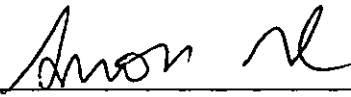


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: 4/26/14

AGREEMENT
BY AND BETWEEN
THE CITY OF CHULA VISTA AND
SOUTH BAY COMMUNITY SERVICES
FOR MANAGEMENT AND IMPLEMENTATION OF
A COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM



AGREEMENT
BY AND BETWEEN THE
CITY OF CHULA VISTA
AND
SOUTH BAY COMMUNITY SERVICES
FOR MANAGEMENT AND IMPLEMENTATION OF
A COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

This Contract Number 981 by and between South Bay Community Services (hereinafter referred to as “Developer”) and the City of Chula Vista (hereinafter referred to as “City”) is effective on July 1, 2014 (“Effective Date”).

WHEREAS, there has been enacted into law the Housing and Community Development Act of 1974 (the “Act”), Title I, Part 24, Section 570, Public Law 93-383, 88 Stat. 633, 42 U.S.C 5301-5321 with the primary objective of development of viable urban communities by providing federal assistance for community development activities in urban areas through the Community Development Block Grant Program (Catalog of Federal Domestic Assistance Number 14.218).

WHEREAS, the City, is authorized to apply for and accept Community Development Block Grant funds;

WHEREAS, City incorporated the Developers proposal for the project described in Attachment “A” hereof (hereinafter referred to as the “Project”) into the City’s Community Development Block Grant/HOME Investment Partnership/Emergency Shelter Grant Annual Funding Plan which was submitted to the U.S. Department of Housing and Urban Development (HUD);

WHEREAS, HUD has approved the City Annual Funding Plan for Community Development Block Grant funds;

WHEREAS, it is the desire of the Developer and the City that the Project be implemented by the Developer;

WHEREAS, the Developer shall undertake the same obligations to the City with respect to the Project in the City’s aforesaid Annual Funding Plan for participation in the Community Development Block Grant program; and

WHEREAS, Developer warrants and represents that they are experienced and staffed in a manner such that they are and can deliver the services required of Developer to City within the time frames herein provided all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City and Developer do hereby mutually agree as follows:

All of the Recitals above are hereby incorporated into this Agreement.

ARTICLE I. DEVELOPER OBLIGATIONS

A. General.

1. Work to be Performed. Developer shall implement the scope of work (“Scope of Work”) described in Attachment A, hereof fully and in accordance with the terms of the Annual Funding Plan approved by the City and submitted to HUD in application for funds to carry out the Project and the Certifications which were submitted concurrently with the Annual Funding Plan. The Annual Funding Plan and Certifications form is hereby incorporated by reference into this contract fully as if set forth herein. Developer shall also undertake the same obligations to the City that the City has undertaken to HUD pursuant to said Annual Funding Plan and Certifications. The obligations undertaken by Developer include, but are not limited to, the obligation to, as applicable, comply with each of the following as may be amended from time to time:
 - a. The Housing and Community Development Act of 1974 (Public Law 93-383, as amended, 42 USC § 5301, *et seq.*);
 - b. HUD regulations relating to Community Development Block Grants (24 CFR 570.1, *et seq.*);
 - c. The regulations in 24 CFR Part 58 specifying other provisions of the law that further the purposes of the National Environmental Policy Act of 1969 and the procedures by which grantees must fulfill their environmental responsibilities;
 - d. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d); Title VII of the Civil Rights Act of 1964 (Public Law 88-352); Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, 42 USC § 3601, *et seq.*); Section 109 of the Housing and Community Development Act of 1974; Executive Order 11246, as amended (equal employment opportunity); Executive Order 11063 (non-discrimination), as amended by Executive Order 12259; and any HUD regulations heretofore issued or to be issued to implement these authorities relating to civil rights;
 - e. Section 3 of the Housing and Urban Development Act of 1968, as amended, [12 U.S.C. 1701u](#). All section 3 covered contracts shall include the following clause (referred to as the “section 3 clause”):
 - i. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, [12 U.S.C. 1701u](#) (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - ii. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
 - iii. The Developer agrees to send to each labor organization or representative of workers with which the Sub-recipient has a collective bargaining agreement or other

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

- iv. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the sub-Sub-recipient is in violation of the regulations in 24 CFR part 135. The Sub-recipient will not subcontract with any sub-Sub-recipient where the Sub-recipient has notice or knowledge that the sub-Sub-recipient has been found in violation of the regulations in 24 CFR part 135.
 - v. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the Sub-recipient is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Sub-recipient's obligations under 24 CFR part 135.
 - vi. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
 - vii. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450e](#)) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
1. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979, 42 USC § 4601, *et seq.*, and regulations adopted to implement that Act in 49 CFR Part 24;
 - a. Office of Management and Budget ("OMB") Circular A-122 entitled "Cost Principles for Non-Profit Organizations"; OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations"; and OMB Circular A-110 entitled "Uniform Administrative Requirement for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;"
 - b. Grant administration requirements as described in 24 CFR 570.504, which requires Developer to return any program income earned by Developer in carrying out the activities of this Contract to the City. Upon expiration of this Contract, Developer shall transfer to the

City any Community Development Block Grant funds on hand at the time of expiration and any accounts receivable attributable to the use of Community Development Block Grant funds. Any real property under Developer's control acquired or improved in whole or in part with Community Development Block Grant funds in excess of \$25,000 will either be:

- i. Used to meet one of the CDBG National Objectives, as defined in 24 CFR 570.208, and outlined by HUD until five years after expiration of the contract; or
- ii. Disposed of in a manner that results in the City being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-Community Development Block Grant funds for acquisition of, or improvement to, the property. Reimbursement is not required after the five-year period pursuant to 24 CFR 570.505.

Program income on hand at the time of closeout and subsequently received shall continue to be subject to all applicable Community Development Block grant Program eligibility requirements, 24 CFR 570.489, and provisions of this Contract;

- c. 24 CFR 570.505 concerning use of real property;
- d. The following laws and regulations relating to preservation of historic places: National Historic Preservation Act of 1966 (Public Law 89-665); the Historical and Archaeological Preservation Act of 1974 (Public Law 93-291); and Executive Order 11593;
- e. The Labor Standards Regulations set forth in 24 CFR 570.603;
- f. Labor Code section 1771 concerning prevailing wages;
- g. The Hatch Act relating to the conduct of political activities (5 U.S.C. § 1501, *et seq.*);
- h. The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001, *et seq.*, and the implementing regulations in 44 CFR Parts 59-78);
- i. The Rehabilitation Act of 1973 (Public Law 93-112) as amended, including Section 504 which relates to nondiscrimination in federal programs and HUD 24 CFR Part 8;
- j. The Clean Air Act (42 U.S.C. § 7401, *et seq.*) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, *et seq.*) and the regulations adopted pursuant thereto (40 CFR Part 6);
- k. The Drug-Free Workplace Act of 1988 (Public Law 100-690);
- l. The Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and implementing regulations at 24 CFR Part 35;
- m. No member, officer or employee of the Developer, or its designee or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any

interest, direct, or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the program assisted under the Grant, and that it shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this certification;

n. The Developer certifies, that in accordance with Section 319 of Public Law 101-121, to the best of his or her knowledge and belief that:

i. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewals, amendment, or modifications of any federal contract, grant loan, or cooperative contract.

ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions;

o. The Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*);

p. The Rehabilitation Act of 1973 (Public Law 93-112) as amended, including section 504 which related to nondiscrimination in federal programs and HUD regulations set forth in 24 CFR 8. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in the operation of programs receiving federal financial assistance. HUD regulations implementing Section 504 contain accessibility requirements for new construction and rehabilitation of housing as well as requirements for ensuring that the programs themselves are operated in a manner that is accessible to and usable by persons with disabilities. Both individual units and the common areas of buildings must be accessible under Section 504.

Section 504 states that "no qualified individuals with a disability in the United States shall be excluded from, denied the benefits of, or be subject to discrimination under" any program or activity that receives Federal financial assistance. Requirements common to these regulations include program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations (See 24 CFR Part 8).

q. The Americans with Disabilities Act (42 U.S.C. § 12101);

r. The bonding requirements described in 24 CFR Part 85.36 required for construction or facility improvement contracts or subcontracts that exceed the simplified acquisition threshold (defined at 41 U.S.C. 403(11)). These requirements are further described in Attachment A, which is attached hereto and incorporated by reference;

- s. Prior to award of any contracts or subcontracts, Developer shall verify that contractor or sub-contractor(s) is eligible according to the Federal EPLS and LEIE databases. Documentation of such eligibility shall be maintained in the project files;
 - t. Developer shall comply with and make good faith and reasonable efforts to carry out the purposes of Executive Order 12166 relating to “Improving Access to Services by Persons with Limited English Proficiency (“LEP”);
 - u. Developer shall comply with Federal Funding Accountability and Transparency Act (FFAT) requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS), the Central Contractor Registration (CCR) database, and the Federal Funding Accountability and Transparency Act, including Appendix A to Part 25 of the Financial Assistance Use of Universal Identifier and Central Contractor Registration, 75 Fed. Reg.55671 (Sept. 14, 2010)(to be codified at 2 CFR part 25) and Appendix A to Part 170 of the Requirements for Federal Funding Accountability and Transparency Act Implementation, 75 Fed. Reg. 55663 (Sept. 14, 2010)(to be codified at 2 CFR part 170), including any subsequent amendments.
 - v. Developer shall comply with and make good faith and reasonable efforts to carry out the purposes of Executive Orders 12432 and 11625 related to participation in federal programs by Minority Business Enterprises (“MBE”) and Executive Order 12138 related to participation in federal programs by Women’s Business Enterprises (“WBE”); and
 - w. Developer shall hold City harmless and indemnify City against any harm that it may suffer with respect to HUD on account of any failure on the part of the Sub-recipient to comply with the requirements of any such obligation.
 - x. Developer shall comply with the bonding requirements described in 24 CFR Part 85.36 required for construction or facility improvement contracts or subcontracts that exceed the simplified acquisition threshold (defined at 41 U.S.C. 403(11)). These requirements are further described in Attachment A, which is attached hereto and incorporated by reference.
 - y. Developer shall hold City harmless and indemnify City against any harm that it may suffer with respect to HUD on account of any failure on the part of the Developer to comply with the requirements of any such obligation.
2. COMPLIANCE WITH LAWS: Developer shall comply with all applicable local, state, and federal laws, regulations, ordinances, and City Policies when performing the work required by this Contract.
 3. COMPENSATION: City shall reimburse Developer reasonable gap financing expenses it incurs for work performed under this Contract. Total reimbursement (developer fee and gap financing) shall not exceed **\$450,000**. Developer shall not submit claims to the City nor shall City reimburse Developer for costs for which Developer is reimbursed from a source other than the funds allocated for work under this Contract.
 4. COMPENSATION SCHEDULE: City shall pay Developer monthly progress payments upon submittal by Developer of a certified statement of actual expenditures incurred, provided, however, that not

more than 90% of the total agreed compensation will be paid during the performance of this Contract. The balance due shall be paid upon certification by Developer that all of the required services have been completed. Payment by City is not to be construed as final in the event HUD disallows reimbursement for the project or any portion thereof. The 10% retention will not apply to acquisition or service contracts.

5. INDIRECT COSTS: If indirect costs are charged, the Developer will develop an indirect cost allocation plan for determining the appropriate Developer's share of administrative costs and shall submit such plan to the City for approval.
6. EXPENDITURE STANDARD: To insure effective administration and performance of approved Neighborhood Stabilization Program projects and to meet HUD performance standards, Developer shall demonstrate reasonable progress on implementation of the project, expending all contracted funds within the term of the contract. In the event all funds are not expended within the term period, the City shall notify the Developer of the expenditure deficiency. Developer will have a total of 30 days from the date of the City's written notification to correct the deficiency. If the deficiency is not corrected within that time, Developer agrees that the City may reallocate the amount of the expenditure deficiency.
7. TERM: This contract shall commence when executed by the parties and shall continue in effect until terminated as provided herein or until Developer has carried out all its obligations under the contract. Services of the Developer shall start on the **1st day of July 2014 and end on the 30th day of June of 2015**. With City approval, the term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Developer remains in control of CDBG funds or other CDBG assets, including program income.
8. TERMINATION FOR CONVENIENCE: The City may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.
9. AUTOMATIC TERMINATION: This Contract shall terminate at the discretion of the City if the United States Government terminates the Neighborhood Stabilization Community Development Block Grant Program or terminates the Project that is the subject of this Contract.
10. TERMINATION OF CONTRACT FOR CAUSE: Developer and City recognize that the City is the governmental entity which executed the grant agreement received pursuant to the City's application and that City is responsible for the proper performance of the Project. If Developer fails to fulfill in a timely and proper manner its obligations under this Contract to undertake, conduct or perform the Project identified in this Contract, or if Developer violates any state laws or regulations or local ordinances or regulations applicable to implementation of the Project, or if Developer violates any provisions of this contract, City shall have the right to terminate this contract by giving at least five days written notice to Developer of the effective date of termination.

Even if City terminates the Contract, Developer shall remain liable to City for all damages sustained by City due to Developer's failure to fulfill any provisions of this Contract, and City may withhold any reimbursement payments from Developer for the purpose of set-off until the exact amount of damages due to City from Developer is determined. Developer hereby expressly waives any and all claims for damages for compensation arising under this contract except as set forth in this section in the event of such termination. The City may also, in lieu of termination and at its discretion, take any action, as stated in 24 CFR 85.43, subdivision (a), sections 1 to 5, to

enforce this Agreement.

11. **CONTRACT ADMINISTRATION:** The Housing Manager of the City of Chula Vista shall administer this Contract on behalf of the City. The Executive Director of the South Bay Community Services shall administer this contract on behalf of the Developer. Within a reasonable time after the City makes a request, Developer shall give the City progress reports or other documentation as required by the City's Administrator to audit Developer's performance of this Contract.
12. **RECORDS AND REPORTS:** The Developer shall maintain records and make such reports as required by the City of Chula Vista to, but not limited to, enable the City to analyze Developer's project. All records of the Developer related to this Contract or work performed under the Contract shall be open and available for inspection by HUD and/or City monitors and auditors during normal business hours.
13. **RETENTION:** The Developer shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.
14. **DATA:** The Developer shall maintain data demonstrating eligibility (low-moderate locations) for services provided. Such data shall include, but not be limited to exact location of the work performed, and a description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
15. **DISCLOSURE:** The Developer understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Developer's responsibilities with respect to services provided under this contract, is prohibited by the state of Federal law privacy laws unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
16. **QUARTERLY REPORTS/ANNUAL REPORT:** Developer shall provide the City with a quarterly report, submitted no later than 15 days after the last day of the previous quarter, which includes a narrative of the services provided, progress towards meeting the timeline goals stated in the contract, and an itemized accounting of the expenditures of CDBG funds during the previous quarter. Failure to submit quarterly reports in a timely manner will result in withholding of CDBG funds until the report has been submitted. Quarterly Performance Reports are due **October 15** (1st Quarter), **January 15** (2nd Quarter), **April 15**, (3rd Quarter) and **July 15** (4th Quarter). The Annual Performance Report will also be due **July 15**.
17. **INDEMNIFICATION:** City shall not be liable for, and Developer shall defend, indemnify, and hold the City, its officers, agents, employees and volunteers harmless from and against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs by this Contract arising either directly or indirectly from any

act, error, omission or negligence of Developer or its officers, employees, agents, Developers, licensees or servants, contractors or subcontractors, including without limitation, claims caused by the concurrent act, error, omission or negligence, whether active or passive, of City, and/or its agents, officers, employees or volunteers. However, Developer shall have no obligation to defend or indemnify City from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of City or its agents or employees.

