000	1,000,000	0	1,000,000	0	0	1,000,000	1,000,000	0	1,000,000	1,000,000	0	0	
Capitalized Operating Reserve (3 mos.)	216,334	4,327	216,334	0	216,334	0	0	216,334	0	216,334	216,334	216,334	0	0	
NPLH Transition Reserve	270,000	5,400	270,000	0	270,000	0	0	270,000	0	0	270,000	270,000	0	0	
Developer Fee	2,200,000	44,000	2,200,000	0	2,200,000	0	0	2,200,000	0	1,320,000	2,200,000	2,200,000	2,200,000	72,381	
FINANCING FEES															
Construction Lender Origination Fee	209,400	4,188	209,400	0	138,417	0	70,983	138,417	0	0	138,417	138,417	138,417	0	
Construction Lender Expenses	25,000	500	25,000	0	16,525	0	8,475	16,525	0	0	16,525	16,525	16,525	0	
Construction Lender Counsel	40,000	800	40,000	0	26,441	0	13,559	26,441	0	0	26,441	26,441	26,441	0	
Permanent Lender Expenses	10,000	200	10,000	0	0	0	10,000	0	0	0	0	0	0	0	
Permanent Lender Counsel	30,000	600	30,000	0	0	0	30,000	0	0	0	0	0	0	0	
Permanent Loan Origination Fee	32,090	642	32,090	0	32,090	0	32,090	32,090	0	0	32,090	32,090	32,090	0	
Subtotal - Financing/Costs of Issuance	346,490	6,930	346,490	0	0	181,383	0	165,107	181,383	0	0	181,383	181,383	0	
TOTAL DEVELOPMENT COSTS	35,063,481	701,270	35,063,481	0	3,454,681	30,424,111	0	890,719	293,970	30,424,111	0	1,831,834	33,177,458	25,971,254	554,924
TDC Per Unit	701,270	100.00%													
TDC Net of accrued interest:	35,063,481														
TDC TCAC	34,894,981														

Recording Requested by and
When Recorded Mail to:

Imperial Beach Housing Authority
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention:

APN: 625-230-23-00

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

Notice of Affordability Restrictions

NOTICE IS HEREBY GIVEN that pursuant to Health & Safety Code Section 33334.3(f), the Imperial Beach Housing Authority is recording this Notice of Affordability Restrictions (hereinafter the “**Notice**”) with regard to the property located at 455 Palm Avenue, Imperial Beach, California, and more particularly described in Exhibit “A” attached hereto (the “**Property**”).

The Property is subject to an Agreement Containing Covenants (the “**Covenants**”) recorded concurrently herewith, which restricts the use of the Property as follows:

- (1) 25 Units will be rented exclusively to an Extremely Low Income Senior Citizen Household at an Affordable Rent as provided in California Health and Safety Code Section 50106, consisting of 5 one bedroom Units and 20 studio Units;
- (2) 24 Units will be rented exclusively to Moderate Income Senior Citizen Households at an Affordable Rent as provided in in applicable California Health and Safety Code statutes and regulations, consisting of 20 studios and 4 one bedroom units Units;

The maximum incomes of eligible tenants under (1) and (2) will be determined on the basis of the income limits for Extremely Low Income, Very Low Income and Low Income households in the San Diego SMSA, published approximately annually by the California Department of Housing and Community Development (“HCD”). If HCD discontinues publishing such income limits, the term “Extremely Low Income” will mean a household income that does not exceed 30% of the area median income, adjusted for family size. Moderate Income” will mean a household income that does not exceed 120% of the area median income, adjusted for family size.

For the term of the Tax Credits, in no case will household income in any of the Units exceed applicable Tax Credit income limits set forth in the TCAC Agreement or otherwise required by virtue of the use of the Tax Credits for the Project.

Rents charged to a tenant will not exceed rents that are affordable to Extremely Low Income, and Moderate Income households, as applicable, (as “**Affordable Rent**” is defined below). The maximum rents, including a reasonable utility allowance for utilities and services (excluding telephone) to be paid by Extremely Low Income, and Moderate Income Senior Citizen Households will be the lower of the maximum rent applicable to Low Income Housing Tax Credits pursuant to the Tax Reform Act of 1986, as amended, and governed by Section 42 of Internal Revenue Code requirements for so long as such requirements are applicable or the maximum rent for the applicable income level as set forth below:

- (a) In the case of an Extremely Low Income Senior Citizen Household, the maximum rent will be a rent that does not exceed 30 percent (30%) of thirty percent (30%) of the area median income adjusted for household size appropriate to the unit, as determined by the California Department of Housing and Community Development;
- (b) In the case of a Very Low Income Senior Citizen Household, the maximum rent will be a rent that does not exceed 30 percent (30%) of one hundred ten percent (110%) of the area median

income adjusted for household size appropriate to the unit, as determined by the California Department of Housing and Community Development;

The affordability restrictions imposed on the Property by the Covenants are scheduled to expire on the date that is 55 years after the recordation of this Agreement.

This Notice is recorded for the purpose of providing notice only and it in no way modifies the provisions of the Covenants.

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

IMPERIAL BEACH HOUSING AUTHORITY,
a public body, corporate and politic

Dated: _____, 202_

By: _____
Tyler Foltz, AICP
Executive Director

ATTEST:

By: _____
Jacqueline M. Kelly, MMC
Authority Secretary

APPROVED AS TO FORM:

By: _____
Jennifer Lyon
Authority Counsel

KANE, BALLMER & BERKMAN

By: _____
Authority Special Counsel

[SIGNATURES CONTINUE ON NEXT PAGE]

CONSENT TO RECORDATION

The undersigned, owner of the interest in real property legally described in Exhibit "A" hereto, hereby consents to the recordation of the foregoing Notice of Affordability against said real property.

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

Dated: _____, 202_

By: _____

Managing Member

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit “A”

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between South District Union of the California-Pacific Annual Conference of the United Methodist Church and Wakeland IBNCA LP, a California limited partnership, dated as of _____, 202_ in the real property described as follows:

APN: 625-230-23-00

Imperial Beach Neighborhood Center Apartments
Notice of Affordability Restrictions
Exhibit A – Legal Description

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Imperial Beach Housing Authority
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 625-230-23-00

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

AGREEMENT CONTAINING COVENANTS
(Including Rental Restrictions)
(455 Palm Avenue - Imperial Beach Neighborhood Center Apartments)

THIS AGREEMENT CONTAINING COVENANTS ("**Agreement**") is entered into as of _____, 20__ by and between the IMPERIAL BEACH HOUSING AUTHORITY, a public body, corporate and politic ("**Authority**") and WAKELAND IBNCA LP, a California limited partnership ("**Owner**").

WHEREAS, Owner is the owner of a long-term leasehold interest in that certain real property ("**Property**") located in the City of Imperial Beach, County of San Diego and State of California and more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference;

WHEREAS, for the purpose of providing housing that will be affordable to Extremely Low Income and Moderate Income Senior Citizen Households, not in any event to exceed applicable income and rent limits set forth in the TCAC Agreement defined below in connection with the Tax Credit program, Owner and the Authority have entered into an Affordable Housing Agreement, dated as of _____, 2024, as amended from time to time ("**Affordable Housing Agreement**"), which is incorporated herein by this reference (any capitalized term that is not otherwise defined in this Agreement has the meaning ascribed to such term in the Affordable Housing Agreement);

WHEREAS, pursuant to the Affordable Housing Agreement, the Authority is providing financial assistance to Owner to assist in the acquisition and development of the Property, using LMIHAF Funds;

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments
Agreement Containing Covenants

WHEREAS, Owner has agreed to repay to the City of Imperial Beach the City Fees Deferral under which the City deferred the payment of certain staff time based fees due to the City in connection with its review of the Project;

WHEREAS, the Owner has obtained an allocation of Low Income Housing Tax Credits pursuant to the Tax Reform Act of 1986, as amended, and governed by Section 42 of Internal Revenue Code (“**Tax Credits**”) and has entered into an agreement under such tax credit program to implement the Tax Credit program for the Project and to limit the income and rents of the Units (“TCAC Agreement”);

WHEREAS, the use of the Tax Credits to finance the development of the Property imposes income and affordability requirements; provided however, that nothing herein will be deemed to authorize charging rents in excess of the Affordable Rent for the specified units set forth in Section 3.a below and in the TCAC Agreement or otherwise required by virtue of the use of the Tax Credits for the Project; and

WHEREAS, the Affordable Housing Agreement contains certain provisions relating to the use of the Property and imposes additional income and affordability requirements.

NOW, THEREFORE, AUTHORITY AND OWNER COVENANT AND AGREE AS FOLLOWS:

1. Construction Covenant.

Owner hereby covenants and agrees on behalf of itself and its successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that Owner and such successors and assigns will develop and construct on the Property a residential apartment Project, which will contain fifty (50) residential units (40 one-bedrooms and 9 studios) and associated amenities, in accordance with the Affordable Housing Agreement, this Agreement, and Plans approved by the City of Imperial Beach.

2. Maximum Incomes.

a. Owner covenants and agrees for itself and its successors, its assigns and every successor in interest to the Property or any part thereof, that Owner and its successors and assignees will use the Property exclusively to provide affordable housing for Senior Citizen Households, subject to all of the terms and conditions of this Agreement, except for one unit designated as the management unit for the on-site manager. In addition:

(i) Twenty-Five (25) Units will be rented exclusively to an Extremely Low Income Senior Citizen Household at an Affordable Rent as provided in California Health and Safety Code Section 50106, consisting of 5 one bedroom Units and 20 studio Units; and

(ii) Twenty-Four (24) Units will be rented exclusively to a Moderate Income Senior Citizen Household at an Affordable Rent as provided in applicable California Health and Safety Code statutes and regulations, consisting of 4 one bedroom Units and 20 studio Units; and

(iii) All of the Units (except for the 1 manager's unit) will be rented subject to the Affordable Rent requirements and limitations as provided in the TCAC Agreement.

b. The maximum incomes of eligible tenants under (i) above will be determined on the basis of the income limits for Extremely Low Income households in the San Diego SMSA, published approximately annually by the California Department of Housing and Community Development ("HCD"). If HCD discontinues publishing such income limits, the term "Extremely Low Income" will mean a household income that does not exceed 30% of the area median income, adjusted for family size, and the term "Moderate Income" will mean a household income that does not exceed 120% of the area median income, adjusted for family size. For the term of the Tax Credits, in no case will household income in any of the Units exceed applicable Tax Credit income limits set forth in the TCAC Agreement or otherwise required by virtue of the use of the Tax Credits for the Project.

c. Owner will obtain and maintain on file an income computation and certification form from such prospective tenant dated immediately prior to the date of initial occupancy. Owner will verify that the income information provided by an applicant is accurate by following all applicable Authority policies and procedures and by taking one or more of the following steps as a part of the verification process: (i) obtain two (2) pay stubs from the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is reasonably satisfactory; or (v) obtain such other information as may be reasonably required. Each tenant lease will contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of a Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

d. Owner will update income records annually and provide copies of updated tenant eligibility records and monthly rental records to the Authority for review. Upon review of such records, the Authority may at its option perform an independent audit of the tenant eligibility records in order to verify compliance with the income and affordability requirements set forth herein. Costs for such an audit performed by the Authority will be deemed an Operating Expense, deductible from the Project's Revenue (as such terms are defined in the LMIHAF and City Fees Deferral Notes). Owner will retain the records described in this Section for a period of not less than five (5) years after the date each record was created.

3. Maximum Rents.

a. Rents charged to a tenant will not exceed rents that are Affordable Rent (as “Affordable Rent” is defined below). The maximum rents, including a reasonable utility allowance for utilities and services (excluding telephone) shall not exceed:

(i) In the case of an Extremely Low Income Senior Citizen Household, the maximum rent will be a rent that does not exceed 30 percent (30%) of thirty percent (30%) of the area median income adjusted for household size appropriate to the unit, as determined by the California Department of Housing and Community Development;

(ii) In the case of a Moderate Income Senior Citizen Household, the maximum rent will be a rent that does not exceed 30 percent (30%) of one hundred and ten percent (110%) of the area median income adjusted for household size appropriate to the unit, as determined by the California Department of Housing and Community Development;

(iii) In all cases, applicable to all of the Units, the maximum rent will be a rent that does not exceed the maximum rents set forth in the TCAC Agreement or otherwise required by virtue of the use of the Tax Credits for the Project.

b. The rent, income and affordability requirements of this Agreement will continue in effect for the period commencing at recordation of this Agreement and continuing until the date that is fifty-five (55) years after the recordation of this Agreement (the “Restricted Period”).

c. Failure to comply with the rent, income and affordability requirements of this Agreement following notice from the Authority and an opportunity to cure such failure is an event of default under the terms of the LMIHAF Loan and the City Fees Deferral. Pursuant to the LMIHAF Note and the City Fees Deferral Note, subject to the right to cure, the LMIHAF Loan and the City Fees Deferral will be due and payable immediately if the housing does not meet the rent, income and affordability requirements of this Agreement.

d. Upon request, the Authority Executive Director will notify Owner of the maximum rents that may be charged under Paragraphs 3.a.i, 3.a.ii, and 3.a.iii above (not to exceed “Affordable Rent”) and the maximum income of persons who are eligible to occupy the Property, based on the then-current area median income. In no event will rents exceed the maximum rent permitted by the tax credit regulations and the TCAC Agreement or (with regard to the allocation of units set forth in Section 2.a(i) and (ii) hereof) the rules applicable to the use of LMIHAF, whichever is the lowest.

e. Owner, its successors and assigns will not charge rents in excess of the amounts determined as set forth in Section 3. In the event that either Owner or the Authority determines that Owner has charged a tenant rent in excess of the amount set forth herein, Owner will immediately reimburse the tenant the amount of overpayment, and if such charge was due to Owner's intentional misconduct with interest, from the date of rental payment, at the highest non-usurious rate of interest permitted by law, within ten (10) days of such determination. Owner may revise rents not more than once annually.

4. Project Monitoring Fee.

Annually, on or before the first day of each fiscal year, Owner will pay to the Authority a Project monitoring fee in an amount equal to \$3600 per year, which fee shall accrue interest if not paid when and as due under this Agreement, from the date the fee is due until paid in full, at the highest non-usurious rate of interest then permitted by law. Notwithstanding any other provision of this Agreement, this provision shall be subject to a fifteen (15) day notice and cure period.

5. Tenant Selection.

Owner will adopt, based upon a draft prepared by the Authority, written tenant selection policies and criteria, for approval by the Authority, that meet the following requirements:

- a. Are consistent with the purpose of providing housing for Extremely Low Income and Moderate Income Senior Citizen Households, as well as for the purpose of providing housing as required by the TCAC Agreement.
- b. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.
- c. Provide for the following rental priority:

Subject to Owner's policies and procedures for screening potential tenants, the Units shall be rented according to the following priorities:

- a. Owner shall give first priority in renting an available Unit to an eligible tenant who has been displaced by activities of the City or Authority pursuant to applicable law.
- b. Owner shall give second priority in renting an available Unit to an eligible tenant who resides or works in the City of Imperial Beach.
- c. Except as otherwise set forth above, Affordable Units shall be rented to eligible tenants on a first-come, first-served basis; provided, however, that Owner shall maintain an "interest list" or "eligibility list" of potential tenants, taking into account applicants' need for accessible features (and subject to any coordinated entry systems and project based voucher referrals, as first approved in writing by the Authority's Executive Director).

d. Tenant selection will be administered in accordance with the tenant selection plan approved by the Authority in accordance with this Agreement.

6. Increases in Tenant Incomes.

This Section will govern in the event of increases in tenant incomes: A tenant who initially qualified in their applicable household income category, but who, due to an increase in income, no longer qualifies for such household income category, will pay as rent the lesser of the amount payable by the tenant under tax credit regulations, State or local law or 30 percent of the household's adjusted income under applicable law.

7. Tenant Protections.

Each tenant lease must provide for housing for not less than one year, unless by mutual agreement between the tenant and the Owner. The lease may not contain any of the following provisions (in which references to "owner" will mean the Owner, its successors or assigns):

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

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

c. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

d. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

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

f. Agreement by the tenant to waive the right to a trial by jury;

g. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the tenant housing agreement; and

h. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

8. Maintenance Obligations.

Owner will maintain the improvements on the Property in compliance with all applicable housing quality standards and local code requirements, and will keep the Property free from any unreasonable accumulation of debris or waste materials. Owner prepared and submitted to the Authority Executive Director for approval a program (the “**Maintenance Program**”) for the maintenance of the Property and the Improvements. For the Restricted Period, Owner, and its successors and assigns, will maintain the Property and the Improvements in accordance with the approved Maintenance Program, as the same may be amended from time to time with the written approval of the Authority Executive Director. If Owner fails to maintain the Property and the Improvements in accordance with the approved Maintenance Program, the Authority will have the right, but not the obligation, to enter the Property and the Improvements, correct any violation, and hold Owner responsible for the cost thereof, and such cost, until paid, will constitute a lien on the Property.

9. Nondiscrimination.

Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there will be no discrimination against or segregation of any person, or group of persons, on account of race, color, national origin, religion or sex in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor will Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. All deeds, leases or contracts will contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land.”

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as

those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

c. In contracts: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, 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.”

Nothing in this Section 9 is intended to prohibit the use of the Neighborhood Center for religiously affiliated events and purposes.

10. Management Obligations.

Prior to the recordation of this Agreement, Owner prepared and submitted to the Authority Executive Director for approval a “**Management Plan**” pursuant to the Affordable Housing Agreement, describing Owner’s proposed plans for managing and operating the Property, a copy of which is on file at the offices of the Authority. For the Term of this Agreement, Owner will manage and operate the Property in accordance with the approved Management Plan and this Agreement, including such amendments as may be approved in writing from time to time by the Owner and the Authority Executive Director, and reflecting compliance with the tenant selection procedures set forth in Section 5 above. Throughout the Term of this Agreement, the Project must include at least one on-site Property Manager.

11. Removal and Replacement of Property Manager.

Owner’s agreement with the Property Manager must provide that it is subject to termination by Owner without penalty, upon thirty (30) days prior written notice. Owner hereby covenants and agrees that, if the Authority determines in its reasonable judgment that the Project is not being operated and managed in accordance with the approved Management Plan, the Authority may deliver notice to the Owner of its determination that the Project’s management practices do not conform to the Management Plan (the “**Authority Notice**”), including a reasonably detailed explanation of such non-conformance. The Authority and Owner will meet and confer in good faith to identify actions to be taken by Owner to bring its management practices into conformance with the Management Plan, which could include replacing the Property Manager. Owner will have thirty (30) days after receipt of the Authority Notice (or such longer time as may be granted by the

Authority) to either change its management practices to conform to the Management Plan or replace the Property Manager with a manager approved by the Authority. Owner must promptly notify the Authority upon learning that there is a change in the management or control of the Property Manager, and, if the change is unsatisfactory to the Authority, it may require Owner to replace the Property Manager in accordance with the terms of this paragraph. Notwithstanding the foregoing, if the Authority determines that the Property Manager has violated local, state, or federal campaign finance laws, it will have the right to require Owner to immediately remove and replace the Property Manager with a manager approved by the Authority.

12. Financial Reports.

Owner will submit the following financial reports for the Project:

a. On or before the first day of each fiscal year, an estimated annual budget for management of the Property (the “**Annual Project Budget**”). The Annual Project Budget will include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amount required for insurance and all other expenses incident to the operation of the Project; and will show the expected revenues to pay such expenses, including annual debt service requirements and reserve fund deposits and balances. The Annual Project Budget, including any amendments proposed by the Owner, will be subject to the approval of the Authority Executive Director.

b. Sixty (60) days following the last day of each quarter of the fiscal year, beginning on the date of first occupancy, a quarterly report for the management of the Property (the “**Quarterly Report**”) during such quarter. The Quarterly Report will include a profit and loss statement, budget to date figures, and occupancy report. The Authority Executive Director in the Authority Executive Director’s sole discretion may waive the requirement of the Quarterly Report for one or more quarterly reporting periods. However, such waiver will not operate to waive any future right of the Authority to require a subsequent Quarterly Report. If at any time the Authority determines that the Property is not being managed or maintained in accordance with the approved Management Plan, Owner will change its management personnel or the practices complained of, upon receipt of written notice from the Authority.

c. Owner will pay to Authority a late fee in the amount of \$500 for each Annual Project Budget and/or Quarterly Report which is not submitted to the Authority within the times and in the form and substance required by this Agreement. Notwithstanding any other provision of this Agreement, this provision shall be subject to a fifteen (15) day notice and cure period.

