

**NO CHARGE ON THIS DOCUMENT PER  
CALIFORNIA GOVERNMENT CODE  
SECTION 6103**

**Recording Requested By  
And When Recorded Mail To:**

City Clerk  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
(Cordova and Trolley)**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (“Declaration”) is dated as of the \_\_ day of \_\_\_\_\_, 2018, by Cordova Trolley, LP, a California limited partnership (“Declarant”) in connection with that certain real property (“Property”) located in the City of Chula Vista, County of San Diego, California, described in Exhibit “A” attached hereto and incorporated herein by reference.

**RECITALS**

A. The City of Chula Vista and the Chula Vista Housing Authority as the Successor Housing Entity (collectively, the “Lender”) has agreed to make a loan to Declarant (“Lender Loan”) pursuant to: (i) that certain Consolidated, Amended and Restated Promissory Note (Cordova and Trolley-HOME Loan) of even date herewith executed by Declarant in favor of the City of Chula Vista, in the original principal amount of \$\_\_\_\_\_.00; and (ii) that certain Amended and Restated Promissory Note (Cordova and Trolley-Housing Authority Loan) of even date herewith executed by Declarant in favor of the Chula Vista Housing Authority as the Successor Housing Entity, in the original principal amount of \$\_\_\_\_\_.00. The aforementioned promissory notes shall be referred to collectively herein as the “Notes.”

B. The Lender Loan is conditioned by the Lender in part upon the recordation of this Declaration setting forth certain restrictions upon the use and sale of the Property. Declarant shall rehabilitate not less than fifty-six (56) affordable units (“Affordable Units”), plus one (1) manager’s unit (collectively the “Project”) on the Property. The Lender Loan was funded by the Lender in part using United States Department of Housing and Urban Development HOME funds. This Declaration is intended to and does restrict nine (9) of the Affordable Units at the Trolley property in accordance with all requirements of the United States Department of Housing and Urban Development HOME program. To the extent any Federal, State or local law, ordinance, statute, regulation or rule applicable to the Property as a result of funding the Lender Loan with proceeds from any of the forgoing programs is not explicitly set forth in this Declaration, the Declarant shall nonetheless comply with such requirements.

C. The Property is also subject to the requirements with respect to the density bonus previously granted to the Property pursuant to Chula Vista Council Resolution 18959 dated as of April 7, 1998, the requirements of which are satisfied by this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to the covenants, conditions and restrictions set forth below:

1. Restrictive Covenants. Declarant agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, that at all times during the term of this Declaration fifty-six (56) residential units at the Project shall be set aside and reserved as “Affordable Units.” As used herein the term “Affordable Units” shall refer to the fifty-six (56) residential units in the Project which are owned or held available strictly in accordance with the terms and conditions set forth below.

(a) Affordable Unit and HOME Affordable Unit Restrictions. The following restrictions shall apply to the fifty-six (56) Affordable Units, including the nine (9) floating HOME Affordable Units (“HOME Affordable Units”) which are subject to the applicable HOME Program regulations (24 CFR Part 92). The restrictions set forth in the Table below shall establish the maximum rental rate, which shall be adjusted for family size appropriate for the unit. Rents shall also be adjusted to reflect a utility allowance (as determined in accordance with the HUD Utility Schedule Model or to otherwise under 24 CFR §92.252(d)(1).

TABLE OF RENT AND INCOME RESTRICTION CRITERIA

1	2	3	4
NUMBER OF AFFORDABLE UNITS AND LOCATIONS	UNIT TYPE	MAXIMUM MONTHLY RENTS	MAXIMUM INCOME OF ELIGIBLE TENANTS
4 at Trolley	2-Bedroom	1/12 <sup>th</sup> of 30% of 40% of AMI	40% of AMI
14 at Trolley	3-Bedroom	1/12 <sup>th</sup> of 30% of 40% of AMI	40% of AMI
3 at Cordova	2-Bedroom	1/12 <sup>th</sup> of 30% of 50% of AMI	50% of AMI
13 at Cordova	2-Bedroom	1/12 <sup>th</sup> of 30% of 60% of AMI	60% of AMI
3 at Cordova	3-Bedroom	1/12 <sup>th</sup> of 30% of 50% of AMI	50% of AMI
12 at Cordova	3-Bedroom	1/12 <sup>th</sup> of 30% of 60% of AMI	60% of AMI
2 at Cordova	4-Bedroom	1/12 <sup>th</sup> of 30% of 50% of AMI	50% of AMI
6 at Cordova	4-Bedroom	1/12 <sup>th</sup> of 30% of 60% of AMI	60% of AMI
TOTAL - 56			