Developer and its successors, assigns, and guarantors, if any, jointly and severally agree to indemnify, defend (with counsel selected by City) reimburse and hold City and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims) or loss, including attorneys' fees, consultant's fees, and experts' fees which arise during or after the contract term for any losses incurred in connection with investigation of site conditions, or any cleanup, remedial, removal or restoration work required by any hazardous materials laws because of the presence of hazardous materials, in the soil, ground water or soil vapors on the premises, and the release or discharge of hazardous materials by Developer during the course of any alteration or improvements of the Premises by Developer, unless hazardous materials are present solely as a result of the gross negligence or willful misconduct of City, its officers, employees or agents. The indemnification provided by this section shall also specifically cover costs incurred in responding to:

- a. Hazardous materials present or suspected to be present in the soil, ground water to or under the Property before the commencement date;
- b. Hazardous materials that migrate, flow, percolate, diffuse, or in any way move on to or under the Property following the commencement date;
- c. Hazardous materials present on or under the Property as a result of any discharge, release, dumping, spilling (accidental or otherwise), onto the Property during or after the term of this Contract by any person, corporation, partnership or entity other than City.

Funding from this program is a result of a Federal Grant, should Federal funding be terminated for any reason, City is not liable for any consequence of any type resulting directly or indirectly from the termination of federal funding and Developer agrees, in addition to any other indemnification provision set forth in this agreement, to indemnify, hold harmless, and defend the City against any claim, cause of action, or any form of liability as a result of, directly or indirectly, funding termination.

The foregoing indemnities shall survive the expiration or termination of the contract any or any transfer of all or any portion of the Premises, or of any interest in this Contract and shall be governed by the laws of the State of California.

18. **AUDIT COSTS:** Developer shall reimburse City for all costs incurred to investigate and audit Developer's performance of its duties under the Contract if Developer is subsequently found to have violated the terms of the Contract. Reimbursement shall include all direct and indirect expenditures incurred to conduct the investigation or audit. City may deduct all such costs from any amount due Developer under this Contract.

19. **ENTIRE AGREEMENT:** This Contract and referenced Attachments and Exhibits constitutes the entire

agreement of the parties and supersedes any previous oral or written understandings or contracts related to the matters covered herein.

20. MODIFICATION. This Contract may not be modified except by written amendment executed by each party.
21. ACKNOWLEDGEMENT OF FUNDING: Developer shall identify the City of Chula Vista as the source of funding, or, if applicable, one of the sources of funding in public announcements that are made regarding the Project. Acknowledgement of the City's funding roles, for example, should be included in publicity materials related to the Project. In addition, Developer agrees that the City shall be apprised of any special events linked to the Project so that a review can be made on what role, if any, the City would assume.
22. INSURANCE: Developer agrees to comply with the insurance requirement set forth in Attachment "B" and/or any additional insurance requirements requested by the City, as the City deems appropriate. Failure to acquire and maintain the required insurance is a basis to take an enforcement action, or terminate this agreement.
23. NO WAIVER: No failure, inaction, neglect or delay by City in exercising any of its rights under this Contract shall operate as a waiver, forfeiture or abandonment of such rights or any other rights under this Contract.
24. NOTICE: Any notice or notices required or permitted to be given pursuant to this Contract shall be personally served by the party giving notice or shall be served by certified mail. Notices shall be sufficient if personally served on or if sent by certified mail, postage prepaid, addressed to:

Developer:

South Bay Community Services
President and CEO
430 F Street
Chula Vista, CA 91910

City:

City of Chula Vista
Housing Manager
276 Fourth Avenue
Chula Vista, CA 91910

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

CITY OF CHULA VISTA

James D. Sandoval,
City Manager, City of Chula Vista

APPROVED AS TO FORM

Glen Googins, City Attorney

ATTEST

City Clerk

SOUTH BAY COMMUNITY SERVICES

Kathryn Lembo, President and CEO

- Attachment A: Scope of Work
- Attachment B: Insurance Requirements
- Attachment C: Income Limits
- Attachment D: Disclosure Form

- Exhibit 1: Deed of Trust
- Exhibit 2: Note Secured by Deed of Trust
- Exhibit 3: Affordable Housing Agreement and Declaration of Covenants, Conditions, and Restrictions (CDBG Program)

ATTACHMENT "A"
SCOPE OF WORK

SOUTH BAY COMMUNITY SERVICES (DEVELOPER) has a certain project to be implemented with Community Development Block Grant (CDBG) funds. The work to be accomplished includes the following:

Developer:

- Shall utilize Community Development Block Grant Program (CDBG) funding for the rehabilitation of 192-196 Landis Avenue Chula Vista, CA 91910 for use of permanent supportive rental housing.
- Shall provide project management and oversight of services for certain aspects of the CDBG, including management and maintenance, hereinafter referred to as "Project(s)."
- Shall secure all other funding sources included in the CDBG Application and any additional funding sources necessary to fund the project.
- Shall prepare a proforma and perform a subsidy layering analysis to determine financial feasibility of the project factoring in affordability period and rent levels. CDBG funds will be available for gap financing.
- Shall not expend funds until an Environmental Review (NEPA and CEQA) has been completed by the City and a Release of Funds had been obtained by HUD (if needed).
- Properties rehabilitated, and leased under this agreement may only be used to benefit eligible households earning less than fifty 50% (percent) of the Area Median Income (AMI) and at Home Investment Partnerships Program rent levels as defined in 24 CFR Part 92.252(a), (c), (e) and (f), and 92.254, as defined by the City's Annual Funding Plan and Consolidated Plan.
- The cost of rehabilitation is eligible under the CDBG are eligible expenses under this agreement.
- Shall carry out the Project under this Agreement in accordance with the guidelines and regulations of the Community Development Block Grant Program.
- Shall use the City of Chula Vista Rehabilitation Standards and at a minimum comply with applicable laws, codes, and other requirements relating to health and safety, quality, and habitability in order to rent such homes and properties.
- Shall obtain any needed permits and Land Use approvals from the City of Chula Vista.
- Will competitively bid the rehabilitation and submit a copy of the bid package and specifications for City review and approval. The project shall be advertised to solicit the most responsive and responsible bidder. Developer shall notify potential bidders that this is a federally funded CDBG project that includes local, Federal, and State requirements. The applicable Davis-Bacon decision rate shall be included in the bid package, if applicable.
- Check the Excluded Parties List to ensure Contractors are not debarred or suspended.
- Developer shall incur the title to the CDBG eligible affordable housing project(s) using the City's Deed of Trust (Exhibit 1), Note Secured By Deed of Trust (Exhibit 2), and Declarations of Covenants, Conditions and Restrictions (Exhibit 3) to be recorded at time of escrow securing the City's financial and property interest in the project(s) and affordability period (minimum 55 years).
- With regard to the CDBG eligible affordable housing project(s), Developer shall execute and use, be bound by and abide by the terms of, and cause to be encumbered the title of property acquired under the Project(s) as stated in the attached City's Deed of Trust (Exhibit 1), Note Secured By Deed of Trust (Exhibit 2), and Declarations of Covenants, Conditions and Restrictions (Exhibit 3) to be recorded at time of escrow securing the City's financial interest in

the project(s) and affordability period (minimum 55 years). Exhibits 1 to 3 are hereby incorporated by reference into this agreement.