13. Term of This Agreement.

The covenants established in this Agreement and any amendments hereto approved by the Authority and the Owner will, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority and the City and their successors and assigns. The requirements of this Agreement shall be in effect for the entirety of the Restricted Period,

notwithstanding the payment in full of the LMIHAF Loan and/or the City Fees Deferral. This Agreement is secured by the Authority Deed of Trust and the City Deed of Trust recorded concurrently herewith and Owner will not be entitled to a reconveyance of any Deed of Trust prior to the expiration of the full Restricted Period of this Agreement. Except to the extent otherwise expressly agreed to by the Authority Executive Director in any subordination agreement with a Senior Lender, this Agreement will unconditionally be and remain at all times prior and superior to the lien created by the Senior Deed of Trust and any other of the Senior Loan Documents and all of the terms and conditions contained in the Senior Loan Documents and to the lien of any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan. The lien of the Authority Deed of Trust and the City Deed of Trust will be subordinate to the lien of the Senior Loan Deed or Deeds of Trust pursuant to Subordination Agreements entered into pursuant to the Affordable Housing Agreement.

14. Enforcement of This Agreement.

The Authority and the City are deemed the beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The Authority and the City will have the right, if the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. Owner hereby agrees that specific enforcement of its obligations contained herein is the only means by which the Authority and the City may fully obtain the benefits of this Agreement, and Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of uncured default by Owner hereunder.

15. Waiver.

A waiver by the Authority of the performance of any covenant or condition herein will not invalidate this Agreement nor will it be considered a waiver of any other covenants or conditions, nor will the delay or forbearance by the Authority in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

16. Covenants Run With the Land.

The covenants and agreements contained herein will run with the land and not be personal obligations of Owner. Upon the sale, conveyance or other transfer of the Property approved by the Authority or otherwise permitted under the Affordable Housing Agreement, the LMIHAF Note, the City Fees Deferral Note, the City Deed of Trust and the Authority Deed of Trust (a “**Transfer**”) and the assumption of the obligations hereunder by a transferee, the Owner’s liability for performance will be terminated as to any obligation to be performed hereunder after the date of such Transfer.

17. Amendments.

This Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the Official Records of the County of San Diego, State of California.

18. Notice.

Any notice required to be given hereunder shall be given in the manner set forth in the Affordable Housing Agreement.

19. Execution in Counterparts.

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, will constitute one single instrument.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on Next Pages]

IN WITNESS WHEREOF, the Authority and Owner have executed this Agreement as of the date first written above.

IMPERIAL BEACH HOUSING AUTHORITY,
a public body, corporate and politic

By: _____
Tyler Foltz, AICP
Executive Director

ATTEST:

By: _____
Jacqueline M. Kelly, MMC
Authority Secretary

APPROVED AS TO FORM:

By: _____
Jennifer Lyon
Authority Counsel

KANE, BALLMER & BERKMAN

By: _____
Authority Special Counsel

[Signatures Continue on Next Page]

“OWNER”

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____

Managing Member

Exhibit "A"

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between South District Union of the California-Pacific Annual Conference of the United Methodist Church and Wakeland IBNCA LP, a California limited partnership, dated as of _____, 202_ in the real property described as follows:

:

APN: 625-230-23-00

PROMISSORY NOTE
TO THE IMPERIAL BEACH HOUSING AUTHORITY
(LMIHAF)

3% Interest
\$625,000

Imperial Beach, California
_____, 202_

FOR VALUE RECEIVED, WAKELAND IBNCA LP, a California limited partnership (“**Borrower**”), hereby promises to pay to the IMPERIAL BEACH HOUSING AUTHORITY, a public body, corporate and politic (“**Authority**”), the Authority’s loan of LMIHAF construction to permanent funds (the “**LMIHAF Loan**”). This Note is given pursuant to that certain Affordable Housing Agreement dated as of _____, 2024, between Borrower and the Authority (the “**Affordable Housing Agreement**”) and evidences the LMIHAF Loan to Borrower, which provides part of the financing for the leasehold acquisition and development of that certain real property located at 455 Palm Avenue in the City of Imperial Beach, legally described in the Deed of Trust securing this Note (the “**Property**”). The obligation of Borrower to Authority hereunder is subject to the terms of the Affordable Housing Agreement, this Note and the following instruments, each dated on or about the date hereof, and, where applicable, executed and delivered by Borrower for the purpose of securing this Note: an Agreement Containing Covenants (Including Rental Restrictions) (“**Agreement Containing Covenants**”); a Subordinated Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (“**Authority Deed of Trust**”); an Assignment of Rents and Leases (“**Assignment of Rents**”); an Assignment of Agreements (“**Assignment of Agreements**”); and a UCC-1 Financing Statement. Said documents are public records on file in the offices of Authority, and the provisions of said documents are incorporated herein by this reference. The Borrower will pay interest at the rate, in the amount and at the time hereinafter provided.

1. Capitalized terms not otherwise defined herein will have the meaning ascribed to such terms in the Affordable Housing Agreement. In addition, the following terms have the following meanings:

“**Annual Financial Statement**” means the annual audited financial statement of Revenue and Operating Expenses and balance sheet for the Improvements, prepared at the Borrower’s expense, by an independent certified public accountant reasonably acceptable to the Authority, which will form the basis for determining the Residual Receipts.

“**Authority Deed of Trust**” means the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Developer is the Trustor and Authority is the Beneficiary, which secures the Authority’s LMIHAF Loan, as evidenced by this Note.

“**Authority’s Share of Residual Receipts**” will have the meaning set forth in Section 8, below.

“Deferred Developer Fee” means that portion of the Developer Fee which was not paid prior to the date of Conversion and which will be paid from the Revenue remaining after payment of Operating Expenses, prior to any payment of Residual Receipts to the Authority. The term “Deferred Developer Fee” will include any loan or capital contribution made by a partner of Borrower to pay such deferred fee.

“Developer Equity” means funds provided by Developer for payment of Acquisition and Development Costs and does not include the Construction Loan, the Permanent Loan, the Authority’s LMIHAF Loan, the City Fees Deferral or any other borrowed funds, and includes the Deferred Developer Fee (as defined in the Method of Financing), the Limited Partner Capital Contribution and other funds of the Developer.

“Developer Fee” means the fee in the amount set forth in the Project Budget.

“General Partner” means WAKELAND IBNCA LLC, a California limited liability company, and its authorized successors and assigns.

“LMIHAF Loan” means the loan made by the Authority to Borrower in the maximum amount of \$625,000, which is evidenced by this Note and secured by the Authority Deed of Trust.

“LMIHAF Loan Documents” means this Note, the Authority Deed of Trust, the Agreement Containing Covenants, the Assignment of Rents, the Assignment of Agreements, the Environmental Indemnity, and the UCC-1 Financing Statement, each dated on or about the date hereof.

“LMIHAF Note” means this Note dated as of the date hereof, evidencing the LMIHAF Loan.

“Low Income Housing Tax Credits” means tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

“Net Proceeds” means the proceeds of a sale, transfer or refinancing, less the customary and reasonable costs of the transaction.

“Operating Expenses” means actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance and management of the Property that are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles, expressly including, without limitation, payment of the following:

- a. Principal and interest and all periodic fees and costs due and payable on the Senior Loan;
- b. Property and other taxes and assessments imposed on the Project;

- c. A general partner partnership management fee to the General Partner of Borrower not to exceed \$30,000 per year, to be increased at an annual rate of three percent (3%), which will accrue to the extent not paid;
- d. General administrative expenses including but not limited to advertising and marketing, security services and systems and similar customary administrative expenses;
- e. Maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and similar customary services;
- f. Cash deposited into a replacement reserve fund in the amount of \$500 per unit per year;
- g. Cash deposited into an operating reserve fund in such reasonable amounts as are required by Project lenders, the California Tax Credit Allocation Committee, and the Investor Limited Partner from time to time, and approved by the Authority;
- h. Utility services not paid for directly or reimbursed by tenants, including but not limited to water, sewer, trash collection, gas and electricity;
- i. License or certificate of occupancy fees required for operation of the Project;
- j. Premiums for property damage and liability insurance;
- k. Cable television, satellite and similar services;
- l. Recreational amenities, supplies and services;
- m. Reasonable property management fee payable to a property manager acceptable to the Authority pursuant to a management contract approved by the Authority;
- n. A reasonable resident services coordinator fee payable to a coordinator acceptable to the Authority;
- o. Purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings (other than from reserves);
- p. Fees and expenses of accountants, attorneys, consultants and other professionals, including annual audits and tax return preparation costs payable to a third party; and
- q. An Asset Management Fee to Borrower's Limited Partner in an amount not to exceed \$8,000 per year, to be increased at an annual rate of three percent (3.0%);
- r. Repayment of operating expense loans or development deficit loans to Borrower's partners; and
- s. A Project monitoring fee to the Authority in an amount equal to [\$3600] per year.

Operating Expenses will not include the following: depreciation, amortization, depletion or other non-cash expenses, any amount expended from a reserve. Operating Expenses will be subject to the reasonable approval of the Authority.

“Permanent Loan” means the permanent loan to be made to Developer by an institutional lender reasonably acceptable to the Authority Executive Director (**“Permanent Lender”**) following Conversion, secured by the Permanent Loan Deed of Trust.

“Permanent Loan Deed of Trust” means the first priority leasehold deed of trust securing the Permanent Loan.

“Permanent Period” means the period of time commencing at Conversion.

“Residual Receipts” means the Revenue minus the Operating Expenses, calculated on a 12-month basis, minus the theretofore unpaid portion of the Deferred Developers Fee. All calculations of Residual Receipts will be subject to verification and reasonable approval by the Authority.

“Revenue” means the gross rental income from the Improvements, and any other income to the Borrower derived from the ownership, operation and management of the Property, including but not limited to the following: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project; and condemnation awards for a taking of part or all of the Project for a temporary period. “Revenue” will also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Project, except that the value of services provided by on-site manager(s) will not be treated as “Revenue” if no more than one dwelling unit is leased to or otherwise used by on-site manager(s). “Revenue” will not include tenants’ security deposits, proceeds from the Senior Loan, the Authority Loan, Developer Equity, including capital contributions or similar advances, or interest that is earned on and allocated to reserve accounts.

“Senior Loan” means, during the Construction Period, the Construction Loan, and during the Permanent Period, the Permanent Loan, and any other loan during either period of time reasonably approved by the Authority Executive Director as a Senior Loan.

“Term” of this Note means a term that expires on the date that is fifty-five (55) years after the Construction Financing Event.

“Transfer” will have the meaning set forth in Section 11.e of this Note.

2. This Note evidences the obligation of the Borrower to the Authority for the repayment of the LMIHAF Loan.

3. This Note is payable at the principal office of Authority, 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

4. This Note is secured by the Authority Deed of Trust.

5. This Note will bear three percent (3%) simple interest.

6. Except in the event of a default described in Section 7 hereof, no payments will be due and payable under this Note except to the extent of (a) the Authority's share of Residual Receipts as described in Section 8, below, and (b) any refinancing, Cost Savings or Additional Proceeds, subject to the limitations set forth in Section 10, below.

7. The entire unpaid principal balance of this Note and any accrued but unpaid interest will be due and payable upon the expiration of the Term hereof, or immediately upon the occurrence of either of the following:

a. if the Property or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the Authority, except as otherwise permitted in this Note or for a Permitted Transfer under the Affordable Housing Agreement; or

b. if there is a default by the Borrower under the terms of this Note, the Authority Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or any deed of trust or other instrument securing the Senior Loan or other obligations secured by a deed of trust on the Property, which is not cured within the respective time period provided herein and therein.

8. Prior to the expiration of the Term hereof, Borrower will be obligated to repay the LMIHAF Loan exclusively from the Authority's share of Residual Receipts, as follows:

a. Annually, not later than the thirtieth (30th) day of April, beginning with the year following the year in which Conversion occurs, Borrower will submit to Authority an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public accountant reasonably acceptable to the Authority, determining the amount of Residual Receipts, if any, generated in that year, together with payment of the Authority's Share of such Residual Receipts. The first such Annual Financial Statement will be for the partial year beginning on the date of Conversion and ending on December 31 of that year. The Authority will review and approve such Annual Financial Statement, or request reasonable revisions, within 30 days after receipt. If as the result of the Authority's review of the statement, there is an increase in the amount of any payment due and payable to Authority (as the result, for example, of a determination that the actual amount of Residual Receipts to which the Authority is entitled exceeds the amount of Authority's share of Residual Receipts shown in the Annual Financial Statement submitted by Borrower), Borrower will promptly pay to the Authority the difference, with interest, from the date on which such payment was due, at the rate of one percent (1%) over the Prime Rate announced by Bank of America, but in any event within ten (10) days of notice of such increase.

b. The Authority's Share of Residual Receipts to be applied to this Note and the Fees Deferral Note, will be 50% (provided that such share shall be prorated to allow for proportionate repayment of the County Loan, the HCD Loan, the LMIHAF Loan and the City Fees Deferral and such other public agencies providing funds for the financing of the Project as approved by Authority and Developer that may require repayment from such 50% of Residual Receipts).

9. All payments applied to this Note will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed.

10. If there are Cost Savings with respect to the Project, subject to the requirements of the other Project lenders, the following will occur: to the extent of fifty percent (50%) of the Cost Savings, such savings shall, unless otherwise approved by Authority, be used to repay the LMIHAF Loan to Authority by proportionate share when considering the County Loan, the HCD Loan, the LMIHAF Loan, the City Fees Deferral and the loan from such other public agencies providing funds for the financing of the Project as approved by Authority and Developer that may require repayment. For purposes hereof, "Cost Savings", shall mean the difference between the total sources of funds and the total cost of development as shown in the Borrower's cost certification contained in Borrower's application to the California Tax Credit Allocation Committee for a Form 8609 for the Project ("Tax Credit Report"); for avoidance of doubt, the Cost Savings will be adjusted to take into account (i) the loss of any equity investment due to an adjustment in the allowable tax credits; provided that the tax credit factor applied to the required equity contribution will be as set forth in Borrower's limited partnership agreement; and (ii) any reduction in the Senior Loans required by the Senior Loan Documents. The amount payable to Authority under this paragraph will be paid within sixty (60) days following submittal of the Tax Credit Report to the California Tax Credit Allocation Committee.

11. Prohibitions on Transfer.

a. Prior to the repayment in full of the LMIHAF Loan and expiration of the Term of the Agreement Containing Covenants, the Borrower must not, except for Permitted Transfers or as permitted by the Affordable Housing Agreement, assign or attempt to assign the Affordable Housing Agreement or this Note or any right therein or herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property (referred to hereinafter as a "**Transfer**"), without prior written approval of the Authority, except as expressly permitted by the Affordable Housing Agreement or this Note. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. Authority shall not unreasonably withhold or delay its consent. If consent should be given, any such transfer shall be subject to this Section 11, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein.

b. Proposed transferees (other than an Affiliate of Borrower) must have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Authority, to fulfill Borrower's obligations undertaken in the Affordable Housing Agreement, the Agreement Containing Covenants, and this Note. A proposed transferee

(including an Affiliate of Borrower), by instrument in writing satisfactory to the Authority and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the Authority must expressly assume all of Borrower's obligations under the Affordable Housing Agreement, the Agreement Containing Covenants, and this Note and agree to be subject to all conditions and restrictions applicable to Borrower. There must be submitted to the Authority for review all instruments and other legal documents proposed to affect any such transfer; and if approved by the Authority its approval will be indicated to Borrower in writing. If consent should be given, such transfer will be subject to this Section 11.

c. In the absence of specific written agreement by the Authority, no unauthorized Transfer, or approval thereof by the Authority, will be deemed to relieve the Borrower or any other party from any obligations under the Affordable Housing Agreement, the Agreement Containing Covenants, or this Note.

d. In the event of a Transfer prior to the time the LMIHAF Loan is paid in full without the prior written consent of the Authority, the remaining principal balance of the LMIHAF Loan and all accrued but unpaid interest will be immediately due and payable.

e. As used herein, "Transfer" means

i. the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein (including, without limitation, a beneficial interest), whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project.

ii. "Transfer" also includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of an interest in Borrower, or a conversion of Borrower to an entity form other than that of Borrower at the time of execution of the Affordable Housing Agreement, except that, a cumulative change in ownership interest of a general partner of Borrower of forty-nine percent (49%) or less will not be deemed a "Transfer" for purposes of this Note.

12. The Authority will not unreasonably withhold, condition, or delay its approval of any matter for which its approval is required hereunder. The Authority's disapproval will be in writing and contain the Authority's reasons for disapproval.

13. The LMIHAF Loan is funded from the Authority's LMIHAF. Accordingly, Borrower agrees for itself, its successors and assigns that the use of the property will be subject to the restrictions on rent and occupancy set forth in the Agreement Containing Covenants.

14. Subject to the provisions and limitations of this Section 14, the obligation to repay the LMIHAF Loan is a nonrecourse obligation of the Borrower. Borrower and each general partner or limited partner of Borrower will not have any personal liability for repayment of the loan, except as provided in this Section 14. The sole recourse of Authority will be the exercise of its rights against the Property and other security for the LMIHAF Loan. Provided, however, that the

foregoing will not (a) constitute a waiver of an obligation evidenced by this Note or the Authority Deed of Trust; (b) limit the right of the Authority to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the Authority Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment will be asked for or taken against Borrower; (c) release or impair this Note or the Authority Deed of Trust; (d) prevent or in any way hinder the Authority from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or other instrument securing the Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder the Authority from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; (f) relieve Borrower of its obligations under an indemnity delivered by Borrower to Authority; or (g) affect in any way the validity of a guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Note and the Authority Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower and its successors and assigns will have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the mortgaged Property, ordinary and reasonable capital improvements to the mortgaged Property, debt service, real estate taxes in respect of the mortgaged Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the mortgaged Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Authority may recover directly from Borrower or from any other party (other than Borrower's Investor Limited Partner):

a. damages, costs and expenses incurred by the Authority as a result of fraud or criminal act or acts of Borrower or a partner, shareholder, officer, director or employee of Borrower, or of a member or general or limited partner of Borrower, or of a general or limited partner of such member or general or limited partner;

b. damages, costs and expenses incurred by Authority as a result of misappropriation of funds provided for the payment of Acquisition and Development Costs, as described in the Affordable Housing Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

c. all amounts owing by Borrower pursuant to the indemnification regarding Hazardous Substances under the Environmental Indemnity, and

d. all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Authority will pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in such enforcement or collection action).

15. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of an extension or extensions of the time of payment or of a due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, the Authority Deed of Trust or any term or provision of either thereof.