Note: The United States Department of Housing and Urban Development HOME program requires two (2) two-bedroom and seven (7) three-bedroom dwelling units at the Trolley property to be rent and occupancy restricted at or below forty percent (40%) of AMI until \_\_\_\_\_, 2019. Monthly rents for each of the nine (9) floating HOME Affordable Units, including utilities or the utility allowance, shall not exceed the lesser of: (i) the amount calculated pursuant to the foregoing table; (ii) the “High HOME Rents” as published by HUD or (iii) the fair market rents for existing housing for comparable units in the area as established by HUD under 24 C.F.R. Section 888.111. Beginning on \_\_\_\_\_, 20\_\_\_\_, and for the remainder of the term of this Declaration, the nine (9) Affordable

Units that were previously restricted as HOME Affordable Units will be subject to the restrictions applicable to the non-HOME Affordable Units set forth in this Declaration.

(b) Eligible Tenants. Eligible Tenants” are those tenants whose aggregate gross annual income does not exceed the respective percentages set forth in the Table of Rent and Income Restriction Criteria set forth in Section 1(a), above, as adjusted for family size. For purposes of this Declaration, the current annual area median income shall be the area median income defined by HUD as the then current area median income for the San Diego-Carlsbad Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size. When determining income eligibility, Declarant shall use actual household size. When determining rents, Declarant shall use the household size appropriate for the Unit, which shall be 1 person for a studio two persons in a one-bedroom unit, three persons in a two-bedroom unit, four persons in a three-bedroom unit, and five persons in a four-bedroom unit. In the event HUD ceases to publish an established area median income as aforesaid, Lender may, in its sole discretion, use any other reasonably comparable method of computing adjustments in area median income. Notwithstanding anything contained herein to the contrary, to the extent any other restrictions applicable to the Property limit the rent and/or occupancy of the Property, the most restrictive shall apply.

2. Affordable Marketing Plan Compliance; Selection of Residents.

(a) Marketing Plan. Declarant shall utilize the Lender’s standardized management and marketing plan for rental of all of the Affordable Units. The marketing plan, at a minimum, requires publicizing the availability of the Affordable Units with the Lender, such as notices in any Lender-sponsored newsletter, advertising in local newspapers and notice in Lender offices. Provided, however, all tenants of each Affordable Unit shall meet the income requirements set forth herein and tenancy and eligibility shall be in conformance with the terms and standards set forth in the management marketing plan and no preference may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household.

(b) Master List. Selection of residents shall be made either by a lottery or based upon the Master List, rather than on a first-come, first-serve basis. In the event the Lender implements a master waiting list for affordable housing in the Lender (“Master List”), then Developer shall provide notices to persons on the Master List of the availability of the Affordable Units, prior to undertaking other forms of marketing. Developer shall give the persons on the Master List not fewer than fifteen (15) days after receipt of such notice to respond by submitting application forms for rental of the Affordable Units.

(c) Priority. Absent a Master List described above, selection of tenants shall be made within the following levels of priority, subject in all circumstances to applicable limitations imposed by law, including, without limitation, the Fair Housing Act under Federal law:

(1) First Priority. Households which are displaced from their primary residence as a result of an action of City or Agency, a condominium conversion involving the household’s

residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least two years prior to such action or event.

(2) Second Priority. Households which meet one of the following criteria: (i) households which are displaced from their primary residence as a result of an action of City or Agency, a condominium conversion involving the household's residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least one year but less than two years prior to such action or event; (ii) households with at least one member who resides within the City, as that person's primary place of residence; (iii) households with at least one member who works or has been hired to work within the City, as that person's principal place of full-time employment; or (iv) households with at least one member who is expected to live within the City as a result of a bona fide offer of employment within the City.

(3) Third Priority. Other Low Income Households who do not meet the criteria for first priority or second priority above.