- Shall participate in the City's Crime Free Multi-Family Housing program.
- Program shall meet the Sustainability Goals and Objectives outlines in the City of Chula Vista's Housing Element.

City:

- The City will reimburse Developer for reasonable costs, related to CDBG-assisted housing rehabilitation or construction activities, at a level approved by the City.
- The City shall provide Developer with Deed of Trust (Exhibit 1), Promissory Note (Exhibit 2), and Covenant Agreement (Exhibit 3) to be recorded at time of escrow securing the City's financial interest in the project(s) and affordability period (minimum 55 years).
- City shall provide technical assistance to Developer to ensure CDBG Project is carried out successfully and in compliance with HUD regulations.
- City shall complete the necessary environmental reviews.

The Scope of Services outlined above shall not be altered without written approval of the City.

Performance Measurement: Create a minimum of 7 rental units serving households earning less than 50% of the Area Median Income for the City of Chula Vista.

CDBG National Objective: **Very Low Income Residents at or below 50 (%) Percent Area Median Income**

- A. TIME SCHEDULE: DEVELOPER will make all good faith and reasonable efforts to fulfill the project by **June 30, 2015**, or earlier.
- B. BUDGET: DEVELOPER shall make all good faith and reasonable efforts to complete the work under this Contract within the following budget. In no case shall DEVELOPER be entitled to, nor shall City reimburse DEVELOPER, more than **\$450,000** for work performed under this Contract.

In addition to the required quarterly reports identified in Section 12 of this **CONTRACT**, the Developer shall document all clients served to ensure that those served are at or below 50 percent of the Area Median Income as established by the U.S. Department of Housing and Urban Development (HUD). This information is to be collected and compiled semi-annually and submitted to the City each January 15 and July 15 during the affordability period and shall be submitted to the City of Chula Vista Development Services Department – Housing Division upon receipt of a written request and at the time of any monitoring of project records.

Developer shall also submit to the City in a timely manner other reports as requested/required by HUD and/or the City including, but not limited to Contractor/Subcontractor: Semi-Annual Labor Standards Enforcement Reports (HUD-4710), Annual Minority Business Enterprise Activity Reports (HUD-2516), Section 3 Reports (HUD-60002) and provide, as requested by HUD and/or the City, information necessary to prepare the Grantee Consolidated Annual Performance and Evaluation Report (CAPER), Consolidated Plan, Annual Plan and other such reports and/or plans.

ATTACHMENT "B"
INSURANCE REQUIREMENTS

Developer must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the Developer, his agents, representatives, employees or subcontractors and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance

Coverage must be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001)
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

Developer/Contractor must maintain limits no less than:

1. General Liability: (Including operations, products and completed operations, as applicable.) **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Workers' Compensation Employer's Liability: **Statutory**
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the Developer/Contractor will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:

1. ***The City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to liability arising out of automobiles*** owned, leased, hired or borrowed by or on behalf of the Developer/contractor, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of the Developer/contractor including providing materials, parts or equipment furnished in connection with such work or operations. The ***general liability additional insured coverage***

must be provided in the form of an endorsement to the Developer's/contractor's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products / Completed Operations coverage.

2. The Developer's/***contractor's insurance coverage must be primary insurance as it pertains to the City***, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of the Developer/contractor and in no way relieves the Developer/contractor from its responsibility to provide insurance.
3. Each insurance policy required by this clause must be endorsed to state that ***coverage will not be canceled by either party, except after thirty (30) days' prior written notice to the City*** by certified mail, return receipt requested.
4. ***Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured*** in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
5. Developers/Contractor's insurer will provide a ***Waiver of Subrogation*** in favor of the City for each required policy providing coverage during the life of this contract.

Acceptability of Insurers

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage

Developer/Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements conform to the contract requirements.

All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Subcontractors

Developer and its Contractor must include all subcontractors as insureds under its policies or furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors are subject to all of the requirements included in these specifications.

Bonding Requirements

Prior to commencement of rehabilitation, Developer shall file with the City on the approved forms, the surety bonds in the amounts and for the purposes noted below. The surety must possess a minimum rating from A.M. Best Company of A-VII. and be listed as an acceptable surety on federal bonds by the United States Department of the Treasury. Developer shall pay all premiums and costs thereof and incidental thereto, as security for payment of persons named in California Civil Code Section 3181 or amounts due under Unemployment Insurance Code with respect to Work or Labor performed by any such claimant. All alterations, time extensions, extra and additional work, and other changes authorized by the Specifications, or any part of the Contract, may be made without securing consent of the surety or sureties on the contract bonds. Each bond shall be signed by both Developer and the sureties. Should any surety or sureties be deemed unsatisfactory at any time by the City, notice will be given Developer to that effect, and Developer shall forthwith substitute a new surety or sureties satisfactory to the Developer. No further payment shall be deemed due or will be made under the Contract until the new sureties qualify and are accepted by the City.

- i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- ii. A performance bond on the part of the developer for 100 percent of the contract price, as determined from the prices in the bid form, and shall insure the faithful performance by developer of all work under the Contract. It shall also insure the replacing of, or making acceptable, any defective materials or faulty workmanship.
- iii. A payment bond on the part of the contractor for 100 percent of the contract price, as determined from the prices in the bid form, and shall inure to the benefit of persons performing labor or furnishing materials in connection with the work of the proposed Contract. This bond shall be maintained in full force and effect until all work under the Contract is completed and accepted by the City, and until all claims for materials and labor have been paid.

ATTACHMENT "C"
2014 San Diego Income Limits
Median Income: \$72,700

San Diego-Carlsbad-San Marcos, CA Metropolitan Statistical Area (MSA)

2014

Household Income Limits

HUD Method

Note: The following household income limits are adjusted for a high cost area as per the Federal Housing Act of 1937 and calculated using HCD methodology to comply with Health and Safety Code Sections 50052.5 and 50093.

San Diego-Carlsbad-San Marcos, CA MSA
 U.S. Department of Housing and Urban Development
 December 18, 2013 Effective Date

\$ 72,700

Persons earning 80% or below are considered Low Income, thus qualify for grant funded programs under HUD eligibility criteria.