16. Upon the failure of Borrower to perform or observe a term or provision of this Note, or upon the occurrence of an event of default under the terms of the Authority Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, and after expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

17. Defaults and Remedies.

a. Subject to the extensions of time set forth in Section 18, and subject to the further provisions of this Section 17, failure or delay by Borrower to perform a material term or provision of this Note, the Authority Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, constitutes a default under this Note.

b. The Authority will give written notice of default to Borrower, specifying the default complained of by the Authority. Delay in giving such notice will not constitute a waiver of any default nor will it change the time of default.

c. Failures or delays by the Authority in asserting its rights and remedies as to a default will not operate as a waiver of default or of such rights or remedies. Delays by the Authority in asserting its rights and remedies will not deprive the Authority of its right to institute and maintain actions or proceedings which it may deem necessary to protect, assert, or enforce such rights or remedies.

d. If a monetary event of default occurs under the terms of this Note or the Authority Deed of Trust, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, prior to exercising its remedies hereunder or thereunder the Authority will give Borrower, each general partner, and the Investor Limited Partner, concurrent written notice of such default. Borrower will have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by the Authority under this Note and the Authority Deed of Trust. In no event will the Authority be precluded from exercising remedies if its security becomes or is about to become materially impaired by a failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

e. If a non-monetary event of default occurs under the terms of the Affordable Housing Agreement, this Note, the Authority Deed of Trust, the Agreement Containing Covenants, or a document implementing the Affordable Housing Agreement or a deed of trust securing a Senior Loan or other obligations secured by a deed of trust on the Property, prior to exercising its remedies hereunder or thereunder, the Authority will give Borrower, each General Partner, and the Investor Limited Partner, concurrent notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower will have such period to effect a cure prior to exercise of remedies by the Authority under the Affordable Housing Agreement, the Agreement Containing Covenants, this Note and/or the Authority Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower will have such additional time as is reasonably necessary to cure the default prior to the Authority's exercise of remedies. If Borrower fails to take corrective action or to cure the default within the time set forth above in this Subsection 17.e, the Authority will give Borrower, the Senior Lender, the Investor Limited Partner written notice thereof, whereupon the Investor Limited Partner, subject to the terms of Borrower's partnership agreement, may take such corrective action, including removing and replacing a general partner. The Investor Limited Partner will have 45 days, or such longer period as is approved by the Authority Executive Director or designee, to remove and replace such general partner of Borrower. The Authority agrees to accept cures tendered by a Senior Lender or the Investor Limited Partner within the time period provided herein. Additionally, in the event the Senior Lender, or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Borrower or a general partner, the Authority agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which such party is so precluded from acting, not to exceed 90 days or such additional time as is reasonably approved by the Authority Executive Director or designee, provided such Senior Lender or Investor Limited Partner is otherwise in compliance with the foregoing provisions. In no event will Authority be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by a failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received or such additional time as is reasonably approved by the Authority Executive Director or designee.

f. A notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, will be deemed delivered upon its transmission; a notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt by Borrower; and a notice of default that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof. Notices will be sent to the following addresses:

To Authority:

Imperial Beach Housing Authority
825 Imperial Beach Boulevard,

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments

LMIHAF Note

Page 10

Imperial Beach, CA 91932
Attention: Executive Director

To Borrower:

Wakeland IBNCA LP
Attn: Wakeland IBNCA LLC
c/o Wakeland Housing and Development Corporation
1230 Columbia Street, Suite 950
San Diego, CA 92101

18. Notwithstanding specific provisions of this Note, Borrower will not be deemed to be in default for failure to perform a non-monetary obligation hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the Authority or any other public or governmental authority or entity, or any causes beyond the control or without the fault of the Borrower. An extension of time for any such cause (a “**Force Majeure Delay**”) will be for the period of the enforced delay and will commence to run from the time of the commencement of the cause, if notice by Borrower is sent to the Authority within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events will constitute a Force Majeure Delay unless and until Borrower delivers to the Authority written notice describing the event, its cause, when and how Borrower obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Borrower will deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Note may also be extended in writing by the Authority and Borrower, such revision approval may be denied by either party in its sole discretion.

19. If the rights created by this Note are held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations must be completely performed and paid.

20. The Authority Deed of Trust securing this Note and all other LMIHAF Loan Documents, except the Agreement Containing Covenants, have been made subordinate and junior to the claims, liens or charges of the Construction Loan Deed of Trust and all other instruments securing the Construction Loan by that certain Subordination Agreement by and among Authority, Borrower and Construction Lender which is being recorded concurrently with the execution and delivery of this Note and the recordation of the Authority Deed of Trust, and to the claims, liens or charges of any other Senior Loan and Senior Loan Documents being made and recorded at the Construction Financing Event; and will also be subordinate and junior to the claims, liens or charges of the Permanent Financing Deeds of Trust securing Senior Loans and all other instruments securing the Permanent Financing involving Senior Loans.

21. The Authority agrees that the lien of the Authority Deed of Trust will be subordinate to the extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “**Extended Use Agreement**”) recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under the Authority Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, will also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that a default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement will be an event of default under this Note and the Authority Deed of Trust and that all costs, damages or other amounts, including reasonable attorneys’ fees incurred by the Authority as a result of an event of default by Borrower, and all amounts paid by Authority to cure a default under the Extended Use Agreement will be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the Authority Deed of Trust.

22. With regard to an approval, consent, or other determination by the Authority required under this Note or the other LMIHAF Loan Documents, the Authority will act reasonably and in good faith.

23. Borrower will have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty. However, neither repayment nor prepayment of the obligation evidenced by this Note prior to the expiration of the term of the Agreement Containing Covenants will not entitle Borrower to a reconveyance of the Authority Deed of Trust.

24. This Note may be executed by each signatory on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF Borrower has executed this Note as of the day and year first set forth above.

BORROWER

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____
Managing Member

Recording Requested by and
When Recorded Mail to:

Imperial Beach Housing Authority
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 625-230-23-00

Document entitled to free
recording per Government
Code Section 27383

**SUBORDINATED DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)**
(Imperial Beach Neighborhood Center Apartments – 455 Palm Avenue)

This Subordinated Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of [REDACTED], 2024 by WAKELAND IBNCA LP, a California limited partnership (“**Trustor**”) (whose address is c/o Wakeland Housing and Development Corporation 1230 Columbia Street, Suite 950, San Diego, CA 92101), to _____, a California corporation (“**Trustee**”), for the benefit of IMPERIAL BEACH HOUSING AUTHORITY, a public body, corporate and politic of the State of California (“**Beneficiary**”), whose address is 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, Attn: Executive Director.

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the “**Trust Estate**”):

(a) Trustor’s long-term leasehold interest in that certain real property in the City of Imperial Beach, County of San Diego, State of California more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (the “**Subject Property**”);

(b) The real property comprised of all buildings, structures, fixtures and other improvements now or in the future located or to be constructed on the Subject Property (the “**Improvements**”);

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the “**Appurtenances**”). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the “**Real Property**”);

(d) subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “**Rents**”);

(e) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “**UCC**”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the “**Goods**,” and together with the Real Property, the “**Property**”); and

(f) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale

proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the “**Intangibles**”).

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the “**Personal Property**”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary will have, in addition to all rights and remedies provided herein, all the rights and remedies of a “secured party” under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) a promissory note in the original principal amount of \$625,000, executed by Trustor of even date herewith in connection with that certain LMIHAF Loan from Authority to Trustor pursuant to the Affordable Housing Agreement (the “**Note**”);
 - (b) the Affordable Housing Agreement dated as of [REDACTED], 2024 (the “**Affordable Housing Agreement**”), between Trustor and Beneficiary; and
 - (c) the Agreement Containing Covenants (Including Rental Restrictions) between Trustor and Beneficiary, recorded concurrently herewith (“**Agreement Containing Covenants**”).
- (2) payment of indebtedness of the Trustor to the Beneficiary in the principal sum of \$625,000 or so much thereof as will be advanced, evidenced by the Note secured hereby, with interest, according to the terms of the Note secured hereby.

The Affordable Housing Agreement, including all Attachments thereto, and the documents and instruments executed by Trustor in connection with the Project, including the Agreement Containing Covenants, the Note, the Assignment of Rents and Leases, and the Assignment of Agreements, all as described in the Affordable Housing Agreement (collectively referred to as the

“Secured Obligations”) and all of their terms are incorporated herein by reference and this conveyance will secure the Secured Obligations any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Each capitalized term that is not otherwise defined in this Deed of Trust has the meaning ascribed to it in the Affordable Housing Agreement.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor will pay the Note secured hereby at the time and in the manner provided therein, and perform the obligations of the Trustor as set forth in the Secured Obligations at the time and in the manner respectively provided therein;

2. That Trustor will not permit or suffer the use of any of the property for any purpose other than the uses permitted by the Affordable Housing Agreement and the Agreement Containing Covenants.

3. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Affordable Housing Agreement.

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary will be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements to be constructed on the Property in accordance with the Affordable Housing Agreement insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by the Beneficiary, and all such insurance will be evidenced by standard fire and extended coverage insurance policy or policies. In no event will the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies will be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies will be deposited with the Beneficiary;

7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said

Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor will not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, the Beneficiary may also require Trustor to maintain and submit additional records. Beneficiary will specify in writing the particular records that must be maintained and the information or reports that must be submitted;

11. Beneficiary will have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary will be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Note secured hereby;

13. That the funds to be advanced hereunder are to be used in accordance with the Secured Obligations and upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said agreements, the principal sum and all arrears of interest, and other charges provided for in the Note secured hereby will at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary, and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor will not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor will, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of San Diego County, a surety bond in an amount one-and-one-half (1½) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of the beneficiary of the Construction Loan Deed of Trust, the Permanent Loan Deed of Trust and any other obligation having a lien on the Property that is senior to the lien of this Deed of Trust (“**Senior Lender**”), Beneficiary will be entitled to all

compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and will be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of the Senior Lenders, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including reasonable attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, will be applied to the amount due under the Note secured hereby. No amount applied to the reduction of the principal will relieve the Trustor from making regular payments as required by the Note secured hereby;

18. Upon default by Trustor in making any payments provided for in the Note secured hereby or in this Deed of Trust, or in performing any obligation set forth in any of the Secured Obligations, and if such default is not cured within the respective time provided therefor in Section 34 of this Deed of Trust, below, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee will cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary will also deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby;

19. a. Prior to the repayment in full of the Note and expiration of the terms of the Agreement Containing Covenants, the Trustor will not assign or attempt to assign the Affordable Housing Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the Project thereon, or any portion thereof or interest therein (referred to hereinafter as a "**Transfer**"), without prior written approval of the Beneficiary, except for the Permitted Transfers described in Section 19.e.(3) below, or as otherwise permitted in the Note secured hereby. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary will not unreasonably withhold or delay its consent. If consent should be given, any such transfer will be subject to this Section 19, and any such transferee will assume all obligations hereunder and agree to be bound by all provisions contained herein, subject to the provisions of paragraph e.(3) of this Section 19, below.

b. Any such proposed transferee will have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Beneficiary, to fulfill the obligations undertaken by Trustor in the Affordable Housing Agreement and the Secured Obligations. Any such proposed transferee, by instrument in writing satisfactory to the Beneficiary and in form recordable among the land records of San Diego County, for itself and its successors and assigns, and for the benefit of the Beneficiary will expressly assume all of the obligations of the Trustor under the Affordable Housing Agreement and the Secured Obligations, and agree to

be subject to all conditions and restrictions applicable to the Trustor in this Deed of Trust. There will be submitted to the Beneficiary for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Beneficiary its approval will be indicated to the Trustor in writing.

c. In the absence of specific written agreement by the Beneficiary, no unauthorized Transfer, or approval thereof by the Beneficiary, will be deemed to relieve the Trustor or any other party from any obligations under the Affordable Housing Agreement or any other Secured Obligations.

d. In the event of a Transfer without the prior written consent of the Beneficiary, prior to the time the LMIHAF Loan is paid in full, the net proceeds (after repayment in full of any Senior Loan and the reconveyance of the Senior Loan Deed of Trust or Permanent Loan Deed of Trust), will be paid to the Beneficiary to the extent necessary to pay in full the accrued interest, if any, current interest and remaining principal balance of the LMIHAF Loan and the Note.

e. (1) As used herein, "Transfer" includes the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project, except as provided in subparagraph e.(3) of this Section 19, below.

(2) "Transfer" will also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Trustor, or any conversion of Trustor to an entity form other than that of Trustor at the time of execution of the Affordable Housing Agreement, except that a cumulative change in ownership interest of any general partner of forty-nine percent (49%) or less will not be deemed a "transfer" for purposes of this Deed of Trust.

(3) "Notwithstanding paragraphs (1) and (2), above, "Transfer" will not include any of the following Permitted Transfers, provided (except for subsection (f) below) Trustor, a general partner of Trustor, or an Affiliate of such general partner, retains day-to-day control over management of the Property and Improvements:

(a) An assignment of the Affordable Housing Agreement and sale of all of Trustor's interest in the Property to an Affiliate, or a sale back to Trustor, which will be subject to the reasonable approval of Beneficiary's Executive Director or designee;

(b) A conveyance of a security interest in the Property in connection with a Senior Loan; provided that, a refinancing that increases the principal balance of the Senior Loan, increases the principal and interest payments required under the Senior Loan, changes the maturity of the Senior Loan, increases the interest rate of the Senior Loan, or otherwise changes the Senior Loan terms in a manner that creates an adverse effect upon the Beneficiary will not be

considered a Permitted Transfer and must be approved by Beneficiary's Executive Director or designee;

(c) The inclusion of equity participation by Trustor by addition of limited partners to Trustor's partnership, or similar mechanisms, and any transfers of limited partnership interests in Trustor's partnership;

(d) The leasing for occupancy of all or any part of the Improvements on the Property, in accordance with the Affordable Housing Agreement and the Agreement Containing Covenants;

(e) The granting of easements or permits to facilitate the development of the Property in accordance with the Affordable Housing Agreement;

(f) In addition, the withdrawal, removal and/or replacement of a general partner of Trustor's partnership pursuant to the terms of the Trustor's partnership agreement or a conveyance of Trustor's interest in the Property and the Improvements or a transfer of limited partnership interests to a general partner pursuant to the option provided to that partner in Trustor's partnership agreement will not constitute a default under this Deed of Trust or any of the Secured Obligations, nor will such actions accelerate the maturity of the LMIHAF Loan, provided that any required substitute general partner, is reasonably acceptable to the Beneficiary and is selected with reasonable promptness; and,

(g) Any transfer approved in writing by Beneficiary's Executive Director or designee, at his or her sole discretion.

Transfers described in clauses (a), (b), or (c) will be subject to the reasonable approval of the Beneficiary's Executive Director or designee; provided that, the Beneficiary approves the transfer of limited partner interests in Trustor's partnership, so long as such transfer is not a result of a resyndication of the Low Income Housing Tax Credits and does not otherwise result in increased equity participation in Trustor, and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws.

f. The Beneficiary will not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder.

Any disapproval will be in writing and contain the Beneficiary's reasons for disapproval.

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, will sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public

announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee will deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts will be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee will apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter will be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution will be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, will be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee will reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact will be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto";

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" will include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several;

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law

the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee will be a party unless brought by Trustee;

27. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the following address:

28. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

29. Trustor agrees that the loan secured by this Deed of Trust is made expressly for the purpose of financing the acquisition, development and construction of the Improvements, including 49 dwelling units of affordable housing (plus one manager's unit) for Extremely Low Income, Very Low Income, and Low Income Senior Citizen Households, and such dwelling units will be occupied exclusively by such persons as set forth in the Secured Obligations.

30. Trustor agrees that, except as otherwise provided in the Note secured hereby, upon sale or refinancing of the Property, the entire principal balance of the debt secured by this Deed of Trust, plus any accrued but unpaid interest thereon, will at the option of Beneficiary be immediately due and payable.

31. The obligation to repay the LMIHAF Loan is a nonrecourse obligation of the Trustor and its partners. Neither Trustor nor any of its general or limited partners, nor any other party, will have any personal liability for repayment of the loan. The sole recourse of Beneficiary will be the exercise of its rights against the Property and any related security for the LMIHAF Loan. Notwithstanding the foregoing, Beneficiary may recover directly from Trustor or from any other party (other than Trustor's Investor Limited Partner):

- (a) any damages, costs and expenses incurred by Beneficiary as a result of fraud or any criminal act or acts of Trustor or any partner, shareholder, officer, director or employee of Trustor, or of any member or general or limited partner of Trustor, or of any general or limited partner of such member or general or limited partner;

(b) any damages, costs and expenses incurred by Beneficiary as a result of any misappropriation of funds provided for the construction of the Improvements, rents and revenues from the operation of the Improvements or proceeds of insurance policies or condemnation proceeds;

(c) any and all amounts owing by Trustor pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity, and

(d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Beneficiary will pay Trustor's reasonable court costs and attorneys' fees if Trustor is the prevailing party in any such enforcement or collection action).

32. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance hereunder will not be deemed to be in default where delays or defaults are proximately caused by any of the following Force Majeure events, provided such event actually delays and interferes with the timely performance of the matter, and, despite the exercise of diligence and good business practices, such event is beyond the reasonable control of Trustor: War; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism, epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the Beneficiary will not excuse performance by the Beneficiary); the imposition of any applicable moratorium by a Governmental Authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events will constitute a Force Majeure Event unless and until Trustor delivers to Beneficiary written notice describing the event, its cause, when and how Trustor obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Trustor will deliver such written notice within fifteen (15) days after it obtains actual knowledge of the event.

33. If the rights and liens created by this Deed of Trust will be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations will be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor will be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

34. (a) Subject to the extensions of time set forth in Section 32, and subject to the further provisions of this Section 34, failure or delay by Trustor to perform any term or provision

respectively required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary will give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice will not constitute a waiver of any default nor will it change the time of default.

(c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default will not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies will not deprive Beneficiary 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.

(d) If a monetary event of default occurs, prior to exercising any remedies hereunder, prior to exercising its remedies, Beneficiary will give Trustor, each general partner, and the Investor Limited Partner, concurrent written notice of such default. Trustor will have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by the Beneficiary under this Deed of Trust. In no event will the Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially impaired by a failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Beneficiary will give Trustor, each general partner, and the Investor Limited Partner, concurrent notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Trustor will have such period to effect a cure prior to exercise of remedies by the Beneficiary under this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor will have such additional time as is reasonably necessary to cure the default prior to the Beneficiary's exercise of remedies. If Trustor fails to take corrective action or to cure the default within the time set forth above in this subsection (e), Beneficiary will give Trustor, the Senior Lender, and the Investor Limited Partner written notice thereof, whereupon the Investor Limited Partner, subject to the terms of Trustor's partnership agreement, may take such corrective action, including removing and replacing a general partner. The Investor Limited Partner will have 45 days, or such longer period as is approved by the Beneficiary Executive Director or designee, to remove and replace such general partner of Trustor. Beneficiary agrees to accept cures tendered by a Senior Lender or the Investor Limited Partner within the time period provided herein. Additionally, in the event the Senior Lender or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Trustor or a general partner, Beneficiary agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which such party is so precluded from acting, not to exceed 90 days or such additional time as is reasonably approved by the Beneficiary Executive Director or designee, provided such Senior Lender or Investor Limited

Partner is otherwise in compliance with the foregoing provisions. In no event will Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by a failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received or such additional time as is reasonably approved by the Beneficiary Executive Director or designee.

(f) Reserved.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, will be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt by Trustor; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof.

35. This Deed of Trust will be subordinate and junior to the Construction Loan Deed of Trust. Following the reconveyance of the lien of the Construction Loan Deed of Trust, this Deed of Trust will be subordinate and junior to the deed of trust in favor of the maker of any permanent or take-out loan (each of which loans is referred to herein as a “**Permanent Loan**”), as described in the Note secured hereby. The Executive Director of the Beneficiary or designee will execute such instruments as may be necessary to subordinate the lien of this Deed of Trust and the Secured Obligations, but not the Agreement Containing Covenants to the deed of trust securing the Construction Loan, the Permanent Loan, and any regulatory agreement recorded in connection with the issuance of the Low Income Housing Tax Credits. In the event of a default or breach by Trustor of any security instrument securing a Senior Loan described in this Section 35, Beneficiary will have the right to cure the default prior to completion of any foreclosure. In such event, Beneficiary will be entitled to reimbursement by Trustor of all reasonable costs and expenses incurred by Beneficiary in curing the default. The amount of any such disbursements will be a lien against the Subject Property and added to the obligation secured by this Deed of Trust until repaid, with interest at the highest rate permitted by law.

36. The Trustor has informed the Beneficiary that Trustor intends that the Project qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code (“**Tax Credits**”). In order to receive an allocation of Tax Credits, the Trustor will be required to record in the real property records of the County of San Diego an “extended low-income housing commitment” (as defined in Code Section 42(h)(6)(B)) (the “**Extended Use Agreement**”). If the Trustor demonstrates to the reasonable satisfaction of the Beneficiary that the Tax Credit Allocation Committee or applicable federal law requires that the lien of this Deed of Trust be subordinate to the Extended Use Agreement, then the Beneficiary will execute a subordination agreement (“**Extended Use Subordination Agreement**”) wherein the lien of this Deed of Trust is subordinated to the Extended Use Agreement. The Extended Use Subordination Agreement will:

(a) provide that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument in lieu of foreclosure or comparable conversion of the LMIHAF Loan in accordance with Section 42(h)(6)(E) of the Internal Revenue Code;

(b) provide that the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, will also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code;

(c) provide that Trustor acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement will be an event of default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by Beneficiary as a result of an event of default by Trustor, and any amounts paid by Beneficiary to cure any default under the Extended Use Agreement will be an obligation of Trustor and become a part of the debt evidenced by the Note and secured by this Deed of Trust; and

(d) otherwise be in a form reasonably acceptable to Beneficiary.