(d) Screening. Nothing herein shall restrict Declarant from screening tenants through the application of criteria which is lawful and customary in apartment management in San Diego County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Project.

3. Determination; Annual Requalification. Declarant shall obtain from each person to whom Declarant leases an Affordable Unit a "Supplemental Rental Application" ("Application") in the form of Exhibit "B", attached hereto (or such other form as Lender may from time to time adopt). Declarant shall be entitled to rely on the Application and supporting documents thereto in determining whether a household is an "Eligible Tenant." Declarant shall retain the Application and supporting documents for a period of not less than three (3) years after the household ceases to occupy an Affordable Unit. An Affordable Unit occupied by an Eligible Tenant, shall be treated as an Eligible Tenant until a recertification of such tenant's income demonstrates that such tenant no longer qualifies as an "Eligible Tenant."

4. Certification; Annual Recertification. Upon completion of rehabilitation of the Project (the occurrence of which shall be evidenced by the issuance of a temporary certificate of occupancy for all units within the Project) and annually each year during of the term of this Declaration, Declarant shall certify to Lender under penalty of perjury, utilizing such forms and providing such backup documentation as requested by the Lender. Failure to timely complete the annual certification process described in this Section 4 shall constitute a material default under this Declaration and the Agreement. Lender may resort to the remedies set forth hereinbelow upon such material default, as well as any and all other remedies available at law or in equity and/or contained in Agreement (subject to the notice and cure provisions thereof, if any).

5. Relationship with Declarant. The term “Eligible Tenant” shall not include Declarant, or any individuals who are partners of Declarant, or in any entity having an interest in Declarant, or the Property, or any officer, employee, agent or consultant of the Declarant, or any relative (by blood or marriage) of any officer, employee, agent or consultant of the Declarant. This restriction shall not preclude occupancy by resident managers in the manager’s unit.

6. No Student Dependents. No Affordable Unit shall be occupied or leased to any person who is a full-time student, or a household comprised exclusively of persons who are full-time students, or any student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same dwelling unit.

7. Income of Co-Tenants, Etc. The income of all co-tenants and/or non-dependent occupants, shall be taken into account in determining whether a household is an Eligible Tenant hereunder.

8. Eviction. Subject to provisions of applicable law, in the event that a tenant who was properly certified as an Eligible Tenant at the commencement of such tenant’s occupancy ceases to be eligible, for any reason other than the tenant being over income, Declarant shall give sixty (60) days written notice, or such longer period as prescribed by law, to such tenant to vacate the Affordable Unit. The vacated Affordable Unit shall thereafter be rented to an Eligible Tenant. In the event that a tenant who was properly certified as an Eligible Tenant at the commencement of such tenant’s occupancy ceases to be eligible, as a result of being over income, the over-income tenant shall continue to be considered an Eligible Tenant until evicted, provided this continued occupancy complies with the applicable regulations as referenced below, depending upon the sources of the restrictions involved:

(a) Lender Restrictions. Except as otherwise provided, in Sections 8(b) and (c), below, a tenant who occupies an Affordable Unit and who becomes over income at the time of recertification shall be given one hundred eighty (180) days notice to vacate the Affordable Unit, effective from and after the date of such failure to requalify (i.e., the recertification date, provided the tenant was properly certified originally). During the time the over-income tenant resides in the Affordable Unit, the tenant shall continue to pay the restricted rent. The tenant shall continue to be considered an “Eligible Tenant” until evicted, provided this continued occupancy complies with all applicable requirements of this Declaration.

(b) HOME Program Restrictions. Notwithstanding Section 8(a), above, and subject to the TCAC Regulatory Agreement and requirements, when the gross income of a tenant who occupies a HOME Affordable Unit exceeds the amount allowed by the Table of Rent and Income Restriction Criteria set forth in Section 1(a), above, that tenant shall commence paying rent equivalent to thirty percent (30%) of the tenant’s adjusted income, subject to the fair market rent ceiling as set forth in 24 CFR 92.252(i) and the next available comparable sized and configured unit shall be designated as a HOME Affordable Unit. Notwithstanding anything to the contrary set forth in this Declaration, the tenant shall continue to be considered an Eligible Tenant, provided this continued occupancy otherwise complies with all applicable HOME Program requirements, and the tenant shall not be evicted as a result of having income in excess of the income limits set forth herein. The next

available unit shall be designated as a HOME Affordable Unit to replace the HOME Affordable Unit of the occupant in question. Notwithstanding anything to the contrary set forth in this Declaration, in order to comply with 24 C.F.R. Section 92.252(i), tenants of HOME Affordable Units subject to the TCAC Regulatory Agreement, as defined in Section 8(c), below, shall only be evicted if permitted by 26 USC 42 and must pay rent as set forth in 26 U.S.C. Section 42.