Hshold Size	Extremely Low Income			Very Low Income			Low Income			120%		
	Annual Income	Monthly Income	30.00% Monthly	Annual Income	Monthly Income	30.00% Monthly	Annual Income	Monthly Income	30.00% Monthly	Annual Income	Monthly Income	30.00% Monthly
ONE	\$16,600	\$1,383	\$415	\$27,650	\$2,304	\$691	\$44,200	\$3,683	\$1,105	\$61,100	\$5,092	\$1,527
TWO	\$18,950	\$1,579	\$473	\$31,600	\$2,633	\$790	\$50,500	\$4,208	\$1,262	\$69,800	\$5,817	\$1,745
THREE	\$21,300	\$1,775	\$532	\$35,550	\$2,963	\$888	\$56,800	\$4,733	\$1,420	\$78,550	\$6,546	\$1,963
FOUR	\$23,650	\$1,971	\$591	\$39,450	\$3,288	\$986	\$63,100	\$5,258	\$1,577	\$87,250	\$7,271	\$2,181
FIVE	\$25,550	\$2,129	\$638	\$42,650	\$3,554	\$1,066	\$68,150	\$5,679	\$1,703	\$94,250	\$7,854	\$2,356
SIX	\$27,450	\$2,288	\$686	\$45,800	\$3,817	\$1,145	\$73,200	\$6,100	\$1,830	\$101,250	\$8,438	\$2,531
SEVEN	\$29,350	\$2,446	\$733	\$48,950	\$4,079	\$1,223	\$78,250	\$6,521	\$1,956	\$108,200	\$9,017	\$2,705
EIGHT	\$31,250	\$2,604	\$781	\$52,100	\$4,342	\$1,302	\$83,300	\$6,942	\$2,082	\$115,200	\$9,600	\$2,880

ATTACHMENT “D”: Disclosure Statement

Pursuant to City Council Policy 101-01, prior to any action on a matter that requires discretionary action by the City Council, Planning Commission or other official legislative body of the City, a statement of disclosure of certain ownerships, financial interests, payments, and campaign contributions must be filed. The following information must be disclosed:

- 1. List the names of all persons having a financial interest in the project that is the subject of the application, project or contract (e.g., owner, applicant, contractor, subcontractor, material supplier).

[Type response here.]

- 2. If any person* identified in section 1 above is a corporation or partnership, list the names of all individuals with an investment of \$2000 or more in the business (corporation/partnership) entity.

[Type response here.]

- 3. If any person* identified in section 1 above is a non-profit organization or trust, list the names of any person who is the director of the non-profit organization or the names of the trustee, beneficiary and trustor of the trust.

[Type response here.]

- 4. Please identify every person, including any agents, employees, consultants, or independent contractors, whom you have authorized to represent you before the City in this matter.

[Type response here.]

- 5. Has any person* identified in 1, 2, 3, or 4, above, or otherwise associated with this contract, project or application, had any financial dealings with an official** of the City of Chula Vista as it relates to this contract, project or application within the past 12 months? Yes No If yes, briefly describe the nature of the financial interest the official may have in this contract.

[Type response here.]

- 6. Has any person* anyone identified in 1, 2, 3, or 4, above, or otherwise associated with this contract, project or application, made a campaign contribution of more than \$250 within the past twelve (12) months to a current member of the Chula Vista City Council? No Yes If yes, which Council member(s)?

[Type response here.]

- 7. Has any person* identified in 1, 2, 3, or 4, above, or otherwise associated with this contract, project or application, provided more than \$420 (or an item of equivalent value) to an official** of the City of Chula Vista in the past twelve (12) months? (This includes any payment that confers a personal benefit on the recipient, a rebate or discount in the price of anything of value, money to retire a legal debt, gift, loan, etc.) Yes No If Yes, list official and what was the nature of item provided?

[Type response here.]

- 8. Has any person* identified in 1, 2, 3, or 4, above, or otherwise associated with this contract, project or application, been a source of income of \$500 or more to an official** of the City of Chula Vista in the past twelve (12) months? Yes No If Yes, identify the official and the nature of the income provided?

[Type response here.]

:[Enter Date Here]

:[Name of Person Signing] Signature: _____

* Person is defined as: any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, any other county, city, municipality, district, or other political subdivision, or any other group or combination acting as a unit.

** Official includes, but is not limited to: Mayor, Council member, Planning Commissioner, Member of a board, commission, or committee of the City, and City employees or staff members.

**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

**AFFORDABLE HOUSING AGREEMENT AND
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
(TENANT RESTRICTIONS)
(LOFTS ON LANDIS)
(City CDBG Residual Receipts Loan)**

THIS AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Declaration”) is dated as of the _____ day of March, 2014, by South Bay Community Services, a California non-profit public benefit corporation (“Declarant”) in connection with that certain parcel of real property (“Property”) located in the City of Chula Vista (“City”), County of San Diego, California, described in Exhibit “A” attached hereto and incorporated herein by reference.

RECITALS

- A. The Property is generally located at 192-196 Landis Avenue in Chula Vista, California (as more particularly described on the Property Legal Description attached hereto as Exhibit “A”, the “Property”). Declarant has title to the Property and will be rehabilitating and permanently financing an affordable housing project, with the aid of a loan from the City of Chula Vista (“City”) in the original principal amount of \$450,000.00 (“City CDBG Loan”) utilizing U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Program (CDBG) for the use of soft costs and rehabilitation costs.
- B. The City CDBG Loan was conditioned in part upon the recordation of a document setting forth certain restrictions upon the use and sale of the Property against the Declarant’s **Leasehold** Estate. This Declaration is that document and shall be the

“Declaration” that contains the CDBG restrictions as set forth in the Loan Documents.

C. The Property is subject to the City Council Resolution Number _____ dated May 6, 2014.

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 set forth seven (7) units at the Property shall be set aside and reserved as affordable CDBG Units restricted pursuant to the CDBG Program (“Affordable Units”) for twenty (20) years. The 20 Year affordability period begins after all units are occupied by eligible residents. As used herein the term “Affordable Units” shall refer to those residential units at the Property which are owned or held available strictly in accordance with the terms and conditions set forth below. The Affordable Units, will be designated prior to initial occupancy at the discretion of City. After initial lease up, such designations are to be floating units and 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).

(a) Affordable Unit Restrictions. The seven (7) Affordable Units shall be occupancy restricted at or below 50% of area median income with monthly rents not to exceed the applicable LOW HOME rents, as issued by the City, using data published periodically by the U.S. Department of Housing and Urban Development (HUD) as the then current area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size, from which a utility allowance, as approved by the Development Services Director, or designee, shall be deducted. The restrictions set forth in the Table below shall establish the maximum rental rate, when not precluded by state law, from which a utility allowance, as approved by the City, shall be deducted:

TABLE 1: RENT, INCOME AND OCCUPANCY RESTRICTION CRITERIA

1	2	3	4	5	6
UNIT DESCRIPTION	NUMBER OF AFFORDABLE UNITS	MAXIMUM % OF AREA MEDIAN INCOME OF ELIGIBLE TENANTS	MAXIMUM MONTHLY RENTS AS PERCENTAGE OF AREA MEDIAN INCOME ADJUSTED FOR FAMILY SIZE APPROPRIATE FOR THE UNIT (MOST RESTRICTIVE SHALL APPLY)	YEARS OF RENT RESTRICTION	MAXIMUM UNIT OCCUPANCY
Studio	7	50% of AMI	LOW HOME RENT	20	2
TOTAL AFFORDABLE UNITS	7				

- (b) “Eligible Tenants” are those tenants whose aggregate gross annual income does not exceed the respective percentages set forth in Section 1(a), above of annual median income, as adjusted for family size. For CDBG program purposes, income shall be calculated using 24 CFR Part 5 and determined using the HOME program regulation at §92.203. For purposes of this Declaration, the area median income shall be the median income defined by the Department of Housing and Urban Development (HUD) as the then current area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size. The rents and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HUD or any successor agency. In the event HUD ceases to publish an established median income as aforesaid, City may, in its sole discretion, use any other reasonably comparable method of computing adjustments in median income or HOME Program rents. 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.
- (c) An adjustment of rents may be performed annually in accordance with the rents contained in the applicable City or HUD rent schedules published by the City of Chula Vista for the affected unit type and updated from time to time. However, in no event shall the rents of the CDBG Units, as adjusted, exceed the maximum rents chargeable for CDBG Units using LOW HOME rents. Further, the rents charged shall be further limited as set forth in Paragraph 14, hereof.