37. This Deed of Trust will be subject to the terms and conditions set forth in that certain Subordination Agreement recorded concurrently herewith by and among the Trustor, Senior Lender, and the Beneficiary, as the same may be amended, restated, supplemented or modified from time to time.

[Remainder of page intentionally blank]

[Signatures on following page]

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____

Managing Member

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between South District Union of the California-Pacific Annual Conference of the United Methodist Church and Wakeland IBNCA LP, a California limited partnership, dated as of _____, 202_ in the real property described as follows:

APN: 625-230-23-00

Recording Requested by and
When Recorded Mail to:

Imperial Beach Housing Authority
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN:

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made as of _____, 202_ by WAKELAND IBNCA LP, a California limited partnership ("**Borrower**"), in favor of the IMPERIAL BEACH HOUSING AUTHORITY, a public body, corporate and politic, and its successors and assigns (the "**Authority**").

RECITALS

A. Borrower is the owner of a long-term leasehold interest in the real property described in Exhibit "A" attached hereto, and the owner of all of the personalty, fixtures, and improvements now or hereafter located thereon or attached thereto now existing or to be constructed thereon. Said real property, personalty, fixtures, and the improvements are herein referred to collectively as the "**Premises**".

B. Authority has agreed to make a loan to Borrower to assist Borrower in financing a portion of the Acquisition and Development Costs, in the original principal amount of \$625,000 ("**LMIHAF Loan**"), (the "**Authority Loan**"), pursuant to the terms of an Affordable Housing Agreement by and between Borrower and Authority dated as of _____, 2024 ("**Loan Agreement**"). In addition the Borrower has incurred an additional indebtedness to the City created by the City's deferral of certain impact fees for the Project in the amount of _____ Dollars (\$ _____) as set forth in the Loan Agreement and pursuant to that certain City Fees Deferral Promissory Note ("**Fees Deferral**"). The LMIHAF Loan and the Fees Deferral (collectively "**Loans**") are each evidenced by a promissory note of even date herewith (each, a "**Note**") and are each secured by a Subordinated Deed of Trust, Security Agreement and Fixture Filing, of even date herewith, executed by Borrower, as Trustor, for the benefit of Authority, as Beneficiary ("**Deeds of Trust**").

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments

Assignment of Rents

Page 1

C. In order to induce Authority to make the Authority Loan to Borrower, Borrower has agreed to execute this Assignment.

NOW, THEREFORE, with reference to the foregoing and in reliance thereon and for good and valuable consideration, the receipt of which is hereby acknowledged, Borrower agrees as follows:

AGREEMENT

1. All initially capitalized terms used herein, unless otherwise defined or required by context, have the meaning ascribed to them in the Loan Agreement.

2. Borrower hereby absolutely grants, sells, assigns, transfers, and sets over to Authority, by this Assignment, all of Borrower's interests, whether now existing or hereafter acquired, in all leases and other occupancy agreements of any nature, now or hereafter covering all or any part of the Premises, together with all extensions, renewals, modifications, or replacements of said leases and occupancy agreements, and together with any and all guarantees of the obligations of the lessees and occupants ("**Lessees**") thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. (Said leases and occupancy agreements, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter referred to collectively as the "**Leases**" and individually as a "**Lease**".)

3. Borrower's purpose in making this Assignment is to relinquish to Authority its right to collect and enjoy the rents, royalties, issues, profits, income, and other benefits at any time accruing by virtue of the Leases (hereinafter called "**Rents and Profits**").

4. This Assignment is a present, absolute and unconditional assignment, subordinate to the rights of _____, and its successors and assigns, each a Senior Lender under the Loan Agreement ("**Senior Lender**") and, immediately upon execution, gives the Authority the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on the Indebtedness and other Obligations under each Note and other loan documents, as well as all other sums payable under the Deeds of Trust or any other instrument given as security for the Indebtedness, subject to the rights of each Senior Lender. However, the Authority hereby grants to Borrower a license to collect and use, subject to the provisions set forth below, the Rents and Profits as they respectively become due and to enforce the Leases, so long as there is no Default by Borrower in performance of the terms, covenants, or provisions of the Deed of Trust, any Note, or the Loan Agreement, this Assignment or any other loan document, after the expiration of any applicable notice and cure periods. Nothing contained herein, nor any collection of Rents and Profits by Authority or by a receiver, will be construed to make Authority a "mortgagee in possession" of the Premises so long as Authority has not entered into actual possession of the Premises.

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments

Assignment of Rents

Page 2

5. Upon the occurrence of any Default or Event of Default, after the expiration of any applicable notice and cure periods, under the terms and conditions of this Assignment, each Note, the Deed of Trust, the Loan Agreement or any other loan document, this Assignment will constitute a direction and full authority to each Lessee under any Lease and each guarantor of any Lease to pay all Rents and Profits to Authority without proof of the Default relied upon. Borrower hereby irrevocably authorizes each Lessee and guarantor to rely upon and comply with any notice or demand by Authority for the payment to Authority of any Rents and Profits due or to become due.

6. Borrower represents and warrants as to each Lease now or hereafter covering all or any portion of the Premises, unless Authority has been otherwise advised in writing by Borrower:

- a. That each Lease is in full force and effect;
- b. That no material default exists on the part of the Lessee thereunder or Borrower;
- c. That no rent in excess of one month's rent has been collected in advance;
- d. Except with respect to Senior Lenders, that no Lease or any interest therein has been previously assigned or pledged;
- e. That no Lessee under any Lease has any defense, setoff or counterclaim against Borrower; and
- f. That all rent due to date under each Lease has been collected and no concession has been granted to any Lessee in the form of a waiver, release, reduction, discount, or other alteration of rent due or to become due except as previously disclosed to Borrower in writing.

7. Borrower agrees with respect to each Lease:

a. If any Lease provides for a security deposit paid by the Lessee to Borrower, this Assignment transfers to Authority all of Borrower's right, title, and interest in and to each such security deposit; provided, however, that Borrower will have the right to retain said security deposit so long as Borrower is not in Default, after the expiration of any applicable notice and cure periods, under this Assignment, the Deed of Trust, each Note, the Loan Agreement or any other Loan Document; and provided further that Authority will have no obligation to the Lessee with respect to such security deposit unless and until Authority comes into actual possession and control of said security deposit.

b. If any Lease provides for the abatement of rent during repair of the leased premises by reason of fire or other casualty, Borrower will furnish rental insurance to Authority, the policies to be with companies and in form, content, policy limits, and terms as are customary in the case of entities owning similar property or assets similarly situated.

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments

Assignment of Rents

Page 3

c. Each Lease will remain in full force and effect despite any merger of the interest of Borrower and any Lessee thereunder. Except as otherwise provided in the Loan Agreement, Borrower will not terminate any Lease (except pursuant to the terms of the Lease upon a Default by any Lessee thereunder), or materially modify or amend any Lease or any of the terms thereof, or grant any concessions in connection therewith or accept a surrender thereof, without the prior written consent of Authority, which consent will not be unreasonably withheld.

d. Except as otherwise provided in the Loan Agreement, Borrower will not hereafter execute any Lease, the terms and conditions of which have not been previously approved in writing by Authority, which approval will not be unreasonably withheld or delayed.

e. Borrower will not collect any Rents and Profits more than thirty (30) days in advance of the date on which they become due under the terms of any Lease, provided that Borrower may collect customary security deposits more than 30 days in advance.

f. Borrower will not discount any future accruing Rents and Profits.

g. Borrower will not consent to any assignment of any Lease, or any subletting thereunder, whether or not in accordance with its terms, on any terms less favorable than those that would reflect an arm's length transaction in light of prevailing market conditions (subject to the rent restrictions applicable to the Premises), without the prior written consent of Authority, except as otherwise provided in the Loan Agreement and with respect to the Senior Loans.

h. Except as otherwise provided in the Loan Agreement and with respect to the Senior Loans, Borrower will not execute any further assignment of any of the Rents and Profits or any interest therein or suffer or permit any such assignment to occur by operation of law.

i. Borrower will not request, consent to, agree to, or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Premises or any part thereof, or suffer or permit conversion of any Lease to a sublease, without Authority's prior written consent.

j. Borrower will faithfully perform and discharge all obligations of the lessor under each Lease, and will give prompt written notice to Authority of any notice of Borrower's default received from any Lessee or any other person and furnish Authority with a complete copy of said notice. Borrower will appear in and defend, at no cost to Authority, any action or proceeding arising under or in any manner connected with any Lease. If requested by Authority, Borrower will enforce each Lease and all remedies available to Borrower against the Lessee in the case of default under the Lease by the Lessee.

k. Except as otherwise provided in the Loan Agreement, Borrower will give Authority written annual reports of all Leases entered into during the previous year, and will

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments

Assignment of Rents

Page 4

promptly upon request of Authority provide to Authority a true and correct copy of each executed Lease. All Leases entered into by Borrower will be deemed included in this Assignment as though originally listed herein. At Authority's option, such reports may be recorded in the Official Records of San Diego County, California, which report will refer to this Assignment.

l. Except as otherwise provided in the Loan Agreement, at Authority's option, Borrower will not hire, retain, or contract with any third party for property management services with respect to the Premises, without the prior written approval of Authority of such party and the terms of its contract for management services.

m. Nothing herein will be construed to impose any liability or obligation on Authority under or with respect to any Lease. Borrower will indemnify, defend, and hold Authority and City, their officers, directors, agents, employees, and representatives (the Indemnitees) harmless from and against any and all liabilities, losses, and damages that any Indemnitee may incur under any Lease or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against any Indemnitee by reason of any alleged obligations to be performed or discharged by Authority under any Lease or this Agreement, unless any of the foregoing arises from or results from the gross negligence or willful misconduct of any Indemnitee. Should any Indemnitee incur any liability, loss, or damage under any Lease or by reason of this Assignment and such liability, loss, or damage falls within the foregoing indemnification, Borrower will immediately upon demand reimburse such Indemnitee for the amount thereof together with all costs and expenses and reasonable attorneys' fees (based on itemized invoices for time and charges) and court costs incurred by such Indemnitee. All of the foregoing sums will bear interest at the maximum rate permitted by law from demand by Indemnitee until paid. Any Rents and Profits collected by Authority may be applied by Authority, in its discretion, in satisfaction of any such liability, loss, damage, claim, demand, cost, expense, or fees.

8. Subject to the rights of Senior Lender, Borrower hereby grants to Authority the following rights:

a. Upon an Event of Default as defined in the Loan Agreement, Authority will be deemed to be the creditor of each Lessee in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership, or other debtor relief proceedings affecting such Lessee, without obligation on the part of Authority, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein.

b. Authority will have the right to assign Borrower's right, title, and interest in the Leases to any subsequent holder of the Deed of Trust or any participating interest therein or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise. Any such Authority assignee will have all the rights and powers herein provided to Authority.

c. Authority will have the right (but not the obligation), upon any Event of Default under the Deed of Trust or the Loan Agreement, to take any action as Authority may deem necessary or appropriate to protect its security, including but not limited to appearing in any action or proceeding and performing any obligations of the lessor under any Lease; and Borrower agrees to pay, on demand, all costs and expenses, including without limitation reasonable attorneys' fees and court costs incurred by Authority in connection therewith, together with interest thereon at the rate of ten percent (10%) per annum.

d. Upon any Default under this Assignment, the Deed of Trust, any Note, the Loan Agreement, or any other loan document (subject to any notice and cure provisions), and without notice to or consent of Borrower, Authority will have the following rights (none of which will be construed to be obligations of Authority):

i. Authority will have the right under this Assignment to use and possess, without rental or charge, the Fixtures, Equipment, and Personal Property of the Borrower located in or on the Premises and used in the operation or occupancy thereof. Authority will have the right to apply any of the Rents and Profits to pay installments due for Personal Property rented or purchased on credit, insurance premiums on Personal Property, or other charges relating to Personal Property in or on the Premises. However, this Assignment will not make Authority responsible for the control, care, management, or repair of the Premises or any Personal Property or for the carrying out of any of the terms or provisions of any Lease.

ii. Authority will have the right to apply the Rents and Profits and any sums recovered by Authority hereunder to the outstanding Indebtedness, as well as to charges for taxes, insurance, improvements, maintenance, and other items relating to the operation of the Premises.

iii. Authority will have the right to take possession of the Premises, manage and operate the Premises and Borrower's business thereon, and to take possession of and use all books of account and financial records of Borrower and its property managers or representatives relating to the Premises.

iv. Authority will have the right to execute new Leases of any part of the Premises, including Leases that extend beyond the term of the Deed of Trust.

v. Authority will have the right to cancel or alter any existing Leases.

vi. Authority will have the irrevocable authority, as Borrower's attorney-in-fact, such Authority being coupled with an interest, to sign the name of Borrower and to bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Premises.

e. All of the foregoing rights and remedies of Authority are cumulative, and Authority will also have upon the occurrence of any such Default or Event of Default all other rights and remedies provided under each Note, the Loan Agreement, the Deed of Trust, or any other loan document or other agreement between Borrower and Authority, or otherwise available at law or in equity or by statute subject to the nonrecourse clause set forth in each Note.

9. Failure of Authority to avail itself of any terms, covenants, or conditions of this Assignment for any period of time or for any reason will not constitute a waiver thereof.

10. Notwithstanding any future modification of the terms of any Note, the Deed of Trust, the Loan Agreement, or any other loan document, this Assignment and the rights and benefits hereby assigned and granted will continue in favor of Authority in accordance with the terms of this Assignment.

11. This Assignment will be binding upon and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto (including without limitation in the case of Authority, any third parties now or hereafter acquiring any interest in the Indebtedness or other obligations of Borrower under each Note or Deed of Trust or a part thereof, whether by virtue of assignment, participation, or otherwise). The words Borrower, Authority, and Lessee, wherever used herein, will include the persons and entities named herein or in any Lease and designated as such and their respective heirs, legal representatives, successors and assigns, provided that any action taken by the named person or entity or any successor, designated as such by an instrument recorded in the Official Records of San Diego County, California, referring to this Assignment, will be sufficient for all purposes notwithstanding that Authority may have theretofore assigned or participated any interest in the obligation to a third party. All words and phrases will be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

12. Any change, amendment, modification, abridgment, cancellation, or discharge of this Assignment or any term or provision hereof will be invalid without the written consent of Authority.

13. Upon payment to Authority of the full amount of the Indebtedness and other obligations secured hereby and by each Note and Deed of Trust, as evidenced by a recorded satisfaction or release of the Deed of Trust, this Assignment will be void and of no further effect.

14. All notices, demands, approvals, and other communications provided for in the Loan Documents will be in writing and be delivered by overnight air courier, personal delivery, or registered or certified U.S. mail, postage prepaid with return receipt requested to the appropriate party at its address as follow

To Authority:

The Imperial Beach Housing Authority
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention: Executive Director

To Borrower:

Wakeland IBNCA LP
Attn: Wakeland IBNCA LLC
c/o Wakeland Housing and Development Corporation
1230 Columbia Street, Suite 950
San Diego, CA 92101

Addresses for notice may be changed from time to time by written notice to all other parties. If any communication is given by mail in the manner hereinabove described, it will be effective upon the earlier of (a) three (3) days after deposit in a post office or other official depository under the care and custody of the United States Postal Service, or (b) actual receipt, as indicated by the return receipt; and if given by personal delivery, or by overnight air courier, when delivered to the appropriate address set forth above.

15. This Assignment may be recorded in the Official Records of San Diego County, California, and Borrower will pay all fees, charges, costs, and expenses of such recording.

16. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof will not be affected thereby.

17. This Assignment will be governed by and construed in accordance with the laws of the State of California.

18. If Authority should bring any action to enforce its rights hereunder at law or at equity, Borrower will reimburse Authority for all reasonable attorneys' fees and costs expended in connection therewith.

[Remainder of Page Intentionally Left Blank; Signatures on Following Pages]

IN WITNESS WHEREOF, the undersigned Borrower has executed this Assignment as of the date first above written.

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____
Managing Member

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
TO ASSIGNMENT OF RENTS AND LEASES

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between South District Union of the California-Pacific Annual Conference of the United Methodist Church and Wakeland IBNCA LP, a California limited partnership, dated as of _____, 202_ in the real property described as follows:

APN:

ASSIGNMENT OF AGREEMENTS

FOR VALUE RECEIVED, the undersigned, WAKELAND IBNCA LP, L.P., a California limited partnership (“**Borrower**”), as of _____, 20__ assigns to the IMPERIAL BEACH HOUSING AUTHORITY, a public body, corporate and politic of the State of California (“**Authority**”), all of its rights, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “**Architectural Agreements**”); and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “**Plans and Specifications**”)

heretofore or hereafter into or prepared by any architect, engineer or other person or entity (collectively “**Architect**”), for or on behalf of Borrower in connection with the construction of the Improvements. The Plans and Specifications, as of the date hereof, include the Plans and Specifications which Borrower has heretofore, or will hereafter deliver to City. The Architectural Agreements include, but are not limited to, the architectural contract between Borrower and _____, located at _____.

This ASSIGNMENT OF AGREEMENTS AND PLANS AND SPECIFICATION (“**Assignment**”) constitutes a present and absolute assignment to City as of the Effective Date, subordinate to the rights of _____ (“**Construction Lender**”); provided, however, City confers upon Borrower the right to enforce the terms of the Architectural Agreements and Borrower’s rights to the Plans and Specifications so long as no Default or event which would constitute a Default after notice or the passage of time, or both, has occurred and is continuing under the Affordable Housing Agreement dated as of _____, 2024, between Authority and Borrower (the “**Affordable Housing Agreement**”), as well as any amendments and implementation agreements. Capitalized terms not otherwise defined herein have the meaning set forth in the Affordable Housing Agreement. Upon the occurrence of a Default or event which would constitute a Default after notice or the passage of time, or both, under the Affordable Housing Agreement, City may, in its sole discretion, give notice to Architect of its intent to enforce the rights of Borrower under the Architect Agreements and of its rights to the Plans and Specifications and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Borrower acknowledges that by accepting this Assignment, City does not assume any of Borrower’s obligations under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower represents and warrants to Authority, as of the Effective Date, that: (a) all Architectural Agreements entered into by Borrower are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to City are complete and correct; and (c) Borrower has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower agrees: (a) to pay and perform all obligations of Borrower under the Architectural Agreements; (b) to enforce the payment and performance of all obligations of any other person or entity under the Architectural Agreements; (c) not to modify the existing Architectural Agreements nor to enter into any future Architectural Agreements without Authority's prior written approval except as otherwise may be permitted in the Affordable Housing Agreement; and (d) not to further assign (other than assignment in connection with a loan from a Senior Lender), for security or any other purposes, its rights under the Architectural Agreements or with respect to the Plans and Specifications with Authority's prior written consent.

This Assignment secures performance by Borrower of all obligations of Borrower under the Affordable Housing Agreement from and after the Construction Financing Event. This Assignment is supplemented by the provisions of the Affordable Housing Agreement and said provisions are incorporated herein by reference.

This Assignment will be governed by the laws of the State of California, without reference to the principles governing conflicts of laws, and Borrower consents to the jurisdiction of any Federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action will be entitled, in addition to any other recovery, to reasonable attorney's fees and costs.

This Assignment will be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Borrower and Authority; provided, however, this will not be construed and is not intended to waive any restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by Borrower contained in the Affordable Housing Agreement.

The attached Architect's Consent, Schedule 1, and Exhibit A are incorporated by reference.