(c) Tax Credit Funds. Notwithstanding Sections 8(a) and (b), above, or anything else to the contrary set forth in this Declaration, when a tenant occupies a unit subject to a regulatory agreement (“TCAC Regulatory Agreement”) by and between the Declarant and the California Tax Credit Allocation Committee pursuant to Section 42 of the Internal Revenue Code, such tenant shall have its rent increased or shall be evicted as a result of such tenant being over income only as and when allowed by such TCAC Regulatory Agreement or by Federal law, including 26 U.S.C. §42. In the event of conflict between the over income regulations of this Declaration and the TCAC Regulatory Agreement, the TCAC Regulatory Agreement provisions shall apply.

9. Maintenance.

(a) Physical Condition of Affordable Units. After completion of construction of the Project, Declarant shall continually maintain the Affordable Units in a decent, safe and sanitary condition, and in good repair as described in 24 CFR §5.703, and in a manner which satisfies the Uniform Physical Conditions Standards promulgated by the Department of Housing and Urban Development (24 CFR §5.705), as such standards are interpreted and enforced by the Lender under its normal policies and procedures. The Lender shall have the right to inspect the Affordable Units from time to time, on reasonable notice and at reasonable times, in order to verify compliance with the foregoing maintenance covenant. Subject to the rights of tenants and their respective leases, Declarant hereby consents to periodic inspection by the Lender’s designated inspectors and/or designees during regular business hours upon notice of no less than twenty-four (24) hours, including the Code Enforcement Agents of the City of Chula Vista, to ensure compliance with all applicable zoning, building codes, regulations, and property standards. Declarant agrees to comply with the provisions of 24 CFR 92.251, whether or not contained in this Section. Further, each Affordable Unit shall be requalified annually, as to the foregoing maintenance covenant, as part of the annual tenant requalification process described in, and to the extent applicable under, Section 4 above. Any deficiencies in the physical condition of an Affordable Unit shall be corrected by Declarant at Declarant’s expense within forty-five (45) days of the identification of such deficiency by the Lender and delivery of written notice of the same to Declarant, provided if the deficiency is of a nature that it cannot be cured within such forty-five (45) day period, the Declarant shall have such additional time to cure as is reasonably determined by the Lender.

(b) Crime-Free Project. At all times during the term of this Declaration, the Declarant shall participate in the Lender’s Crime-Free Multifamily Housing Program, or any successor or similar program established by the Lender.

10. Monitoring. It is contemplated that, during the term of this Declaration, the Lender will perform the following monitoring functions: (a) preparing and making available to Declarant any general information that the /or Lender possesses regarding income limitations and restrictions which

are applicable to the Affordable Units; (b) reviewing the documentation submitted by Declarant in connection with the annual certification process for Eligible Tenants described in Section 3, above; (c) reviewing the documentation submitted by Declarant in connection with the annual certification process for Eligible Tenants in accordance with Section 4, above; and (d) inspecting the Affordable Units to verify that they are being maintained in accordance with Section 9, above. Notwithstanding the foregoing description of the Lender's functions, Declarant shall have no claim or right of action against the Lender based on any alleged failure to perform such function. In addition, the Declarant shall cooperate with and utilize such forms, software, websites and third-party vendors as may be required by the Lender.

11. HOME Affordable Units and Applicable Regulations.

(a) Designation of HOME Affordable Units. The HOME Affordable Units, nine (9) floating units as set forth in Section 1(a), above, will be designated prior to initial occupancy at the discretion of Lender. Such designations may be changed by Declarant, provided that the units before and after the change in designation are of the same unit types, size, features and otherwise comply with the terms of 24 C.F.R. §92.252(j).