2. Affordable Marketing Plan Compliance; Selection of Residents. Declarant shall utilize the City’s standardized management and marketing plan for rental of all of the Affordable Units. Notwithstanding the foregoing, to the extent the management and marketing plan for rent of all of the low income units at the Property is subject to the review and approval of the U.S. Department of Housing and Urban Development (“HUD”), Declarant agrees to submit such plan to HUD for its review and approval and to make such changes as are required pursuant to any regulations, policies and/or handbooks of HUD. Declarant’s marketing of units shall be in compliance with federal and state fair housing law. All tenants of each CDBG Unit shall meet the income requirements set forth herein and tenancy Declarant’s marketing of the Affordable Units shall be in compliance with federal and state fair housing laws. The marketing plan, at a minimum, requires publicizing the availability of the Affordable Units within the City, such as notices in any City-sponsored newsletter, advertising in local newspapers and notice in City offices. In the event the City implements a master waiting list for affordable housing in the City (“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. Selection of residents shall be made based upon the Master List, rather than on a first-come, first-serve basis. Provided, however, (i) 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; and (ii) 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. Accessibility Standards

Declarant must meet the requirements at 24 CFR Part 8, implementing regulations of the Rehabilitation Act of 1973 [29 U.S.C. 794]. All units shall be built to conform to the design and construction of the Fair Housing Act.

- a) Section 504 implementing regulations (24 CFR Part 8) apply to the Property.
 - b) All common spaces in the Property must be made accessible in accordance with the Uniform Federal Accessibility Standards (UFAS).
 - c) The number of units that must be made accessible to persons with mobility-impairments and the number of units that must be made accessible to persons with sensory impairments in accordance with UFAS.
 - d) Declarant shall develop procedures so that information regarding the availability of assessable units reaches eligible persons with disabilities and that ensures that reasonable, nondiscriminatory steps are taken to make sure that accessible units that become available are offered first to persons with disabilities who require accessibility features.
4. 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 City 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 five (5) 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." Notwithstanding the foregoing, Declarant agrees to comply with any and all regulations, policies and/or handbooks of HUD, with respect to determination of tenant eligibility with respect to the CDBG Units to the extent the HUD requirements vary in any way from the requirements of this Declaration.

5. Relationship with Declarant. The term "Eligible Tenant" shall not include Declarant or any individuals who are partners or shareholders in Declarant or in any entity having an interest in Declarant or in the Property, or officer, employee, agent or consultant of the owner, developer or sponsor.
6. No Student Participation. The CDBG program adopts the Section 8 Housing Choice Voucher (HCV) program restrictions on student participation found in 24 CFR Part 5.612, which excludes any student that:
 - a) Is enrolled in a higher education institution
 - b) Is under the Age of 24
 - c) Is not a veteran of the U.S. military
 - d) Is not married
 - e) Does not have a dependent child(ren)
 - f) Is not a person with disabilities
 - g) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income.

Excluded students are prohibited from receiving any type of CDBG assistance, including renting a CDBG assisted rental unit, or otherwise participating in the CDBG program independent of their low-or very low-income families.

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 (§92.903(d)(1)).
8. Eviction.
 - (a) Any Reason Other Than Over Income. 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 being over income, Declarant shall give sixty (60) days written notice to such tenant to vacate the Affordable Unit. The vacated Affordable Unit shall thereafter be rented to an Eligible Tenant.
 - (b) Over Income Tenants. When the gross income of a tenant who occupies an Affordable Unit exceeds the "low income" definition as defined in CFR 92.252(i),

then the 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 HOME Regulation 92.252(i) and the next available comparable sized and configured unit shall be designated as an Affordable Unit. The tenant shall continue to be considered an "Eligible Tenant" until evicted, provided this continued occupancy otherwise complies with all applicable HOME Program requirements.

9. Maintenance.

(a) Physical Condition of Affordable Units. After completion of the Affordable Units, Declarant shall continually maintain the Affordable Units in a condition which satisfies HUD's Property Standards §92.251, as such standards are interpreted and enforced by City under their normal policies and procedures. City 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. Further, each Affordable Unit shall be requalified annually, as to the foregoing maintenance covenant, as part of the annual tenant requalification process described in Section 4 above. Any deficiencies in the physical condition of an Affordable Unit shall be corrected by Declarant at Declarant's expense within thirty (30) days of the identification of such deficiency by City and delivery of written notice of the same to Declarant (unless such deficiency is not capable of being cured within such thirty (30) day period, then such amount of time as City determines is needed, not to exceed one hundred twenty (120) days, provided Borrower commences cure within such thirty (30) day period and continues to diligently pursue cure).

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

10. Monitoring. It is contemplated that, during the term of this Declaration, the City will perform the following monitoring functions: (a) preparing and making available to Declarant any general information that the City possess 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 (24 C.F.R. §92.252(j)); (c) examining the financial condition of the project at least annually to ensure long term financial viability; and (d) inspecting the Affordable Units to verify that they are being maintained in accordance with Section 9, above. Notwithstanding the foregoing description of City functions, Declarant shall have no claim or right of action against City 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 City.

11. Lease Provisions. Declarant agrees that it will include in all of its leases and cause its successors in interest to include in all of their leases, all provisions required under the terms of the HOME Program, including the following provisions:

a) Additional Lease Provisions/Annual Income Verification.

Lessee agrees, upon written request from the Landlord, City of Chula Vista ("City"), 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 City. 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) Term of Lease for CDBG Units.

Lessee has been made aware by Landlord that the unit being leased was assisted with CDBG funds. Under the provisions of 24 CFR 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 Lessee acknowledges that it has been made aware of the provisions of 24 CFR 92.253.

12. Compliance with CDBG and Local Regulations. Declarant shall comply with all regulations, policies and procedures promulgated by HUD, or by City in connection with the CDBG Program, under which the Loan is being made to Declarant. Declarant's failure to so comply shall constitute a material default hereunder, entitling City to the remedies set forth herein.

13. Successors Bound. Declarant covenants, for itself and its successors and assigns, not to sell, transfer, assign or otherwise dispose of ownership of the Property, without the express written consent of the City. Any prospective purchaser, transferee or assignee shall expressly promise in writing to be bound by all of the provisions hereof, including the covenant in this Section 13 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 Loan. Further, the obligations of Declarant hereunder shall be deemed independent of Declarant's obligations under the Loan.

14. 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 City and reimburse the City 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 Agreement and this Declaration.
15. Cross Default. A default under the Loan Agreement, including without limitation failure to make the payments to the City pursuant to the same, shall be a material default under this Declaration.
16. Term. This Declaration and the covenants and restrictions contained herein shall be effective on the date this Declaration is recorded and shall remain in full force and effect for a period of twenty (20) years from the date of issuance of the certificate of occupancy and stabilized occupancy for the 33rd residential unit at the Property.
17. Enforcement. Declarant expressly agrees and declares that the City or any successor public entity 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 City or any successor public entity shall be the proper party to waive, relinquish, release or modify the rights, covenants, obligations or restrictions contained in or arising under this Declaration.
18. 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 to be fixed by the court which shall render a judgment, as well as the costs of suit.
19. 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.