[SIGNATURES ON FOLLOWING PAGES]

BORROWER:

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California
limited liability company, Managing General Partner

By: _____

Managing Member

ARCHITECT'S CONSENT

The undersigned architect (“**Architect**”) hereby consents to the foregoing Assignment to which this Architect’s Consent (“**Consent**”) is part, and acknowledges that there presently exists no unpaid claims due to the Architect except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to Borrower and/or the performance of the Architect’s obligations under the Assignment.

Architect agrees that if, at any time, Authority will become the owner of said Property, or, pursuant to its rights under the Affordable Housing Agreement, elects to undertake or cause the completion of construction of the Improvements on any portion of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; THEN, so long as Architect has received, receives or continues to receive the compensation called for under the Agreements, Authority may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of Authority in the same manner as if performed for the benefit or account of Borrower in the absence of the Assignment.

Architect further agrees that, in the event of a breach by Borrower of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as Borrower’s interest in the Agreements and Plans and Specifications is assigned to Authority, Architect will give written notice to Authority of such breach at the address shown below. Authority will have thirty (30) days from the receipt of such written notice of default to remedy or cure said default. Nothing herein will require Authority to cure said default or to undertake completion of construction of the Improvements.

[Architect’s Signature on Following Page]

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments
Assignment of Agreements
Architect’s Consent

Architect warrants and represents that he or she has no knowledge of any prior assignment(s) of any interest in the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein will have the meanings given them in the Assignment.

Executed as of _____, 20__.

[ARCHITECT NAME]

By: _____

Name:

Title:

[Architect address]

Authority's Address:

IMPERIAL BEACH HOUSING AUTHORITY
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: Executive Director

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments
Assignment of Agreements
Architect's Consent

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to Assignment of Architectural Agreements and Plans and Specifications dated as of _____, 20__ between WAKELAND IBNCA LP, as Borrower, and the IMPERIAL BEACH HOUSING AUTHORITY, as Authority.

[List Claims]

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments
Assignment of Agreements
Schedule of Unpaid Claims

EXHIBIT A

PROPERTY DESCRIPTION

A leasehold interest created by that certain Ground Lease between South District Union of the California-Pacific Annual Conference of the United Methodist Church and Wakeland IBNCA LP, a California limited partnership, dated as of _____, 202_ in the real property described as follows:

APN: 625-230-23-00

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments
Assignment of Agreements
Exhibit A
Legal Description

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (“**Indemnity**”), dated as of _____, 202_, made by WAKELAND IBNCA LP, a California limited partnership (“**Borrower**”), in favor of the IMPERIAL BEACH HOUSING AUTHORITY, a public body, corporate and politic, of the State of California (“**Authority**”).

WITNESSETH

WHEREAS, Borrower is the owner of the real property in the City of Imperial Beach, as more particularly described on Exhibit A attached hereto and made a part hereof, and the real property improvements thereon (collectively referred to as the “**Property**”);

WHEREAS, Borrower and the Authority, entered into that certain Affordable Housing Agreement, dated as of _____, 2024 (“**Affordable Housing Agreement**”), pursuant to which the Authority agreed to make a loan to Borrower in the original principal amounts of SIX HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$625,000) (“**LMIHAF Loan**”), referred to herein as the “**Authority Loan**”, to provide part of the financing for the acquisition, development, construction, and operation of a 50-unit housing project thereon (the Affordable Housing Agreement and the documents and instruments referred to therein which are being executed by Borrower concurrently herewith are referred to collectively as the “**Loan Documents**”);

WHEREAS, in accordance with the Affordable Housing Agreement, Borrower is indebted to the City of Imperial Beach (the “**City**”) for the deferral of certain staff-time fees otherwise payable to the City in connection with its review of the Project, in the amount of _____ (\$_____), and such indebtedness (“**City Fees Deferral**”) is evidenced by the City Fees Deferral Promissory Note and is secured by the City Deed of Trust; and

WHEREAS, Borrower has agreed to execute and deliver to the Authority this Indemnity to induce the Authority to make the Authority Loan and to induce the City to provide the City Fees Deferral.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the Authority as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, “Hazardous Materials” or “Hazardous Substances” will include, but not be limited to, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” in the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code, as “infectious waste” in Section 25117.5 of the California Health and Safety Code, or as “hazardous substances” in Section 25316 of the California Health and Safety Code or “hazardous materials” as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws. Other capitalized terms used in this Indemnity will have the meanings ascribed to them in the Affordable Housing Agreement with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants and indemnities are hereby given and made by Borrower:

2.1 Covenants.

(a) Borrower covenants that it will comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Borrower covenants that the Property will not, while Borrower is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the routine construction, operation and maintenance of the Property.

(c) Borrower further agrees that Borrower will not release or dispose of any Hazardous Materials at the Property, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the routine construction, operation and maintenance of the Property, without the express written approval of the Authority and that any such release or disposal will be effected in strict compliance with all applicable laws and all conditions, if any, established by the Authority.

(d) The Authority will have the right, at any time, to conduct an environmental audit of the Property at the Authority’s expense, unless Hazardous Materials are found in violation of this Agreement, then at Borrower’s sole cost and expense, and Borrower will cooperate in the conduct of any such environmental audit but in no event will such audit be conducted unless the Authority believes that such audit is warranted. Other than in an emergency, such audit will be conducted only after reasonable prior notice has been given to Borrower and only in the presence

of a representative of Borrower. Borrower will give the Authority and its agents and employees access to the Property at all reasonable times to remove, or otherwise to mitigate against the effects of, Hazardous Materials.

(e) Borrower will not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Borrower will promptly either (i) remove or cause to be removed any material that such regulations deem hazardous and require to be removed, or (ii) otherwise comply with such federal and state regulations, at Borrower's sole cost and expense. If Borrower will fail to so do within the cure period permitted under applicable law, regulation, or order, the Authority may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof will be added to the Obligations (as hereinafter defined) of Borrower under this Section 2.

(f) Borrower will immediately advise the Authority in writing of any of the following: (i) any pending or threatened environmental claim against Borrower or the Property, (ii) any condition or occurrence on the Property that (A) results in noncompliance by Borrower with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Borrower.

2.2 Indemnity. Borrower will indemnify, protect, and hold the Authority and the City of Imperial Beach (the "City") harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, reasonable attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the Obligations) which may at any time be imposed upon, incurred by or asserted or awarded against the Authority and/or City and arising from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas;
- (b) The breach of any covenant made by Borrower in Section 2.1 hereof; or
- (c) The enforcement by the Authority and/or the City of any of the provisions of this Section 2.2 or the assertion by Borrower of any defense to its obligations hereunder.

Subject to the qualifications set forth in Section 2.3, below, Borrower will be liable for payment and performance of the Obligations to the full extent (but only to the extent) of the property and

assets (including the Property) which constitute security for such Obligations. If default occurs in the timely and proper payment and performance of any such Obligations (after notice and reasonable opportunity to cure), any judicial proceedings brought by the Authority and/or City against Borrower will be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing such Obligations and enforcement and collection of such Obligations for which Borrower remains directly liable as provided in this Section. If there is a foreclosure of any such liens, mortgages, assignments, rights and security interests by power of sale or otherwise, no personal judgment for any deficiency thereon will be sought or obtained by the Authority and/or City against Borrower, or its officers, directors, agents, attorneys, servants or employees. In no event shall Borrower be liable for any Obligations resulting exclusively from the gross negligence and/or willful misconduct of the Authority and/or the City.

2.3 Exceptions to Non-Recourse Liability. Notwithstanding the foregoing provisions of Section 2.2 or any other agreements,

(a) the Authority and/or City may proceed against any other person or entity whatsoever with respect to the enforcement of any guarantees, surety bonds, letters of credit, reimbursement agreements or similar rights to payment or performance; and

(b) The Authority and/or City may recover personally from any person or entity other than Borrower's Managing General Partner and Limited Partners:

(1) any damages, costs and expenses incurred by the Authority and/or City as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials by such person or entity or by others; provided, however, that neither Borrower nor any officer, partner, agent, attorney, servant or employee of Borrower will have any personal liability if the act or omission complained of was performed in good faith and was not reckless, wanton, intentional or grossly negligent;

(2) any damages, costs and expenses incurred by Authority and/or City as a result of fraud or any criminal act or acts of Borrower or any partner, shareholder, officer, director or employee of Borrower, or of any general or limited partner of Borrower; and

(3) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions.

Section 3. BORROWER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Borrower hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law,

regulation, or order now or hereafter in effect in any jurisdiction affecting any of the Loan Documents or affecting any of the rights of the Authority with respect thereto. The obligations of Borrower hereunder will be absolute and unconditional irrespective of:

- (a) The validity, regularity, or enforceability of the Loan Documents or any other instrument or document executed or delivered in connection therewith;
- (b) Any alteration, amendment, modification, release, termination, or cancellation of any of the Loan Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Borrower contained in any of the Loan Documents;
- (c) Any extension of the maturity of the Authority Loan or any waiver of, or consent to any departure from, any provision contained in any of the Loan Documents;
- (d) Any exculpatory provision in any of the Loan Documents limiting the Authority's recourse to property encumbered by the Deed of Trust securing the Authority Loan, or to any other security, or limiting the Authority's rights to a deficiency judgment against Borrower;
- (e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral for the Authority Loan, or any release, amendment, waiver of, or consent to any departure from any provision of, any other Borrower or guarantee given in respect of the Authority Loan;
- (f) The insolvency or bankruptcy of Borrower, Borrower, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the Authority Loan; or
- (g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower, Borrower, or any other indemnitor or guarantor with respect to the Authority Loan or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and will remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the payment in full of the Authority Loan or the release or other extinguishment of any security for the Authority Loan); and (b) will continue to be effective or will be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Authority upon the insolvency, bankruptcy, or reorganization of Borrower, Borrower or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Borrower's obligations under the Loan Documents, this Indemnity will not terminate if any of the following will have occurred:

(a) The Authority has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Borrower hereby waives the following:

(a) Promptness and diligence;

(b) Notice of acceptance and notice of the incurrence of any obligation by Borrower;

(c) Notice of any action taken by the Authority, Borrower, or any other interested party under any Loan Document or under any other agreement or instrument relating thereto;

(d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Borrower of its Obligations hereunder;

(e) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(f) Any requirement that the Authority and/or City protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(g) Any requirement that the Authority and/or City exhaust any right or take any action against Borrower or any other person or collateral; and

(h) Any defense that may arise by reason of:

(1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;

(2) The failure of the Authority and/or City to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the Authority and/or City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of the Authority and/or City or any other right of the Authority and/or City to proceed against Borrower.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder will be in writing and will be personally served or delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), or mailed by first-class registered mail, return receipt requested, to the following addresses (or to such other address as the parties hereto, will designate in writing):

In the case of the Authority:

825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: Executive Director

In the case of Borrower:

Wakeland IBNCA LP
Attn: Wakeland IBNCA LLC
c/o Wakeland Housing and Development
Corporation
1230 Columbia Street, Suite 950
San Diego, CA 92101

With a copy to Investor Limited Partner at:

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments
Environmental Indemnity

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Borrower will make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the Authority and/or City at the Authority address specified in Section 5 hereof.

6.2 No amendment of any provision of this Indemnity will be effective unless it is in writing and signed by Borrower and the Authority, and no waiver of any provision of this Indemnity, and no consent to any departure by Borrower from any provision of this Indemnity, will be effective unless it is in writing and signed by the Authority, and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Authority to exercise, and no delay in exercising, any right hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Authority provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Authority under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Authority to exercise any of its rights under any other Loan Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity will (a) be binding upon Borrower, and Borrower's successors and assigns; and (b) inure, together with all rights and remedies of the Authority hereunder, to the benefit of the Authority, its respective directors, officers, employees, and agents, any successors to the Authority's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the Authority's rights and remedies under the Loan Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the Authority may, subject to, and in accordance with, the provisions of the Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other Loan Document, to any other person, and such other person

will thereupon become vested with all of the rights and obligations in respect thereof that were granted to the Authority herein or otherwise. None of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the Authority.

6.6 Borrower hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in San Diego County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Borrower irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Borrower agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and will in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity will be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein.

6.9 This Indemnity may be executed in any number of counterparts, each of which will constitute an original and all of which together will constitute one agreement.

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

IN WITNESS WHEREOF, Borrower has duly executed this Indemnity as of the date first set forth above.

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____

Managing Member

Exhibit A
to Environmental Indemnity

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between South District Union of the California-Pacific Annual Conference of the United Methodist Church and Wakeland IBNCA LP, a California limited partnership, dated as of _____, 202_ in the real property described as follows:

:

APN: 625-230-23-00

DISBURSEMENT AGREEMENT
(Imperial Beach Neighborhood Center Apartments - 455 Palm Avenue)

THIS DISBURSEMENT AGREEMENT is entered into by and among the IMPERIAL BEACH HOUSING AUTHORITY, a public body corporate and politic of the State of California (“**Authority**”), and WAKELAND IBNCA LP, a California limited partnership (“**Borrower**”), and [_____], (“**Construction Lender**”), as of _____, 202_.

R E C I T A L S

A. Authority and Borrower have heretofore entered into that certain Affordable Housing Agreement dated as of _____, 2024 (“**Affordable Housing Agreement**”), relating to the real property described in Attachment No. 2 to the Affordable Housing Agreement (the “**Property**”). Terms not defined herein will have the meaning given to them in the Affordable Housing Agreement.

B. In accordance with the Affordable Housing Agreement, Borrower intends to construct a multifamily rental development consisting of 50 dwelling units (the “**Units**”) and ancillary facilities, as described in the Affordable Housing Agreement and its attachments (the “**Project**”). The Units will be rented to and occupied by Extremely Low Income Senior Citizen Households, with the exception of one on-site manager’s unit. The costs of acquiring the leasehold interest in the Property and developing the Project (the “**Acquisition and Development Costs**”) are set forth in the Project Budget approved by the Authority and Construction Lender as the final project budget, which is attached to this Agreement as Exhibit “A” and incorporated herein by this reference (the “**Project Budget**”). The Project Budget will be subject to amendment from time to time, subject to prior written approval by the Construction Lender and the Authority Executive Director or designee, to the extent applicable, upon which approval the Project Budget will be replaced by the approved revised Project Budget.

C. Pursuant to the Affordable Housing Agreement, the Authority has agreed to loan funds to Borrower which will be disbursed by Authority to Borrower to assist Borrower in financing a portion of the Acquisition and Development Costs, in the original principal amount of \$625,000 (“**LMIHAF Loan**”). The Affordable Housing Agreement, the promissory note evidencing the LMIHAF Loan, the deed of trust securing the LMIHAF Loan, and an Agreement Containing Covenants, each dated on or around the date hereof, and other instruments referred to in the Affordable Housing Agreement, are sometimes referred to collectively as the “**Authority Loan Documents**.”

D. Construction Lender and Borrower have entered into that certain Construction Loan Agreement dated on or around the date hereof (“**Construction Loan Agreement**”), pursuant to which Construction Lender has agreed to lend Borrower funds in the amount of approximately \$_____ (variously referred to as the “**Construction Loan**” and the “**Construction Lender Funds**”) to finance a portion of the Acquisition and Development Costs. The Construction Loan Agreement, the promissory note evidencing the Construction Loan, the

deed of trust securing the Construction Loan and other instruments referred to in the Construction Loan Agreement are sometimes referred to collectively as the “**Construction Loan Documents.**”

E. In addition, Borrower has agreed to provide at least \$_____ in Borrower’s funds during the construction period, as set forth in subsection 1.a. below, (“**Borrower’s Funds**”), to pay that portion of the Acquisition and Development Costs in excess of the sum of the Authority Funds and the Construction Lender Funds.

F. The Authority Funds, Construction Lender Funds, and Borrower’s Funds are referred to collectively as the “**Project Funds.**” The Authority and Construction Lender are referred to collectively as the “**Lenders**” or individually as a “**Lender**”.

G. The Lenders and Borrower desire to enter into this Disbursement Agreement solely to provide for the disbursement of the Project Funds for approved Acquisition and Development Costs and to provide for cooperation among the Lenders.

NOW, THEREFORE, the parties agree as follows:

1. Deposit and Use of Funds.

a. Borrower’s Account. The Borrower’s Funds consist of the following:

- (1) Borrower will be responsible, during the construction period, to provide funds if and as needed to pay for cost overruns and contingencies not otherwise funded by other sources of construction financing, in accordance with the requirements and procedures of the Construction Loan Documents;
- (2) In addition, Borrower will defer \$0 of the Developer Fee set forth in the Project Budget.
- (3) In addition, Borrower’s Investor Limited Partner will disburse advances and capital contributions prior to Conversion in the approximate amount of \$_____.
- (4) In addition, Borrower will defer to Conversion the payment of other Acquisition and Development Costs, consisting of the capitalization of the Operating Reserve, in the approximate amount of \$_____.

b. Except to the extent Borrower’s Funds have been spent on Acquisition and Development Costs prior to the Construction Financing Event, or as otherwise agreed to between the Authority and Construction Lender, Borrower will deposit Borrower’s Funds (except for the deferred Developer Fee and Acquisition and Development Costs deferred until Conversion), into a fully segregated disbursement account held by the Construction Lender (the “**Borrower’s Account**”), or such other accounts provided for in the Construction Loan Documents (which may include bond financing documents, if applicable) at such

times as the amounts are payable by the Investor Limited Partner pursuant to the Partnership Agreement.

2. Loan Balancing.

- a. As used in this Disbursement Agreement, the term “**Approved Costs**” will mean all hard and soft Cost line items (and modifications thereto), which were approved by the Authority in connection with its approval of the Project Budget and approved by the Construction Lender in connection with the procedures of the Construction Loan Documents and which are needed for the completion of the Project.

3. Amendments to Project Budget.

- a. Subject to the terms and provisions of this Disbursement Agreement, the Authority Loan Documents, and the Construction Loan Documents, a change order or Project Budget amendment (collectively referred to as a “**Revision**”) will require the approval of the Authority and the Construction Lender. The Authority will be deemed to have approved a requested Revision for which Construction Lender’s approval is not required under the terms of the Construction Loan Agreement, or which has been approved by the Construction Lender, if, within five (5) business days after receipt of the request for Revision, the Authority receives such explanation and/or back-up information as was received and relied upon by the Construction Lender in connection with its approval of the Revision, and if the following conditions are satisfied:
 - (1) To the extent the Revision is limited to a reallocation of budgeted funds among Project Budget line items without any increase in the total Project Budget, (a) the amount of the Revision does not exceed \$100,000, and (b) the funds in the line item(s) to be reduced remain sufficient for completion of the Project.
 - (2) To the extent the Revision involves an increase in the total Acquisition and Development Costs, (a) additional funds in an amount equal to the increase in the total Acquisition and Development Costs will be provided by Borrower or a Lender if such increase is not matched with cost savings or contingency, and (b) the requested increase in the total Acquisition and Development Costs will be approved by the parties to such extent.
 - (3) The Revision will not materially shorten the useful life of the Project or any element of the Project or materially impair the functionality of any system or component of the Project.
 - (4) The Revision will not materially reduce the quality or functionality of the fixtures, finishes, furnishings, window materials, doors, hardware or appliances in the residential units or the common use facilities.

- (5) The Revision will not change the interior layout of any of the residential units in a manner that conflicts with accessibility requirements.

4. Lender Funds.

- a. Authority Funds. The Authority Funds will be held by the Authority as the Authority will determine, to be disbursed as provided in this Disbursement Agreement. The Authority Funds are not pledged to the Construction Lender or any other lender, nor will they constitute security for the Construction Loan or any other loan.
- b. Construction Lender Funds. The Construction Lender Funds will be deposited and held by the Construction Lender as the Construction Lender will determine, to be disbursed as provided in the Construction Loan Agreement. The Construction Lender Funds are not pledged to the Authority or any other lender, nor will they constitute security for the LMIHAF Loan or any other loan.