(b) Compliance with HOME and Lender Regulations. Declarant shall comply with all applicable regulations, policies and procedures promulgated by HUD in connection with the HOME Program or otherwise adopted by the Lender, until \_\_\_\_\_, 2019. Declarant's failure to so comply shall constitute a material default hereunder, entitling Lender to the remedies set forth in Section 24, below (subject to any applicable notice and cure provisions).

12. Additional Lease Provisions/Annual Income Verification.

(a) All Affordable Units. Declarant shall not include any of the provisions described in 24 C.F.R. §92.253(b) in any lease for any part of the Property. Declarant agrees that it will require each Eligible Tenant to execute an Authorization for Release of Information, in the form attached hereto as Exhibit "C." Declarant agrees that it will include the following provision in all of its leases:

Lessee agrees, upon written request from the Landlord or the City of Chula Vista ("Lender"), to certify under penalty of perjury the accuracy of all information provided in connection with the examination or reexamination of annual income of the tenant's household. Further, tenant agrees that the annual income and other eligibility requirements are substantial and material obligations of the tenancy and that the tenant will comply promptly with all requests for information with respect to the tenancy from the Landlord and/or Lender. Further, tenant acknowledges that tenant's failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or the refusal to comply with the request for information with respect thereto, shall be deemed a violation of this lease provision, and a material breach of the tenancy and shall constitute cause for immediate termination of the tenancy.

(b) HOME Affordable Units. Declarant agrees that it will include the following provision in all of its leases of HOME Affordable Units:

Term of Lease for HOME Program Restricted Units. Tenant has been made aware by Landlord that the unit being leased was assisted with HOME funds. Under the provisions of 24 C.F.R. §92.253, a lease must be for a period of not less than one (1) year unless the parties agree by mutual agreement that the term of the lease be less. The Tenant acknowledges by initialing in the space below that it has been made aware of the provisions of 24 C.F.R. §92.253.

13. Compliance with Regulations. Declarant shall comply with all regulations, policies and procedures promulgated or otherwise adopted by the Lender. Declarant's failure to so comply shall constitute a material default hereunder, entitling Lender to the remedies set forth herein.

14. Successors Bound. Declarant covenants, for itself and its successors and assigns, not to sell, transfer, assign or otherwise dispose of ownership of the Property, unless the prospective purchaser, transferee or assignee expressly promises in writing to be bound by all of the provisions hereof, including the covenant in this Section 14 to require successors to expressly assume the obligations herein. It is expressly acknowledged that the covenants and restrictions set forth herein shall survive any repayment of the Lender Loan. Further, the obligations of Declarant hereunder shall be deemed independent of Declarant's obligations under the Notes.

15. Maximum Rent To Be Collected by Declarant. In no event, shall all of the rent, including the portion paid by the Eligible Tenant and any other person or entity, collected by Declarant (the "Total Rent") for any rent restricted unit exceed the amount of rent set forth in this Declaration. Total Rent includes all payments made by the Eligible Tenant and all subsidies received by Declarant. In the case of persons receiving Section 8 benefits, who are Eligible Tenants, Declarant acknowledges that it shall not accept any subsidy or payment that would cause the Total Rent received for any restricted unit to exceed the maximum rents allowed by this Declaration, for any Affordable Unit. Should Declarant receive Total Rent in excess of the allowable maximum rent set forth in this Declaration, Declarant agrees to immediately notify Lender and reimburse the Lender for any such overpayment. Acceptance by Declarant or its successors in interest, of Total Rent in excess of the maximum rent set forth in this Declaration shall constitute a material breach of the Loan Agreements and this Declaration.

16. Cross Default. Annual payments as referenced in the Notes shall be made to Lender as provided therein. Failure to make the payments to the Lender pursuant to the Notes (subject to all applicable cure periods), shall be a material default under this Declaration.

17. Term. This Declaration and the covenants and restrictions contained herein shall be effective commencing on the date this Declaration is recorded and shall remain in full force and effect until 12:00 midnight on December 31, 2075.

18. Covenant Against Discrimination. Declarant covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, not to discriminate against any tenant or



prospective tenant of any Affordable Unit on the basis of their race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin, as referenced in all applicable state, local and federal law. Until \_\_\_\_\_, 2019, the Declarant shall comply with all applicable Federal requirements set forth in 24 C.F.R. part 5, subpart A.