20. 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.
21. Recordation; Waiver and Amendment; Payment of Fees. 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, the City. In the event the City consent to such an amendment, modification or rescission, the same shall be conditioned upon Declarant’s payment of all fees and costs incurred by the City with respect to the same, including without limitation attorneys’ fees.
22. 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 City, or any successor or public entity or 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 subparagraph, and no recovery to the City, shall restrict or limit the rights or remedies of persons or entities other than City, 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. In the event of any material default under Sections 1 through 21 hereof regarding restrictions on the operation and the transfer of the Property, the City shall be entitled to, in addition to any and all other remedies available at law or in equity: (i) declare the City HOME Loan to be all due and repayable; and (ii) recover compensatory damages. If the default in question involves the collection of rents in excess of the rents permitted hereunder, 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, the City agrees that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to City as a result of such a default and that the foregoing formula is a fair and reasonable method of approximating such damages. The City 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 than 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 the Loan Agreement and/or this Declaration 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.

23. Mortgagees Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Declaration shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Declaration, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.
24. Property Manager. At all times that this Declaration is in force and effect, and City has served a ten (10) day written notice of deficiencies in the property management for the Property which do not conform to the standards of property management of a professional property manager operating similar properties in San Diego County and

which deficiencies have not been rectified by Declarant, within the ten (10) day period (unless such deficiency is not reasonably capable of being cured within such ten (10) day period, then such reasonable amount of time as is needed not to exceed 90 days, provided Declarant commences cure within such ten (10) day period and continues to diligently pursue cure), then, City, as applicable, shall have the right, in its reasonable discretion, and upon ten (10) days written notice: (i) to require the retention of a professional property management firm to manage the Property; (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. Declarant shall cooperate with City to effectuate the rights set forth in this Section 24.

25. Section 42 of the Internal Revenue Code

(a) Section 42(h)(6)(E)(ii) of the Internal Revenue Code does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for three (3) years after the date the Property is acquired by foreclosure or deed in lieu of foreclosure.

(b) Notwithstanding anything to the contrary contained in the Loan Agreement or this Declaration, City acknowledges that pursuant to Section 42 of the Internal Revenue Code, the Property will be subject to a regulatory agreement by and between Declarant and the California Tax Credit Application Committee (the "TCAC Regulatory Agreement"). The City further acknowledges and agree that the terms and conditions of the TCAC Regulatory Agreement may impose rental restrictions that are more strict than the restrictions set forth herein, and compliance by Declarant of any such stricter rental restrictions set forth in the TCAC Regulatory Agreement shall not constitute a default hereunder or under the Loan Agreement or any of the documents executed by Declarant in conjunction therewith.

26. No Conversion to Condominiums. Declarant agrees that the conveyance, transfer or sale of any portion of the Property as a condominium, shall be a breach of this Declaration, the Loan Agreement, entitling the City to immediately exercise any and all of their rights and remedies under this Declaration, the Loan Agreement, including without limitation acceleration of the City CDBG Loan and foreclosure under the deed of trust securing the City CDBG Loan.

27. 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.

28. 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 HOME 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.
29. No Novation; Conflicts Between Agreements. This Declaration is not a novation of, and does not supersede or otherwise amend all or any part of the Loan Agreement, the terms of which are hereby ratified and agreed to by Declarant. Notwithstanding the foregoing or anything to the contrary set forth in the Loan Agreement, the provisions of this Declaration shall apply in the event of a conflict between any provision of this Declaration and any provision of the Loan Agreement.
30. Signature Authority. All individuals signing this Declaration for a party which is a corporation, a 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 City 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:

South Bay Community Services,
a California non-profit public benefit corporation

By: _____
Kathryn Lembo, Chief Executive Officer

CITY:

City of Chula Vista

By: _____
James D. Sandoval, City Manager

Approved as to form:

By: _____
Glen Googins, City Attorney

Exhibit “A”

Property Description

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

APN:

Exhibit “B”

Supplemental Rental Application

DO NOT DESTROY THIS NOTE: WHEN PAID, THIS NOTE AND THE DEED OF TRUST SECURING IT MUST BE SURRENDERED TO TRUSTEE FOR CANCELLATION BEFORE RECONVEYANCE WILL BE MADE.

**NOTE SECURED BY DEED OF TRUST
(LANDIS STUDIOS-CITY CDBG RESIDUAL RECEIPTS LOAN)
("CDBG Note")**

San Diego, California

Month Day, 2014

1. Principal and Interest.

FOR VALUE RECEIVED, and in consideration of Chula Vista City Council Resolution No. 2014-_____ dated May 6, 2014, the City of Chula Vista ("Lender"), made by the City of Chula Vista, a public body, corporate and politic ("City"), South Bay Community Services, a California non-profit public benefit corporation ("Maker") promises to pay to City, or order, at 276 Fourth Avenue, Chula Vista, California 91910, or such other place as the holder may from time to time designate by written notice to Maker the principal sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000) in Community Development Block Grant Program funds, or so much as is advanced, together with accrued interest from the date of disbursement on the disbursed and unpaid principal at the interest rate of three percent (3%) simple interest per annum, except in the event of a default under this Note or any of the Loan Documents, as defined below, in which event ten percent (10%) simple interest shall be deemed to have accrued as of the date of default under this Note. This Note is issued pursuant to the deed of trust (the "Deed of Trust"), being executed concurrently herewith, to be recorded in the office of the County Recorder of San Diego County. The real property described in the Deed of Trust shall be referred to herein as the "Property." The Note, Deed of Trust, and Affordable Housing Agreement and Declaration of Covenants, Conditions and Restrictions are sometimes collectively referred to herein as the "Loan Documents."

2. Term of Loan, Due Date and Right of Prepayment.

Due Date and Right of Prepayment. Payments shall be due and payable on the earlier of the following dates:

- a) Commencing one year after the timely filing of the Certificate of Completion, by the City, but no later than **July 1st, 2015**, and on July 1st of each year thereafter, Maker shall calculate its Residual Receipts for the previous calendar year, as defined herein, submit to City a report calculating payment or nonpayment of Residual Receipts and pay to the Lender Percent (50%) of the Residual Receipts for the previous calendar year and shall be made payable to the City. The other fifty percent (50%) of Residual Receipts shall be retained by Maker.