5. Use of Funds to Pay Acquisition and Development Costs.

- a. Approved Costs. The Authority Funds, Construction Lender Funds, and the Borrower's Funds will be used exclusively for the payment of, or reimbursement for, the Acquisition and Development Costs shown in the Project Budget, as the same may be amended from time to time with the written approval of the Construction Lender and the written approval or deemed approval of the Authority (subject to paragraph b. of this Section 5). Payment of, or reimbursement for, Approved Costs will be made only after they have been incurred by the Borrower.
- b. Budget Amendments: Construction Lender's Right to Disburse Funds without Authority Approval. Notwithstanding any provision of this Disbursement Agreement requiring approval by the Authority of amendments to the Project Budget, the Construction Lender will have the right, without Authority approval, to disburse Borrower's Funds and Construction Lender Funds (as applicable) to pay interest on the Construction Loan and Approved Costs which the Authority is deemed to have approved. The parties acknowledge and agree that the Project Budget attached to this Disbursement Agreement is approved as of the date hereof.

6. Application for Payments.

- a. Applications for Payment. Disbursements of Project Funds will be made upon submission of a written itemized statement or draw request in a form that is mutually acceptable to the Lenders (the "**Application for Payment**"), subject to the conditions set forth below. Each Application for Payment will include a representation by Borrower that it has obtained the approval of the Investor Limited Partner, to the extent such approval is required by the Partnership Agreement. The term "disbursement" will include, without limitation, disbursement of the Authority Funds, Borrower's Funds that have been delivered to Construction Lender as

“Borrower’s Funds,” Borrower’s prior expenditures of Borrower’s Funds and Construction Lender Funds. Applications for Payment may be submitted not more frequently than once monthly unless otherwise permitted by the investor and Construction Lender. Each Lender will determine whether or not the conditions precedent to its obligation to advance its funds have been satisfied or whether or not to waive a condition precedent to such obligation to advance its loan.

b. Order of Disbursement. Each Lender and the Borrower will disburse its respective Project Funds as follows:

- (1) First, approximately \$_____ of the Borrower’s Funds will be disbursed to pay Approved Costs.
- (2) Second, the Authority will disburse all of the LMIHAF Loan less the hold-back of ten percent (10%) described in paragraph (3) below), and
- (3) Disbursement of the Construction Loan will be subject to such retention as may be provided for in the Construction Loan Agreement. The Construction Loan retention will be disbursed when and as required by the Construction Loan Agreement. The Construction Lender will disburse to itself, from principal of the Construction Loan, on a monthly basis, an amount equal to interest accrued on the outstanding principal of the Construction Loan during the previous month.

c. Contents of Application for Payment. Subject to any additional requirements of the Construction Lender (which will not, in any event, apply to the disbursement of Authority Funds), each Application for Payment will set forth: (1) a description of the work performed, material supplied and/or Acquisition and Development Costs incurred or due for which disbursement is requested with respect to any Acquisition and Development Costs shown as a line item (“**Item**”) in the Project Budget; (2) the total amount incurred, expended and/or due for each requested Item, less prior disbursements; and (3) the percentage of completion of the portion of the work to be paid from the Item. The Authority hereby consents to the use of the form of Application for Payment attached to the Construction Loan Agreement for draw requests. Notwithstanding anything to the contrary herein, any Application for Payment for Construction Lender funds will be deemed approved by and control over any contrary response from Authority when approved by Construction Lender.

d. Delivery of Applications for Payment. Borrower will deliver copies of each Application for Payment concurrently to each of the Lenders. Subject to c above, each Application for Payment will be subject to the approval of the Lenders, with respect to their respective loans, in accordance with this Disbursement Agreement, and, if prevailing wage requirements are applicable, will be subject to review and approval by the Authority’s prevailing wage consultant, if needed to determine compliance with applicable prevailing wage requirements.

- e. Documentation. Each Application for Payment will be accompanied by the following: (i) change order(s) to the general contract, if any, (ii) copies of paid invoices and (except for the first Application for Payment) unconditional lien releases for construction costs paid with the proceeds of the prior Application for Payment, and (iii) conditional (upon receipt of payment) lien releases for construction costs to be paid with the proceeds of the instant Application for Payment, which invoices and lien releases will be considered a part of each Application for Payment. Where Borrower is requesting Project Funds for Acquisition and Development Costs other than general contract payments, Borrower will attach to the Application for Payment copies of invoices or such other appropriate documentation to evidence, document, justify and support the request, which will be an amount within the amount of the applicable line item in the Project Budget. Lenders may require Borrower to separate lien waivers and hard cost invoices from the other materials provided with Applications for Payment. Each Application for Payment submitted to the Authority will be accompanied by documentation satisfactory to the Authority to demonstrate Borrower's compliance with applicable prevailing wage requirements.
- f. Submittal of Inspection Report to Authority. Immediately after each disbursement pursuant to an Application for Payment, if agreed to by the Construction Lender in advance and in writing, the Construction Lender will transmit to the Authority a copy of its inspection report or other documentation indicating the determination by Construction Lender's inspector of the percentage of work completed, pertaining to such Application for Payment. No representation or warranty of Construction Lender is made or will be implied with respect to any matter shown in such inspection report or other documentation, in any event.

7. Approval of Applications for Payment

- a. General. Approval of each Application for Payment will be subject to satisfaction of the requirements of this Agreement and the Lenders' respective Loan Documents.
- b. Procedure. Except as otherwise provided in the Construction Loan Agreement with respect to the Construction Loan, each Lender will, within fifteen (15) business days after receipt of an Application for Payment containing all of the items described in Section 6, above, determine the amount of the Application for Payment that is approved, notify Borrower, appropriate members of the construction team and the other Lenders of such amount, and, if and as required by paragraph b of Section 6 above, disburse the approved amount. With respect to disbursements of Authority Funds, the Authority will promptly disburse the approved amounts, by check, in either of the following ways (as the Authority may determine in its sole discretion): (i) to Borrower, and Borrower will promptly disburse such funds as provided in the Application for Payment, (ii) to subcontractors and/or suppliers entitled to such payment as provided in the Application for Payment, or (iii) jointly to Borrower and such subcontractors and/or suppliers.

- c. Disapprovals. An item in an Application for Payment which is not specifically approved within fifteen (15) business days will be deemed disapproved. On the basis of the progress of the work performed on the Project and the conditions precedent to making disbursements contained in their respective agreements with Borrower, each Lender may disapprove all or part of an Application for Payment. If a Lender disapproves any portion of the amount requested by Borrower in an Application for Payment, such Lender will promptly notify the other Lenders and the Borrower of the disapproved amount and the reason therefor. A Lender's disapproval of an amount requested in an Application for Payment is not binding on the other Lenders.
- d. Concurrent Review of Applications for Payment. If requested payment for an Item in the Application for Payment is disapproved or deemed disapproved, the representatives of Borrower and the Lenders will meet promptly and in good faith to attempt to resolve the matter to their mutual satisfaction. To effectuate this paragraph, the Lenders will review each Application for Payment concurrently, and notify the other Lenders of its approval or disapproval (in whole or in part) of such request as soon as possible. Each Lender will signify its approval of an Application for Payment by signing and transmitting to the other Lenders a copy of the Application for Payment, by hard copy or facsimile transmission.
- e. Disbursement of Undisputed Amounts. If there is a dispute over an item included in an Application for Payment, the Lenders and Borrower will each, if and as required by paragraph b of Section 6 above, disburse the portion of the Application for Payment not in dispute, and fund the disputed amounts promptly upon resolution of the dispute. If a Lender elects to fund an amount disputed by another Lender, and the Lenders and Borrower subsequently resolve such dispute so that the Lender that disputed the amount agrees to fund the previously disputed amount, the Lender that disputed the amount will so disburse its funds to reimburse the other Lender for the amount such Lender previously funded. Disputed amounts will not be deducted from the Lenders' respective loans, but will be available for disbursement for other Approved Costs in accordance with the Project Budget.
- f. Disbursement by Construction Lender to Pay Disputed Amounts. Notwithstanding any provision of this Disbursement Agreement requiring approval by all Lenders of disbursements to be made by any Lender, the Construction Lender will have the right, without the other Lenders' approval, to disburse Borrower's Funds and Construction Lender Funds to pay Approved Costs as provided in an Application for Payment that is not approved by the Authority, including amounts to pay cost overruns, without regard to whether such advance would cause the outstanding principal amount of the Construction Loan to exceed the original stated amount thereof. With respect to disbursements by the Construction Lender, all such amounts so advanced to pay Approved Costs will be and remain senior to the liens of the deeds of trust securing the LMIHAF Loan all on the terms and conditions set forth in the applicable subordination agreement. Notwithstanding any provision in

this Agreement or any other document or instrument, disbursements of Construction Lender's Funds pursuant to this paragraph to pay Approved Costs will be deemed approved disbursements for purposes of subordination of the LMIHAF Loan to the Construction Loan, and the subordination of the LMIHAF Loan to the Construction Loan will include all such disbursements and advances by the Construction Lender, all on terms and conditions set forth in the respective subordination agreement.

- g. Right to Condition Disbursements. The Lenders will each have the right to condition a disbursement upon receipt and approval of such documentation, evidence or information that such Lender may request, including, but not limited to, vouchers, invoices, and architect's inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed.
- h. General Conditions Applicable to Disbursements. Disbursements will be subject to the following conditions:
 - (1) Each Lender will use the disbursement procedures set forth in the respective Loan Documents and this Agreement; provided, however, none of the Lenders will be obligated to disburse any Project Funds until the other Lender has approved, or is deemed to have approved, all or a portion of the Application for Payment for the funds to be disbursed; and
 - (2) The Lenders will make agreed disbursements of Project Funds: (a) to Borrower for reimbursement of soft costs incurred and paid by Borrower and for payment to third-party contractors, subcontractors or creditors of the Project, as the case may be; or (b) to Construction Lender for financing costs, including without limitation, loan fees, interest and reimbursement for Construction Lender's costs as set forth in the Construction Loan Documents and included in the Project Budget. Notwithstanding the foregoing, the Authority and Construction Lender will each have the right in their sole discretion to make disbursements of Project Funds directly to third parties entitled to such payment.

8. Approval of Final Application for Payment

Subject to additional conditions set forth in the Construction Loan Agreement (which will not, in any event, apply to any disbursement of Authority Funds), the final contractor's invoice (representing retention on the construction contract) will be disbursed by the Construction Lender in accordance with the Construction Loan Documents. Subject to additional conditions set forth in the Authority Loan Documents (which will not, in any event, apply to a disbursement of Construction Lender Funds), the Authority will disburse to Borrower the portion of the Authority Funds held back as retention upon Borrower's documentation of satisfaction of all conditions precedent to Conversion.

9. Disbursement of Borrower's Funds.

Subject to the terms of the Construction Loan Agreement, Construction Lender will disburse all of the Borrower's Funds (other than the Borrower's Funds that will be disbursed at closing) to pay Acquisition and Development Costs on the basis of Applications for Payment approved by the Construction Lender and approved or deemed approved by the Authority and the Lender in accordance with this Agreement.

10. Allocation of Cost Savings

If, there are Cost Savings with respect to the Project, such Cost Savings will be applied consistent with the Affordable Housing Agreement and its attachments or to reduce the Permanent Loan Amount, if approved by Authority and City.

11. Inspection of the Project.

The Lenders will each have the right to inspect the Property during construction and agree, subject to the consent of such Lender's inspector, to deliver to each other Lender copies of inspection reports created. Inspection of the Property will be for the sole purpose of protecting the respective security of the Lender and is not to be construed as a representation by such Lender or its inspector that there has been compliance with plans or that the Property will be free of faulty materials or workmanship. The Borrower may make or cause to be made such other independent inspections as the Borrower may desire for its own protection.

12. Supervision of Construction.

Neither the Authority nor the Construction Lender will be under any obligation to perform any of the construction or complete the construction of the improvements on the Property, or to supervise any construction on the Property, and will not be responsible for inadequate or deficient contractors, subcontractors, materials, equipment or supplies. Neither the Authority nor the Construction Lender is an agent for any other Lender or for Borrower, nor are the Authority or the Construction Lender partners or joint venturers with any other Lender or with Borrower. Neither the Authority nor the Construction Lender will have any fiduciary duty or obligation to any other Lender or to Borrower.

13. Use of Authority Funds by Construction Lender or Assignee after Foreclosure.

The Authority and Construction Lender agree as follows:

- a. Construction Lender or Assignee May Assume the Affordable Housing Agreement.
If there is (1) a default by Borrower under the terms of the Affordable Housing Agreement, which remains uncured after notice to the Borrower pursuant to the Affordable Housing Agreement and which results in the termination of the Affordable Housing Agreement by the Authority, and/or (2) a foreclosure by the Construction Lender, or conveyance to Construction Lender by deed in lieu of foreclosure, the Construction Lender (and the assignee of such Lender, referred to

herein as the “**Assignee**”) will have the right, but not the obligation, to assume the rights and obligations of Borrower under the Affordable Housing Agreement as if the Affordable Housing Agreement had not been terminated. The Construction Lender or Assignee, as the case may be, will be referred to as the “**Party in Possession**”.

- b. Conditions to Continued Disbursement of LMIHAF Loan. The Authority will continue to disburse the undisbursed portion of the LMIHAF Loan for the payment of Project Acquisition and Development Costs as provided herein, upon and subject to: (1) the execution of an Assignment and Assumption Agreement acceptable to the Authority and the Party in Possession, pursuant to which the Party in Possession agrees to construct and operate the Project in accordance with the terms and conditions of the Affordable Housing Agreement, as the Affordable Housing Agreement may be further amended by mutual agreement of the Authority and the Party in Possession; and (2) to the extent necessary, the execution or re-execution and recordation or re-recordation, of the promissory note evidencing the LMIHAF Loan, the Authority Deed of Trust and other instruments securing the LMIHAF Loan, and the Agreement Containing Covenants.
- c. Procedure if Party in Possession Fails to Assume Agreement. If the Authority and the Party in Possession fail to enter into an Assignment and Assumption Agreement as described in paragraph b within 90 days after termination of the Affordable Housing Agreement or Construction Lender’s foreclosure of its deed of trust (or such later date as the Party in Possession and the Authority may agree to in writing), either party may terminate this Disbursement Agreement by providing written notice of termination to the other party. Upon termination of this Disbursement Agreement, the Authority will have no further obligation to Construction Lender or any other person to disburse the undisbursed portion of the LMIHAF Loan and the Construction Lender will have no further obligation to the Authority or any other person to disburse the undisbursed portion of the Construction Loan.
- d. Reservation of Rights. Nothing contained herein will be construed as restricting, limiting, amending or modifying the rights of the parties in the Affordable Housing Agreement, or the Construction Loan Agreement, as they relate to defaults or remedies, including, inter alia, the right of each party under its respective security instruments to foreclose on the Property, or to seek recourse under any guaranties.

14. Integrated Agreement.

This Disbursement Agreement is made for the sole benefit and protection of the parties hereto and no other person or persons will have any right of action or right to rely hereon. As this Disbursement Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof will be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Disbursement Agreement, this Disbursement Agreement does not

supersede and will not be deemed to amend the Construction Loan Documents or the Authority Loan Documents.

15. Termination of this Disbursement Agreement.

This Disbursement Agreement will terminate when all of the Project Funds have been fully disbursed.

16. Binding Effect.

This Disbursement Agreement will be binding on and inure to the benefit of the parties hereto and their heirs, personal representatives, successors, and assigns, except as otherwise provided herein.

17. Governing Law.

This Disbursement Agreement has been negotiated and entered into in the State of California, and will be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.

18. Titles and Captions.

Titles or captions contained herein are inserted as a matter of conveniences and for reference, and in no way define, limit, extend or describe the scope of this Disbursement Agreement or any provision hereof.

19. Interpretation.

No provision in this Disbursement Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.

20. Waiver; Amendments.

No breach of a provision hereof may be waived unless in writing. Waiver of one breach of a provision hereof will not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Disbursement Agreement may be amended only by a written agreement executed by the parties to be bound at the time of the amendment.

21. Further Assurances.

The parties hereto agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Disbursement Agreement.

22. Severance.

If any provision of this Disbursement Agreement is determined by a court of competent jurisdiction to be illegal, invalid or enforceable, such provision will be deemed to be severed and deleted from this Disbursement Agreement as a whole and neither such provision, nor its severance and deletion will in any way affect the validity of the remaining provisions of this Disbursement Agreement.

23. Independent Advice of Counsel.

The parties hereto and each of them, represent and declare that in executing this Disbursement Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.

24. Voluntary Agreement.

The parties hereto, and each of them, further represent and declare that they carefully read this Disbursement Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

25. Attorneys' Fees.

If there is a dispute between the Lenders regarding this Disbursement Agreement, the prevailing party will be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.

26. Counterparts.

This Disbursement Agreement may be signed by each party on a separate signature page, and when the executed signature pages are combined, will constitute one single instrument with the same effect as if all signatories had executed the same instrument.

[Remainder of Page Intentionally Left Blank; Signatures On Following Pages]

IN WITNESS WHEREOF, the Authority, Construction Lender, and Borrower have executed this Disbursement Agreement as of the date first set forth above.

“AUTHORITY”

IMPERIAL BEACH HOUSING AUTHORITY,
a public body, corporate and politic

By: _____
Tyler Foltz, AICP
Executive Director

ATTEST:

By: _____
Jacqueline M. Kelly, MMC
Authority Secretary

APPROVED AS TO FORM:

By: _____
Jennifer Lyon
Authority Counsel

KANE, BALLMER & BERKMAN

By: _____
Authority Special Counsel

[Signatures Continue On Following Pages]

“Borrower”

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____
Managing Member

[Signatures Continue On Following Page]

“Construction Lender”

[_____]

By: _____

Name: _____

Title: _____

Exhibit “A” to Disbursement Agreement

PROJECT BUDGET

[Immediately Follows This Page]

PROMISSORY NOTE
TO THE CITY OF IMPERIAL BEACH
(FEES DEFERRAL)

3% Interest
\$ _____

Imperial Beach, California
_____, 202_

FOR VALUE RECEIVED, WAKELAND IBNCA LP, a California limited partnership (“**Borrower**”), hereby promises to pay to the CITY OF IMPERIAL BEACH, a municipal corporation of the State of California (“**City**”), or order, a principal amount of _____ DOLLARS (\$_____), being the principal amount of the indebtedness of Borrower to City created by the deferral of certain City staff time based fees in connection with the City’s review of the Project, as contemplated in that certain Affordable Housing Agreement between Borrower and the Imperial Beach Housing Authority (the “**Authority**”) dated as of _____, 2024 (the “**Affordable Housing Agreement**”). This Note evidences the City Fees Deferral, which provides part of the financing for the acquisition and development of that certain real property long-term leased by Borrower and located at 455 Palm Avenue in the City of Imperial Beach, legally described in the Deed of Trust securing this Note (the “**Property**”). The obligation of Borrower to City hereunder is subject to the terms of the Affordable Housing Agreement, this Note and the following instruments, each dated on or about the date hereof, and, where applicable, executed and delivered by Borrower for the purpose of securing this Note: an Agreement Containing Covenants (Including Rental Restrictions) (“**Agreement Containing Covenants**”) and a Subordinated Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (“**City Deed of Trust**”). Said documents are public records on file in the offices of City, and the provisions of said documents are incorporated herein by this reference. The Borrower will pay interest at the rate, in the amount and at the time hereinafter provided.

1. Capitalized terms not otherwise defined herein will have the meaning ascribed to such terms in the Affordable Housing Agreement. In addition, the following terms have the following meanings:

“**Acquisition and Development Costs**” means the total cost of acquiring the long-term leasehold interest in the Property and developing, and constructing, the Improvements thereon, as set forth in the Project Budget. Acquisition and Development Costs may also include capitalized operating reserves required by lenders and investors and reasonably approved by the Authority Executive Director.

“**Affiliate**” means any Person directly or indirectly controlling, controlled by or under common control with another Person. The term “control” as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board of directors. It will be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with

respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, each general partner will be considered an “Affiliate” of Borrower.

“**Annual Financial Statement**” means the annual audited financial statement of Revenue and Operating Expenses and balance sheet for the Improvements, prepared pursuant to the Affordable Housing Agreement at the Borrower’s expense, by an independent certified public accountant reasonably acceptable to the Authority, which will form the basis for determining the Residual Receipts.

“**City Deed of Trust**” means the Subordinated Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by Borrower in favor of City and dated on or about the date hereof, which secures this Note.