(a) Obligation to Refrain from Discrimination. Declarant covenants by and for itself and any successors in interest that there shall 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, ancestry, familial status, source of income or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Declarant or any person claiming under or through it establish or permit any such practice or practices of discrimination 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, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or the rental, lease sale of the Property and any dwelling unit thereon. The foregoing covenants shall run with the Property.

(b) Nondiscrimination Covenants. Declarant shall refrain from restricting the rental, lease and sale of the Property and any dwelling unit thereon on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) Deeds. In deeds “The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(2) Leases. In leases “The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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 race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming

under or through it, establish or permit 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 land herein leased.”

(3) Contracts. In contracts “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry 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 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 land.”

19. Enforcement. Declarant expressly agrees and declares that the Lender or any successor public entity or agency is a proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such default may have actually been suffered by some other person or the public at large. Further, the Lender or any successor public entity or agency shall be the proper party to waive, relinquish, release or modify the rights, covenants, obligations or restrictions contained in or arising under this Declaration.

20. Attorneys’ Fees. In the event that any litigation for the enforcement or interpretation of this Declaration, whether an action at law or arbitration or any manner of non-judicial dispute resolution to this Declaration by reason of the breach of any condition or covenant, representation or warranty in this Declaration, or otherwise arising out of this Declaration, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys’ fees and out of pocket expenses (including expert witness fees) to be fixed by the court which shall render a judgment, as well as the costs of suit.

21. Severability. In the event that any provision or covenant of this Declaration is held by a court of competent jurisdiction to be invalid or unenforceable, then it shall be severed from the remaining portions of this Declaration which shall remain in full force and effect.

22. Covenants to Run With the Land. The covenants contained herein shall constitute “covenants running with the land”, and shall bind the Property and every person having an interest therein during the term of this Declaration. Declarant agrees for itself and its successors that, in the event that, for any reason whatsoever, a court of competent jurisdiction determines that the foregoing covenants do not run with the land, such covenants shall be enforced as equitable servitudes against the Property.

23. Recordation; Waiver and Amendment. This Declaration shall be recorded in the Office of County Recorder of San Diego, California. No provision of this Declaration, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed

to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Declaration may be amended, modified or rescinded only in writing signed by Declarant and the City Manager of the City of Chula Vista. In the event the Lender consents to such an amendment, modification or rescission, the same shall be conditioned upon Declarant's payment of all fees and costs incurred by the Lender with respect to the same, including without limitation attorneys' fees.

24. Remedies.

(a) Contract Governed by Laws of State of California. This Declaration, its performance, and all suits and special proceedings under this Declaration, shall be constituted in accordance with the laws of the State of California and Federal law, to the extent applicable. In any action, special proceeding, or other proceeding that may be brought arising out of, under or because of this Declaration, the laws of the State of California and the United States, to the extent applicable, shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

(b) Standing, Equitable Remedies; Cumulative Remedies. Declarant expressly agrees and declares that Lender or any successor or public agency shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Declarant expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default, and to assure compliance with this Declaration. Nothing in this Section 24(b), and no recovery to Lender, shall restrict or limit the rights or remedies of persons or entities other than Lender, against Declarant in connection with the same or related acts by Declarant. The remedies set forth in this Section are cumulative and not mutually exclusive, except the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction.

(c) Remedies at Law for Breach of Tenant Restrictions. Subject to the terms of the Deed of Trust, in the event of any material default hereunder regarding restrictions on the operation and the transfer of the Property and the expiration of any applicable cure period, Lender shall be entitled to, in addition to any and all other remedies available at law or in equity: (i) declare all of the Lender Loan to be all due and payable; and (ii) recover compensatory damages. The amount of such compensatory damages shall be the product of multiplying: (A) the number of months that the default in question has continued until the time of trial by (B) the result of subtracting the rents properly chargeable hereunder for the Affordable Units in question from the amount actually charged for those Affordable Units. Declarant and Lender agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to Lender as a result of such a default and that the foregoing formula is a fair and reasonable method of approximating such damages. Lender shall be entitled to seek and to recover damages in separate actions for successive and separate breaches which may occur. Further, interest shall accrue on the amount of such damages from the date of the breach in question at the rate of ten percent (10%) per annum or the

maximum rate then allowed by law, whichever is less. Nothing in this section shall preclude the award of exemplary damages as allowed by law.

(d) Expert Witness, Attorneys' Fees and Costs. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Declaration and/or the Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") §1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP §998.

(e) Foreclosure. Subject to the terms of the Deed of Trust, upon default by the Declarant in the performance of any obligation under this Declaration, after the expiration of any and all applicable notice or cure periods, the Lender may declare all sums secured by the Deed of Trust immediately due and payable by delivering to the trustee thereof a written declaration of default and demand for sale and a written notice of default and election to sell the Property. The trustee shall cause the notice of default and election to sell to be recorded. After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, the trustee, without demand on the Declarant, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale.

25. Property Manager. At all times that this Declaration is in force and effect, and Lender has served a thirty (30) day written notice of deficiencies in the property management for the Project, which deficiencies have not been rectified by Declarant within the thirty (30) day period (unless such deficiency is not reasonably capable of being cured within such thirty (30) day period, then such reasonable amount of time as is needed not to exceed 120 days, provided Declarant commences cure within such thirty (30) day period and continues to diligently pursue cure), then, Lender shall have the right, in its reasonable discretion, and upon thirty (30) days written notice: (i) to require the retention of a professional property management firm to manage the Project; (ii) to approve, in advance and in writing, the retention of any such property management firm, including the terms of the contract governing such retention; and (iii) to require Declarant to terminate any such property management firm, provided that such termination shall comply with the termination provisions of the management contract in question, and to require that Declarant retain a replacement professional property management firm, acceptable to the Declarant, in its reasonable discretion. Declarant shall cooperate with Lender to effectuate Lender's rights set forth in this Section 25.

26. Declarant Required to Pay Monitoring Fees. Commencing upon completion of rehabilitation, the Declarant shall pay to Lender an annual occupancy monitoring fee ("Annual Loan Monitoring Fee"), in an amount equal to \$1,000.00, the first year after Project completion and increased by 3.0% each year thereafter. Annual Loan Monitoring Fees shall be paid to Lender annually within ten (10) days after Lender provides a written invoice for the same. Failure to timely pay the Annual Loan Monitoring Fee shall constitute a material default under the terms and conditions of the Agreement and this Declaration. The Annual Loan Monitoring Fee shall be paid to Lender as a consideration for the lending of funds by Lender to Declarant.

27. Notices. Notices under this Declaration shall be in writing and sent (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). All notices shall be delivered to the following addresses:

Lender: City of Chula Vista and the Chula Vista Housing Authority  
276 Fourth Avenue  
Chula Vista, California, 91910  
Attention: Development Services Department Housing Division

Copy to: City of Chula Vista  
276 Fourth Avenue  
Chula Vista, California 91910  
Attention: City Attorney

Declarant: Cordova Trolley, LP  
c/o Trestle Development  
101 Broadway, Suite 300  
San Diego, California 92101

Copy to: RSEP Holding, LLC  
c/o Red Stone Equity Partners, LLC  
1100 Superior Avenue, Suite 1640  
Cleveland, OH 44114  
Attention: General Counsel

Copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90017  
Attention: Kyle Arndt, Esq.

28. Noticing Requirements Prior to Termination. Prior to termination of this Declaration, Declarant shall comply with any and all noticing requirements required under any applicable laws or regulations, including without limitation, the requirements of California Government Code Sections 65863.10 and 65863.11, if applicable.

29. Signature Authority. All individuals signing this Declaration for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Lender that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

**DECLARANT:**  
Cordova Trolley, LP, a California limited partnership

By: Cordova Trolley Management, LLC, a California limited liability company  
Its: Managing General Partner

By: South Bay Community Services, a California nonprofit public benefit corporation  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Kathryn Lembo  
President and Chief Executive Officer



**ACKNOWLEDGMENT**

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 San Diego )

On \_\_\_\_\_, 2018, before me, \_\_\_\_\_, 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"**

**Property Description**

That certain real property situated in the City of Chula Vista, County of San Diego, State of California, described as follows:

**Exhibit “B”**

**Supplemental Rental Application**

**Exhibit “C”**

**Authorization for Release of Information**