“**City Fees Deferral**” means the indebtedness of Developer to the City created by the City’s deferral of fees for reimbursement to City for staff time in reviewing and approving the Project in the amount of _____ Dollars (\$_____) as contemplated in the Affordable Housing Agreement, which indebtedness is evidenced by this City Fees Deferral Note and secured by the City Deed of Trust having a lien on the Property that is junior in priority to the lien of the Senior Loan Deed of Trust.

“**City Fees Deferral Note**” means this Note dated as of the date hereof, evidencing the City Fees Deferral indebtedness.

“**City’s Share of Residual Receipts**” will have the meaning set forth in Section 8, below.

“**Construction Financing Event**” means the date on which the Construction Loan Deed of Trust is recorded.

“**Construction Loan**” means the Construction Period loan to be made to Borrower by an institutional lender reasonably acceptable to City (together with its successors and assigns, “**Construction Lender**”) at the time of the Construction Financing Event, secured by the Construction Loan Deed of Trust.

“**Construction Loan Deed of Trust**” means the deed of trust securing the Construction Loan that is first in priority.

“**Construction Period**” means the period of time commencing upon the Construction Financing Event and ending upon the repayment of the Construction Loan and the funding of the Permanent Financing.

“**Conversion**” means the point in time when the Permanent Financing has been funded, the Limited Partner Capital Contribution has been funded (subject to adjustment as provided in the Partnership Agreement and less that portion of the Limited Partner Capital Contribution that will

be funded upon receipt of Form(s) 8609), and the Construction Loan has been repaid in full or converted to permanent financing.

“Deferred Developer Fee” means that portion of the Developer Fee which was not paid prior to the date of Conversion and which will be paid from the Revenue remaining after payment of Operating Expenses, prior to any payment of Residual Receipts to the City. The term “Deferred Developer Fee” will include any loan or capital contribution made by a partner of Borrower to pay such deferred fee.

“Developer Equity” means funds provided by the Borrower for payment of Acquisition and Development Costs and will not include the Senior Loan, the LMIHAF Loan, the City Fees Deferral, or any other borrowed funds, and will include the Deferred Developer Fee, the Investor Limited Partner’s capital contribution, as well as any other funds of the Borrower or the General Partners.

“Developer Fee” means the fee in the amount set forth in the Project Budget.

“Environmental Indemnity” means the indemnity in the form attached to the Affordable Housing Agreement as Attachment No. 12, which is incorporated herein by this reference.

“Improvements” means the 50-unit residential development and ancillary facilities to be constructed on the Property by the Borrower, all as described in the Affordable Housing Agreement. The Improvements do not include the Neighborhood Center except for any facilities, easements, rights of way, improvements and/or equipment needed for the operation of the Project and for access to the Project by pedestrians and vehicles.

“Investor Limited Partner” means a Person reasonably acceptable to Developer and City who will be a limited partner in the Limited Partnership pursuant to the Limited Partnership Agreement and who will be allocated the Low Income Housing Tax Credits and own an approximately 99.99% interest in the Developer, and any successor and assign thereof as permitted by the Limited Partnership Agreement.

“LMIHAF Loan” means the loan made by the Authority to Borrower in the maximum amount of \$625,000, which is evidenced by the LMIHAF Note and secured by the Authority Deed of Trust.

“LMIHAF Note” means the LMIHAF Note dated as of the date hereof, evidencing the LMIHAF Loan.

“Low Income Housing Tax Credits” means tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

“Managing General Partner” means Wakeland IBNCA LLC, a California limited liability company, and its successors and assigns permitted under the terms of the Affordable Housing Agreement and this Note.

“**Net Proceeds**” means the proceeds of a sale, transfer or refinancing, less the customary and reasonable costs of the transaction.

“**Operating Expenses**” means actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance and management of the Property that are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles, expressly including, without limitation, payment of the following:

- a. Principal and interest and all periodic fees and costs due and payable on the Senior Loan;
- b. Property and other taxes and assessments imposed on the Project;
- c. A general partner partnership management fee to the General Partner of Borrower not to exceed \$30,000 per year, to be increased at an annual rate of three percent (3%), which will accrue to the extent not paid;
- d. General administrative expenses including but not limited to advertising and marketing, security services and systems and similar customary administrative expenses;
- e. Maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and similar customary services;
- f. Cash deposited into a replacement reserve fund in the amount of \$500 per unit per year;
- g. Cash deposited into an operating reserve fund in such reasonable amounts as are required by Project lenders, the California Tax Credit Allocation Committee, and the Investor Limited Partner from time to time, and approved by the City;
- h. Utility services not paid for directly or reimbursed by tenants, including but not limited to water, sewer, trash collection, gas and electricity;
- i. License or certificate of occupancy fees required for operation of the Project;
- j. Premiums for property damage and liability insurance;
- k. Cable television, satellite and similar services;
- l. Recreational amenities, supplies and services;
- m. Reasonable property management fee payable to a property manager acceptable to the City pursuant to a management contract approved by the City;
- n. A reasonable resident services coordinator fee payable to a coordinator acceptable to the City;

- o. Purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings (other than from reserves);
- p. Fees and expenses of accountants, attorneys, consultants and other professionals, including annual audits and tax return preparation costs payable to a third party; and
- q. An Asset Management Fee to Borrower's Limited Partner in an amount not to exceed \$8,000 per year, to be increased at an annual rate of three percent (3.0%);
- r. Repayment of operating expense loans or development deficit loans to Borrower's partners; and
- s. A Project monitoring fee to the City in an amount equal to \$3,600 per year.

Operating Expenses will not include the following: depreciation, amortization, depletion or other non-cash expenses, any amount expended from a reserve. Operating Expenses will be subject to the reasonable approval of the City.

“Permanent Financing” means the loans and other sources of permanent financing identified in the Method of Financing (Attachment No. 3) attached to the Affordable Housing Agreement, secured by the Permanent Financing Deed of Trust.

“Permanent Financing Deed of Trust” means the deed or deeds of trust and other security instruments securing the Permanent Financing.

“Permanent Period” means the period of time commencing upon the repayment of the Construction Loan and the funding of the Permanent Financing and payment of the Limited Partner Capital Contribution.

“Permitted Transfer” means any of the following, provided (except for subsection f. below) Borrower, a General Partner of Borrower, or an Affiliate of such General Partner, retains day-to-day control over management and operations of the Property and the Improvements and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws:

- a. An assignment of the Affordable Housing Agreement and Borrower's interests in the Property to an Affiliate or a conveyance back from the Affiliate to Borrower;
- b. A conveyance of a security interest in the Property or any portion thereof or interest therein, in connection with a Senior Loan or other loan funding costs related to the Project, approved by the Authority;
- c. The inclusion of equity participation in the Project by addition of limited partners to Borrower's partnership or similar mechanism, and transfers of limited partnership interests in Borrower's partnership;

- d. The lease for occupancy of all or any part of the Improvements on the Property in accordance with the Affordable Housing Agreement and the transfer of the [Neighborhood Center] in fee or by lease;
- e. The granting of easements or permits to facilitate the development of the Property in accordance with the Affordable Housing Agreement;
- f. The withdrawal, removal and/or replacement of a general partner of Borrower's partnership pursuant to the terms of Borrower's partnership agreement, or a conveyance of Borrower's interest in the Property and the Improvements and/or a transfer of limited partnership interests to a general partner or an affiliate of the limited partner pursuant to the option provided to that partner in Borrower's partnership agreement, will not constitute a default under this Agreement or any of the loan documents, nor will such actions accelerate the maturity of this Note, provided that any required substitute general partner is reasonably acceptable to the City, as evidenced by the City's written consent, and is selected with reasonable promptness; and
- g. A transfer approved in writing by City Manager or designee, at his or her sole discretion.

A transfer described in clauses a., b., or c. will be subject to the reasonable approval of the City Manager or designee; provided that, the City approves the transfer of limited partner interests in Borrower's partnership, so long as such transfer is not a result of a resyndication of the Low Income Housing Tax Credits and does not otherwise result in increased equity participation in Borrower, and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

"Property" means the real property described as the "Property" legally described as set forth in Exhibit "A" of the City Deed of Trust.

"Residual Receipts" means the Revenue minus the Operating Expenses, calculated on a 12-month basis, minus the theretofore unpaid portion of the Deferred Developers Fee. All calculations of Residual Receipts will be subject to verification and reasonable approval by the City.

"Revenue" means the gross rental income from the Improvements, and any other income to the Borrower derived from the ownership, operation and management of the Property, including but not limited to the following: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business

interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project; and condemnation awards for a taking of part or all of the Project for a temporary period. "Revenue" will also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Project, except that the value of services provided by on-site manager(s) will not be treated as "Revenue" if no more than one dwelling unit is leased to or otherwise used by on-site manager(s). "Revenue" will not include tenants' security deposits, proceeds from the Senior Loan, the City Loan, Developer Equity, including capital contributions or similar advances, or interest that is earned on and allocated to reserve accounts.

"Senior Loan" means the Construction Period loan made by Construction Lender to Borrower in the approximate amount of \$_____ and during the Permanent Period, the Permanent Financing, which will be secured by deeds of trust or other instrument to which the City agrees, in its sole discretion, to subordinate this Note and the City Deed of Trust, and any other loan during either period of time reasonably approved by the Authority Executive Director as a Senior Loan.

"Term" of this Note means a term that expires on the fifty-fifth (55th) anniversary of the Construction Financing Event.

"Transfer" will have the meaning set forth in Section 11.e of this Note.

2. This Note evidences the obligation of the Borrower to the City for the repayment of the City Fees Deferral indebtedness.

3. This Note is payable at the principal office of City, 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

4. This Note is secured by the City Deed of Trust.

5. This Note will bear three percent (3%) simple interest.

6. Except in the event of a default described in Section 7 hereof, no payments will be due and payable under this Note except to the extent of (a) the City's share of Residual Receipts as described in Section 8, below, and (b) any refinancing, Cost Savings or Additional Proceeds, subject to the limitations set forth in Section 10, below.

7. The entire unpaid principal balance of this Note and any accrued but unpaid interest will be due and payable upon the expiration of the Term hereof, or immediately upon the occurrence of either of the following:

a. if the Property or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the City, except as otherwise permitted in this Note or for a Permitted Transfer under the Affordable Housing Agreement; or

b. if there is a default by the Borrower under the terms of this Note, the City Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or any deed of trust or other instrument securing the Senior Loan or other obligations secured by a deed of trust on the Property, which is not cured within the respective time period provided herein and therein.

8. Prior to the expiration of the Term hereof, Borrower will be obligated to repay the Fees Deferral indebtedness exclusively from the City's share of Residual Receipts, as follows:

a. Annually, not later than the thirtieth (30th) day of April, beginning with the year following the year in which Conversion occurs, Borrower will submit to City an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public accountant reasonably acceptable to the City, determining the amount of Residual Receipts, if any, generated in that year, together with payment of the City's Share of such Residual Receipts. The first such Annual Financial Statement will be for the partial year beginning on the date of Conversion and ending on December 31 of that year. The City will review and approve such Annual Financial Statement, or request reasonable revisions, within 30 days after receipt. If as the result of the City's review of the statement, there is an increase in the amount of any payment due and payable to City (as the result, for example, of a determination that the actual amount of Residual Receipts to which the City is entitled exceeds the amount of City's share of Residual Receipts shown in the Annual Financial Statement submitted by Borrower), Borrower will promptly pay to the City the difference, with interest, from the date on which such payment was due, at the rate of one percent (1%) over the Prime Rate announced by Bank of America, but in any event within ten (10) days of notice of such increase.

b. The City's Share of Residual Receipts to be applied to this Note and the LMIHAF Loan will be 50% (provided that such share shall be prorated to allow for proportionate repayment of the County Loan, the HCD Loan, the LMIHAF Loan and the City Fees Deferral and such other public agencies providing funds for the financing of the Project as approved by Authority and Developer that may require repayment from such 50% of Residual Receipts).

9. All payments applied to this Note will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed.

10. If there are Cost Savings with respect to the Project, subject to the requirements of the other Project lenders, the following will occur: to the extent of fifty percent (50%) of the Cost Savings, such savings shall, unless otherwise approved by Authority, be used to repay the City Fees Deferral to the City by proportionate share when considering the County Loan, the HCD Loan, the LMIHAF Loan, the City Fees Deferral and the loan from such other public agencies providing funds for the financing of the Project as approved by Authority and Developer that may require repayment. For purposes hereof, "Cost Savings", shall mean the difference between the total sources of funds and the total cost of development as shown in the Borrower's cost certification contained in Borrower's application to the California Tax Credit Allocation Committee for a Form 8609 for the Project ("Tax Credit Report"); for avoidance of doubt, the Cost Savings will be adjusted to take into account (i) the loss of any equity investment due to an

adjustment in the allowable tax credits; provided that the tax credit factor applied to the required equity contribution will be as set forth in Borrower's limited partnership agreement; and (ii) any reduction in the Senior Loans required by the Senior Loan Documents. The amount payable to City under this paragraph will be paid within sixty (60) days following submittal of the Tax Credit Report to the California Tax Credit Allocation Committee.

11. Prohibitions on Transfer.

a. Prior to the repayment in full of the Fees Deferral indebtedness and expiration of the Term of the Agreement Containing Covenants, the Borrower must not, except for Permitted Transfers or as permitted by the Affordable Housing Agreement, assign or attempt to assign the Affordable Housing Agreement or this Note or any right therein or herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property (referred to hereinafter as a "**Transfer**"), without prior written approval of the City, except as expressly permitted by the Affordable Housing Agreement or this Note. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. City shall not unreasonably withhold or delay its consent. If consent should be given, any such transfer shall be subject to this Section 11, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein.

b. Proposed transferees (other than an Affiliate of Borrower) must have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill Borrower's obligations undertaken in the Affordable Housing Agreement, the Agreement Containing Covenants, and this Note. A proposed transferee (including an Affiliate of Borrower), by instrument in writing satisfactory to the City and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City must expressly assume all of Borrower's obligations under the Affordable Housing Agreement, the Agreement Containing Covenants, and this Note and agree to be subject to all conditions and restrictions applicable to Borrower. There must be submitted to the City for review all instruments and other legal documents proposed to affect any such transfer; and if approved by the City its approval will be indicated to Borrower in writing. If consent should be given, such transfer will be subject to this Section 11.

c. In the absence of specific written agreement by the City, no unauthorized Transfer, or approval thereof by the City, will be deemed to relieve the Borrower or any other party from any obligations under the Affordable Housing Agreement, the Agreement Containing Covenants, or this Note.

d. In the event of a Transfer prior to the time the Fees Deferral indebtedness is paid in full without the prior written consent of the City, the remaining principal balance of the Fees Deferral indebtedness and all accrued but unpaid interest will be immediately due and payable.

e. As used herein, "Transfer" means

i. the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein (including, without limitation, a beneficial interest), whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project.

ii. “Transfer” also includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of an interest in Borrower, or a conversion of Borrower to an entity form other than that of Borrower at the time of execution of the Affordable Housing Agreement, except that, a cumulative change in ownership interest of a general partner of Borrower of forty-nine percent (49%) or less will not be deemed a “Transfer” for purposes of this Note. Transfer shall not include routine changes in officers and/or board members.

12. The City will not unreasonably withhold, condition, or delay its approval of any matter for which its approval is required hereunder. The City’s disapproval will be in writing and contain the City’s reasons for disapproval.

13. The City Fees Deferral indebtedness arises from the City’s deferral of certain City fees pursuant to the Affordable Housing Agreement, and such fees would otherwise have been paid to the City by Borrower in connection with the development of the Property. Accordingly, Borrower agrees for itself, its successors and assigns that the use of the property will be subject to the restrictions on rent and occupancy set forth in the Agreement Containing Covenants.

14. Subject to the provisions and limitations of this Section 14, the obligation to repay the City Fees Deferral indebtedness is a nonrecourse obligation of the Borrower. Borrower and each general partner or limited partner of Borrower will not have any personal liability for repayment of the loan, except as provided in this Section 14. The sole recourse of City will be the exercise of its rights against the Property and other security for the Fees Deferral indebtedness. Provided, however, that the foregoing will not (a) constitute a waiver of an obligation evidenced by this Note or the City Deed of Trust; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the City Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment will be asked for or taken against Borrower; (c) release or impair this Note or the City Deed of Trust; (d) prevent or in any way hinder the City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or other instrument securing the Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder the City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; (f) relieve Borrower of its obligations under an indemnity delivered by Borrower to City; or (g) affect in any way the validity of a guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Note and the City Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower and its successors and assigns will have personal liability hereunder for any deficiency judgment,

but only if and to the extent Borrower, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the mortgaged Property, ordinary and reasonable capital improvements to the mortgaged Property, debt service, real estate taxes in respect of the mortgaged Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the mortgaged Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party (other than Borrower's Investor Limited Partner):

a. damages, costs and expenses incurred by the City as a result of fraud or criminal act or acts of Borrower or a partner, shareholder, officer, director or employee of Borrower, or of a member or general or limited partner of Borrower, or of a general or limited partner of such member or general or limited partner;

b. damages, costs and expenses incurred by City as a result of misappropriation of funds provided for the payment of Acquisition and Development Costs, as described in the Affordable Housing Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

c. all amounts owing by Borrower pursuant to the indemnification regarding Hazardous Substances under the Environmental Indemnity, and

d. all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City will pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in such enforcement or collection action).

15. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of an extension or extensions of the time of payment or of a due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, the City Deed of Trust or any term or provision of either thereof.

16. Upon the failure of Borrower to perform or observe a term or provision of this Note, or upon the occurrence of an event of default under the terms of the City Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, and after expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

17. Defaults and Remedies.

a. Subject to the extensions of time set forth in Section 18, and subject to the further provisions of this Section 17, failure or delay by Borrower to perform a material term or provision of this Note, the City Deed of Trust, the Affordable Housing Agreement, the Agreement Containing Covenants, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, constitutes a default under this Note.

b. The City will give written notice of default to Borrower, specifying the default complained of by the City. Delay in giving such notice will not constitute a waiver of any default nor will it change the time of default.

c. Failures or delays by the City in asserting its rights and remedies as to a default will not operate as a waiver of default or of such rights or remedies. Delays by the City in asserting its rights and remedies will not deprive the City of its right to institute and maintain actions or proceedings which it may deem necessary to protect, assert, or enforce such rights or remedies.

d. If a monetary event of default occurs under the terms of this Note or the City Deed of Trust, or a deed of trust securing a Senior Loan, or other obligations secured by a deed of trust on the Property, prior to exercising its remedies hereunder or thereunder the City will give Borrower, each general partner, and the Investor Limited Partner, concurrent written notice of such default. Borrower will have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by the City under this Note and the City Deed of Trust. In no event will the City be precluded from exercising remedies if its security becomes or is about to become materially impaired by a failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

e. If a non-monetary event of default occurs under the terms of the Affordable Housing Agreement, this Note, the City Deed of Trust, the Agreement Containing Covenants, or a document implementing the Affordable Housing Agreement or a deed of trust securing a Senior Loan or other obligations secured by a deed of trust on the Property, prior to exercising its remedies hereunder or thereunder, the City will give Borrower, each General Partner, and the Investor Limited Partner, concurrent notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower will have such period to effect a cure prior to exercise of remedies by the City under the Affordable Housing Agreement, the Agreement Containing Covenants, this Note and/or the City Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower will have such additional time as is reasonably necessary to cure the default prior to the City's exercise of remedies, but not to exceed ninety (90) days from the notice of default. If Borrower fails to take corrective action or to cure the default within the time set forth above in this Subsection 17.e, the City will give Borrower, the Senior Lender, the Investor Limited Partner written notice thereof, whereupon the Investor Limited Partner, subject to the terms of Borrower's partnership agreement, may take such corrective action, including removing and replacing a general partner. The Investor Limited Partner will have 45 days, or such longer period as is approved by the City Manager or designee, to remove and replace

such general partner of Borrower. The City agrees to accept cures tendered by a Senior Lender or the Investor Limited Partner within the time period provided herein. Additionally, in the event the Senior Lender, or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Borrower or a general partner, the City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which such party is so precluded from acting, not to exceed 90 days or such additional time as is reasonably approved by the City Manager or designee, provided such Senior Lender or Investor Limited Partner is otherwise in compliance with the foregoing provisions. In no event will City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by a failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received or such additional time as is reasonably approved by the City Manager or designee.

f. A notice of default that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, will be deemed delivered upon its transmission; a notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt by Borrower; and a notice of default that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof. Notices will be sent to the following addresses:

To City:

The City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention: City Manager

To Borrower:

Wakeland IBNCA LP
Attn: Wakeland IBNCA LLC
c/o Wakeland Housing and Development Corporation
1230 Columbia Street, Suite 950
San Diego, CA 92101

18. Notwithstanding specific provisions of this Note, Borrower will not be deemed to be in default for failure to perform a non-monetary obligation hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the City or any other public or governmental authority or entity, or any causes beyond the control or without the fault of the Borrower. An extension of time for any such cause (a “**Force Majeure Delay**”) will be for the period of the enforced delay and will commence to run from the

time of the commencement of the cause, if notice by Borrower is sent to the City within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events will constitute a Force Majeure Delay unless and until Borrower delivers to the City written notice describing the event, its cause, when and how Borrower obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Borrower will deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Note may also be extended in writing by the City and Borrower, such revision approval may be denied by either party in its sole discretion.

19. If the rights created by this Note are held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations must be completely performed and paid.

20. The City Deed of Trust securing this Note and all other City Fees Deferral Loan Documents, except the Agreement Containing Covenants, have been made subordinate and junior to the claims, liens or charges of the Construction Loan Deed of Trust and all other instruments securing the Construction Loan by that certain Subordination Agreement by and among City, Borrower and Construction Lender which is being recorded concurrently with the execution and delivery of this Note and the recordation of the City Deed of Trust, and to the claims, liens or charges of any other Senior Loan and Senior Loan Documents being made and recorded at the Construction Financing Event; and will also be subordinate and junior to the claims, liens or charges of the Permanent Financing Deeds of Trust securing Senior Loans and all other instruments securing the Permanent Financing involving Senior Loans.

21. The City agrees that the lien of the City Deed of Trust will be subordinate to the extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “**Extended Use Agreement**”) recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under the City Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, will also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that a default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement will be an event of default under this Note and the City Deed of Trust and that all costs, damages or other amounts, including reasonable attorneys’ fees incurred by the City as a result of an event of default by Borrower, and all amounts paid by City to cure a default under the Extended Use Agreement will be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the City Deed of Trust.

22. With regard to an approval, consent, or other determination by the City required under this Note or the City Deed of Trust, the City will act reasonably and in good faith.

23. Borrower will have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty. However, prepayment of the obligation evidenced by this Note prior to the expiration of the term of the Agreement Containing Covenants will not entitle Borrower to a reconveyance of the City Deed of Trust.

24. This Note may be executed by each signatory on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF Borrower has executed this Note as of the day and year first set forth above.

BORROWER

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____

Managing Member

Recording Requested by and
When Recorded Mail to:

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 625-230-23-00

Document entitled to free
recording per Government
Code Section 27383

**SUBORDINATED DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)**
(Imperial Beach Neighborhood Center Apartments – 455 Palm Avenue)

This Subordinated Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of [REDACTED], 2024 by WAKELAND IBNCA LP, a California limited partnership (“**Trustor**”) (whose address is c/o Wakeland Housing and Development Corporation 1230 Columbia Street, Suite 950, San Diego, CA 92101), to _____, a California corporation (“**Trustee**”), for the benefit of the CITY OF IMPERIAL BEACH, a municipal corporation of the State of California (“**Beneficiary**”), whose address is 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, Attn: City Manager.

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the “**Trust Estate**”):

(a) Trustor’s long-term leasehold interest in that certain real property in the City of Imperial Beach, County of San Diego, State of California more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (the “**Subject Property**”);

(b) The real property comprised of all buildings, structures, fixtures and other improvements now or in the future located or to be constructed on the Subject Property (the “**Improvements**”);

455 Palm Avenue - Imperial Beach Neighborhood Center Apartments

City Deed of Trust

Page 1

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the “**Appurtenances**”). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the “**Real Property**”);

(d) subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “**Rents**”);

(e) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “**UCC**”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the “**Goods**,” and together with the Real Property, the “**Property**”); and

(f) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale

proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the “**Intangibles**”).

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the “**Personal Property**”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary will have, in addition to all rights and remedies provided herein, all the rights and remedies of a “secured party” under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) a promissory note in the original principal amount of \$_____, executed by Trustor of even date herewith in connection with that certain City Fees Deferral Loan from City to Trustor pursuant to the Affordable Housing Agreement (the “**Note**”);
 - (b) the Affordable Housing Agreement dated as of _____, 2024 (the “**Affordable Housing Agreement**”), between Trustor and the Imperial Beach Housing Authority (“the “**Authority**”); and
 - (c) the Agreement Containing Covenants (Including Rental Restrictions) between Trustor and Authority, recorded concurrently herewith (“**Agreement Containing Covenants**”).
- (2) payment of indebtedness of the Trustor to the Beneficiary in the principal sum of \$_____ or so much thereof as will be advanced, evidenced by the Note secured hereby, with interest, according to the terms of the Note secured hereby.

The Affordable Housing Agreement, including all Attachments thereto, and the documents and instruments executed by Trustor in connection with the Project, including the Agreement Containing Covenants, the Note, the Assignment of Rents and Leases, and the Assignment of

Agreements, all as described in the Affordable Housing Agreement (collectively referred to as the “**Secured Obligations**”) and all of their terms are incorporated herein by reference and this conveyance will secure the Secured Obligations any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Each capitalized term that is not otherwise defined in this Deed of Trust has the meaning ascribed to it in the Affordable Housing Agreement.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor will pay the Note secured hereby at the time and in the manner provided therein, and perform the obligations of the Trustor as set forth in the Secured Obligations at the time and in the manner respectively provided therein;

2. That Trustor will not permit or suffer the use of any of the property for any purpose other than the uses permitted by the Affordable Housing Agreement and the Agreement Containing Covenants.

3. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Affordable Housing Agreement.

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary will be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements to be constructed on the Property in accordance with the Affordable Housing Agreement insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by the Beneficiary, and all such insurance will be evidenced by standard fire and extended coverage insurance policy or policies. In no event will the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies will be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies will be deposited with the Beneficiary;

7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor will not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, the Beneficiary may also require Trustor to maintain and submit additional records. Beneficiary will specify in writing the particular records that must be maintained and the information or reports that must be submitted;

11. Beneficiary will have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary will be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Note secured hereby;

13. That the funds to be advanced hereunder are to be used in accordance with the Secured Obligations and upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said agreements, the principal sum and all arrears of interest, and other charges provided for in the Note secured hereby will at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary, and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor will not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor will, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of San Diego County, a surety bond in an amount one-and-one-half (1½) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of the beneficiary of the Construction Loan Deed of Trust, the Permanent Loan Deed of Trust and any other obligation having a lien on the Property that is senior to the lien of this Deed of Trust ("**Senior Lender**"), Beneficiary will be entitled to all

compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and will be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of the Senior Lenders, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including reasonable attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, will be applied to the amount due under the Note secured hereby. No amount applied to the reduction of the principal will relieve the Trustor from making regular payments as required by the Note secured hereby;

18. Upon default by Trustor in making any payments provided for in the Note secured hereby or in this Deed of Trust, or in performing any obligation set forth in any of the Secured Obligations, and if such default is not cured within the respective time provided therefor in Section 34 of this Deed of Trust, below, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee will cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary will also deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby;

19. a. Prior to the repayment in full of the Note and expiration of the terms of the Agreement Containing Covenants, the Trustor will not assign or attempt to assign the Affordable Housing Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the Project thereon, or any portion thereof or interest therein (referred to hereinafter as a "**Transfer**"), without prior written approval of the Beneficiary, except for the Permitted Transfers described in Section 19.e.(3) below, or as otherwise permitted in the Note secured hereby. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary will not unreasonably withhold or delay its consent. If consent should be given, any such transfer will be subject to this Section 19, and any such transferee will assume all obligations hereunder and agree to be bound by all provisions contained herein, subject to the provisions of paragraph e.(3) of this Section 19, below.

b. Any such proposed transferee will have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Beneficiary, to fulfill the obligations undertaken by Trustor in the Affordable Housing Agreement and the Secured Obligations. Any such proposed transferee, by instrument in writing satisfactory to the Beneficiary and in form recordable among the land records of San Diego County, for itself and its successors and assigns, and for the benefit of the Beneficiary will expressly assume all of the obligations of the Trustor under the Affordable Housing Agreement and the Secured Obligations, and agree to

be subject to all conditions and restrictions applicable to the Trustor in this Deed of Trust. There will be submitted to the Beneficiary for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Beneficiary its approval will be indicated to the Trustor in writing.

c. In the absence of specific written agreement by the Beneficiary, no unauthorized Transfer, or approval thereof by the Beneficiary, will be deemed to relieve the Trustor or any other party from any obligations under the Affordable Housing Agreement or any other Secured Obligations.

d. In the event of a Transfer without the prior written consent of the Beneficiary, prior to the time the City Fees Deferral Loan is paid in full, the net proceeds (after repayment in full of any Senior Loan and the reconveyance of the Senior Loan Deed of Trust or Permanent Loan Deed of Trust), will be paid to the Beneficiary to the extent necessary to pay in full the accrued interest, if any, current interest and remaining principal balance of the City Fees Deferral Loan and the Note.

e. (1) As used herein, "Transfer" includes the sale, agreement to sell, transfer or conveyance of the Property, the Project, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project, except as provided in subparagraph e.(3) of this Section 19, below.

(2) "Transfer" will also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Trustor, or any conversion of Trustor to an entity form other than that of Trustor at the time of execution of the Affordable Housing Agreement, except that a cumulative change in ownership interest of any general partner of forty-nine percent (49%) or less will not be deemed a "transfer" for purposes of this Deed of Trust.

(3) "Notwithstanding paragraphs (1) and (2), above, "Transfer" will not include any of the following Permitted Transfers, provided (except for subsection (f) below) Trustor, a general partner of Trustor, or an Affiliate of such general partner, retains day-to-day control over management of the Property and Improvements:

(a) An assignment of the Affordable Housing Agreement and sale of all of Trustor's interest in the Property to an Affiliate, or a sale back to Trustor, which will be subject to the reasonable approval of Beneficiary's City Manager or designee;

(b) A conveyance of a security interest in the Property in connection with a Senior Loan; provided that, a refinancing that increases the principal balance of the Senior Loan, increases the principal and interest payments required under the Senior Loan, changes the maturity of the Senior Loan, increases the interest rate of the Senior Loan, or otherwise changes the Senior Loan terms in a manner that creates an adverse effect upon the Beneficiary will not be

considered a Permitted Transfer and must be approved by Beneficiary's City Manager or designee;

(c) The inclusion of equity participation by Trustor by addition of limited partners to Trustor's partnership, or similar mechanisms, and any transfers of limited partnership interests in Trustor's partnership;

(d) The leasing for occupancy of all or any part of the Improvements on the Property, in accordance with the Affordable Housing Agreement and the Agreement Containing Covenants;

(e) The granting of easements or permits to facilitate the development of the Property in accordance with the Affordable Housing Agreement;

(f) In addition, the withdrawal, removal and/or replacement of a general partner of Trustor's partnership pursuant to the terms of the Trustor's partnership agreement or a conveyance of Trustor's interest in the Property and the Improvements or a transfer of limited partnership interests to a general partner pursuant to the option provided to that partner in Trustor's partnership agreement will not constitute a default under this Deed of Trust or any of the Secured Obligations, nor will such actions accelerate the maturity of the City Fees Deferral Loan, provided that any required substitute general partner, is reasonably acceptable to the Beneficiary and is selected with reasonable promptness; and,

(g) Any transfer approved in writing by Beneficiary's City Manager or designee, at his or her sole discretion.

Transfers described in clauses (a), (b), or (c) will be subject to the reasonable approval of the Beneficiary's City Manager or designee; provided that, the Beneficiary approves the transfer of limited partner interests in Trustor's partnership, so long as such transfer is not a result of a resyndication of the Low Income Housing Tax Credits and does not otherwise result in increased equity participation in Trustor, and further provided that such transfer is not to a Prohibited Person or would otherwise violate Anti-Terrorism Laws.

f. The Beneficiary will not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder.

Any disapproval will be in writing and contain the Beneficiary's reasons for disapproval.

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, will sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the

sale by public announcement at the time fixed by the preceding postponement. Trustee will deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts will be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee will apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter will be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution will be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, will be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee will reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact will be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto";

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" will include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several;

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or

of any action of proceeding in which Trustor, Beneficiary, or Trustee will be a party unless brought by Trustee;

27. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the following address:

28. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

29. Trustor agrees that the loan secured by this Deed of Trust is made expressly for the purpose of financing the acquisition, development and construction of the Improvements, including 49 dwelling units of affordable housing (plus one manager's unit) for Extremely Low Income, Very Low Income, and Low Income Senior Citizen Households, and such dwelling units will be occupied exclusively by such persons as set forth in the Secured Obligations.

30. Trustor agrees that, except as otherwise provided in the Note secured hereby, upon sale or refinancing of the Property, the entire principal balance of the debt secured by this Deed of Trust, plus any accrued but unpaid interest thereon, will at the option of Beneficiary be immediately due and payable.

31. The obligation to repay the City Fees Deferral Loan is a nonrecourse obligation of the Trustor and its partners. Neither Trustor nor any of its general or limited partners, nor any other party, will have any personal liability for repayment of the loan. The sole recourse of Beneficiary will be the exercise of its rights against the Property and any related security for the City Fees Deferral Loan. Notwithstanding the foregoing, Beneficiary may recover directly from Trustor or from any other party (other than Trustor's Investor Limited Partner):

(a) any damages, costs and expenses incurred by Beneficiary as a result of fraud or any criminal act or acts of Trustor or any partner, shareholder, officer, director or employee of Trustor, or of any member or general or limited partner of Trustor, or of any general or limited partner of such member or general or limited partner;

(b) any damages, costs and expenses incurred by Beneficiary as a result of any misappropriation of funds provided for the construction of the Improvements, rents and revenues from the operation of the Improvements or proceeds of insurance policies or condemnation proceeds;

(c) any and all amounts owing by Trustor pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity, and

(d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Beneficiary will pay Trustor's reasonable court costs and attorneys' fees if Trustor is the prevailing party in any such enforcement or collection action).

32. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance hereunder will not be deemed to be in default where delays or defaults are proximately caused by any of the following Force Majeure events, provided such event actually delays and interferes with the timely performance of the matter, and, despite the exercise of diligence and good business practices, such event is beyond the reasonable control of Trustor: War; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism, epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any Governmental City (except acts or failure to act of the Beneficiary will not excuse performance by the Beneficiary); the imposition of any applicable moratorium by a Governmental City; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events will constitute a Force Majeure Event unless and until Trustor delivers to Beneficiary written notice describing the event, its cause, when and how Trustor obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Trustor will deliver such written notice within fifteen (15) days after it obtains actual knowledge of the event.

33. If the rights and liens created by this Deed of Trust will be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations will be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor will be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

34. (a) Subject to the extensions of time set forth in Section 32, and subject to the further provisions of this Section 34, failure or delay by Trustor to perform any term or provision respectively required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary will give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice will not constitute a waiver of any default nor will it change the time of default.

(c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default will not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies will not deprive Beneficiary 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.

(d) If a monetary event of default occurs, prior to exercising any remedies hereunder, prior to exercising its remedies, Beneficiary will give Trustor, each general partner, and the Investor Limited Partner, concurrent written notice of such default. Trustor will have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by the Beneficiary under this Deed of Trust. In no event will the Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially impaired by a failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Beneficiary will give Trustor, each general partner, and the Investor Limited Partner, concurrent notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Trustor will have such period to effect a cure prior to exercise of remedies by the Beneficiary under this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor will have such additional time as is reasonably necessary to cure the default prior to the Beneficiary's exercise of remedies. If Trustor fails to take corrective action or to cure the default within the time set forth above in this subsection (e), Beneficiary will give Trustor, the Senior Lender, and the Investor Limited Partner written notice thereof, whereupon the Investor Limited Partner, subject to the terms of Trustor's partnership agreement, may take such corrective action, including removing and replacing a general partner. The Investor Limited Partner will have 45 days, or such longer period as is approved by the Beneficiary City Manager or designee, to remove and replace such general partner of Trustor. Beneficiary agrees to accept cures tendered by a Senior Lender or the Investor Limited Partner within the time period provided herein. Additionally, in the event the Senior Lender or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Trustor or a general partner, Beneficiary agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which such party is so precluded from acting, not to exceed 90 days or such additional time as is reasonably approved by the Beneficiary City Manager or designee, provided such Senior Lender or Investor Limited Partner is otherwise in compliance with the foregoing provisions. In no event will Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by a failure to cure a default or the default is not cured within one hundred eighty

(180) days after the notice of default is received or deemed received or such additional time as is reasonably approved by the Beneficiary City Manager or designee.

(f) Reserved.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, will be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt by Trustor; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof.

35. This Deed of Trust will be subordinate and junior to the Construction Loan Deed of Trust. Following the reconveyance of the lien of the Construction Loan Deed of Trust, this Deed of Trust will be subordinate and junior to the deed of trust in favor of the maker of any permanent or take-out loan (each of which loans is referred to herein as a “**Permanent Loan**”), as described in the Note secured hereby. The City Manager of the Beneficiary or designee will execute such instruments as may be necessary to subordinate the lien of this Deed of Trust and the Secured Obligations, but not the Agreement Containing Covenants to the deed of trust securing the Construction Loan, the Permanent Loan, and any regulatory agreement recorded in connection with the issuance of the Low Income Housing Tax Credits. In the event of a default or breach by Trustor of any security instrument securing a Senior Loan described in this Section 35, Beneficiary will have the right to cure the default prior to completion of any foreclosure. In such event, Beneficiary will be entitled to reimbursement by Trustor of all reasonable costs and expenses incurred by Beneficiary in curing the default. The amount of any such disbursements will be a lien against the Subject Property and added to the obligation secured by this Deed of Trust until repaid, with interest at the highest rate permitted by law.

36. The Trustor has informed the Beneficiary that Trustor intends that the Project qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code (“**Tax Credits**”). In order to receive an allocation of Tax Credits, the Trustor will be required to record in the real property records of the County of San Diego an “extended low-income housing commitment” (as defined in Code Section 42(h)(6)(B)) (the “**Extended Use Agreement**”). If the Trustor demonstrates to the reasonable satisfaction of the Beneficiary that the Tax Credit Allocation Committee or applicable federal law requires that the lien of this Deed of Trust be subordinate to the Extended Use Agreement, then the Beneficiary will execute a subordination agreement (“**Extended Use Subordination Agreement**”) wherein the lien of this Deed of Trust is subordinated to the Extended Use Agreement. The Extended Use Subordination Agreement will:

(a) provide that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument in lieu

of foreclosure or comparable conversion of the City Fees Deferral Loan in accordance with Section 42(h)(6)(E) of the Internal Revenue Code;

(b) provide that the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, will also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code;

(c) provide that Trustor acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement will be an event of default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by Beneficiary as a result of an event of default by Trustor, and any amounts paid by Beneficiary to cure any default under the Extended Use Agreement will be an obligation of Trustor and become a part of the debt evidenced by the Note and secured by this Deed of Trust; and

(d) otherwise be in a form reasonably acceptable to Beneficiary.

37. This Deed of Trust will be subject to the terms and conditions set forth in that certain Subordination Agreement recorded concurrently herewith by and among the Trustor, Senior Lender, and the Beneficiary, as the same may be amended, restated, supplemented or modified from time to time.

[Remainder of page intentionally blank]

[Signatures on following page]

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

WAKELAND IBNCA LP, a California limited partnership

By: WAKELAND IBNCA LLC, a California limited liability company, Managing General Partner

By: _____

Managing Member

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

LEGAL DESCRIPTION

A leasehold interest created by that certain Ground Lease between South District Union of the California-Pacific Annual Conference of the United Methodist Church and Wakeland IBNCA LP, a California limited partnership, dated as of _____, 202_ in the real property described as follows:

APN: 625-230-23-00