- b) Fifty-five (55) years from the City's issuance of the final Certificate of Occupancy, but no later than sixty (60) years from the date of this CDBG Note, when all principal and accrued interest shall be due and payable.
- c) Acceleration of this CDBG Note pursuant to the provisions of Paragraph 4 of this CDBG Note, when all principal and accrued interest shall be due and payable; or
- d) Upon default under the terms of this CDBG Note as referenced in Paragraph 4 hereof, when all principal and accrued interest shall be due and payable.
- e) "Residual Receipts" shall mean "Gross Revenue" (as defined below) from the Property minus the "Reasonable Operating Expenses" (as defined below) for the same period, calculated on a calendar year basis, as provided in the Residual Receipts Computation form attached hereto as Exhibit "A". All calculations of Residual Receipts during the preceding calendar year shall be subject to verification and approval by the City.
- f) "Gross Revenue" shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, all cancellation fees; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance to the extent not applied to the first lien priority loan from (Insert Name of 1st Loan), in an original principal amount that shall not exceed \$_____, (collectively, the "Senior Loan"); the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project or applied to the Senior Loan; and condemnation awards for a taking of part or all of the Project for a temporary period to the extent not applied to the Senior Loan or used to repair or restore the Project. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances or payments from reserve funds.
- g) "Reasonable Operating Expenses". "Reasonable Operating Expenses" shall mean any and all reasonable and actually incurred costs associated with the ownership, operation, use or maintenance of the Property, calculated in accordance with generally accepted accounting principles. Such expenses may include, without limitation, property and other taxes and assessments imposed on the Project; premiums for property damage, liability and business interruption insurance; utilities not directly paid for by the tenants including, without limitation, water, sewer, trash collection, gas and electricity; maintenance and repairs including, without limitation, pest control, landscaping and grounds maintenance, painting and decorating, cleaning, general repairs, and supplies; tenant relocation costs and expenses; license fees or certificate of occupancy fees required for operation of the Project; general administrative expenses directly attributable to the Property including, without limitation, advertising and marketing, security services and systems, and professional fees for legal, audit and accounting; property management fees and reimbursements including on-site manager and assistance manager expenses; debt service on any loan made to the Maker by any partner of the Maker to cover operating expenses; cash deposited into a reserve for capital replacements of the Project improvements and an

operating reserve; and reasonable supplemental management fees. In no event shall expenditures, including attorneys' fees or litigation costs, normally required to be paid out of the Replacement Reserve, be treated as Reasonable Operating Expenses unless specifically approved in writing by the City. For purposes of the foregoing definition of "Reasonable Operating Expenses," any property management fee which is paid to Maker or an affiliate of Maker shall at no time exceed an amount as is customary and standard for affordable housing projects similar in size, scope and character to the Project. Notwithstanding the foregoing, for purposes of this calculation, Reasonable Operating Expenses shall not include the following: principal and interest payments on any debt subordinate to the City Note (except debt service on loans made to the Maker by a partner to cover operating expenses, as provided above), depreciation, amortization, depletion or other non-cash expenses, incentive partnership asset management fees payable to the Maker or its affiliate (other than the management fees described above), or any amount expended from a reserve account. In the event that any of the above costs is incurred partially with respect to the Project, the parties shall mutually agree upon an allocable portion of such costs which shall be deemed Reasonable Operating Expenses of the Project for the purposes of this Agreement.

This CDBG Note may be prepaid in whole or in part at any time and, from time to time, without notice or penalty. Any prepayment shall be allocated first to unpaid interest and then to principal. Should the undersigned sell, convey, transfer, further encumber, or dispose of the Property described in the Deed of Trust securing this CDBG Note, or any part of it, or any interest in it, without first obtaining the written consent of City, or the then holder of this CDBG Note, then all obligations secured by this CDBG Note may be declared due and payable, at the option of City, or the then holder of this CDBG Note. City reserves the right to approve all sales, transfers, conveyances, additional encumbrances, or dispositions of the real property which approval shall not be unreasonably withheld or delayed. Consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions. If such a sale, transfer, further encumbrance, disposition, conveyance or transfer is approved by City, then upon the sale, transfer, further encumbrance, conveyance, transfer all accrued but unpaid interest on this CDBG Note shall be paid to City, at City's option. The City shall not unreasonably withhold its consent to a transfer to the General Partner of the Maker pursuant to the purchase option and right of first refusal to be granted to the General Partner in the Maker's Partnership Agreement. Notwithstanding the foregoing, the following shall not be sales, conveyances, transfers, further encumbrances or dispositions, for purposes of this City Note: (i) the transfer of limited partnership interest in the Maker and the admission of replacement limited partners of the Maker (neither of which shall require City approval); (ii) replacement of one or more general partner(s) of the Maker, provided that the replacement general partner(s) is/are acceptable to the City in its sole discretion, provided that an affiliate of Wells Fargo Bank, National Association, shall be an acceptable replacement general partner. In addition, nothing contained herein shall limit the ability of Wells Fargo Affordable Housing Community Development Corporation to remove the Maker's general partner in accordance with the Maker's partnership agreement, provided that the replacement general partner, shall be acceptable to the City in its reasonable discretion, not to be arbitrarily withheld, conditioned or delayed, provided that an affiliate of Wells Fargo Bank, National Association, shall be an acceptable replacement

general partner; (iii) recordation of the deed of trust (“Senior Deed of Trust”) and other instruments securing the first lien priority construction loan from Wells Fargo Bank, National Association, in an original principal amount that shall not exceed \$11,505,483.00, which will convert into a permanent loan from California Community Reinvestment Corporation in an original principal amount that shall not exceed \$1,504,476 (collectively, the “Senior Loan”); (iv) recordation of the delivery assurance deed of trust made by Maker for the benefit of California Community Reinvestment Corporation; and (v) recordation of the TCAC Regulatory Agreement. Notwithstanding the foregoing, the City acknowledges that the Maker and the California Tax Credit Allocation Committee intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended. In the event the extended use agreement required by the California Tax Credit Allocation Committee is recorded against the Property, then in the event the City acquires title to the Property, the City agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

3. Security for Note.

This CDBG Note is secured by the Deed of Trust of even date herewith executed by Maker, which creates a lien on that certain real property described therein and by the Loan Documents, including the Security Agreement.

4. Acceleration Upon Default.

In the event of any material default under the terms of this Note, Deed of Trust, or the Declaration, or any prior or subsequent loans, notes and/or deed of trust, at the option of the holder of this Note, and after the expiration of any applicable notice and cure period, all principal and interest due under this Note and the Note shall immediately become due and payable, without further notice. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default. Without limiting any other events of default contained herein, or in any of the Loan Documents, the failure to complete rehabilitation of the Project to the satisfaction of Lender on or before December 31, 2014, shall be considered an event of default, entitling the Lender to accelerate the payment of principal and interest hereunder, as provided in this Section 4. Time is of the essence.

5. Costs Paid by Maker.

Maker agrees to pay the following costs, expenses, and attorneys’ fees paid or incurred by the holder of this CDBG Note, or adjudged by a court: (a) reasonable costs of collection, costs, and expenses, and attorneys’ fees paid or incurred in connection with the collection or enforcement of this CDBG Note, whether or not suit is filed; and (b) costs of suit and such sum as the court may adjudge as attorneys’ fees in any action to enforce payment of this CDBG Note or any part of it.

6. Payment and Interest Calculation.

Principal and interest shall be payable in lawful money of the United States of America. Interest shall be computed based on a 360-day year and 30-day month. Payments shall be applied to interest first and then to any unpaid principal balance.

7. Incorporation of the Loan Agreement.

The provisions of the Loan Agreement are expressly incorporated in this CDBG Note by this reference.

8. Waiver.

Maker hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this CDBG Note, and expressly agrees that, without in any way affecting the liability of Maker hereunder, City may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this CDBG Note. Maker further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this CDBG Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this CDBG Note.

9. Recourse During Construction and Non-Recourse After Filing of Certificate of Completion. Following the timely completion of the **construction** of the Project, as defined in the Loan Documents, measured by the timely filing of a Certificate of Completion, nothing herein contained shall be deemed to cause Maker (or any of its partners, or any of their respective directors, officers, employees, partners, principals or members) personally to be liable to pay or perform any of its obligations evidenced hereby, and the City shall not seek any personal or deficiency judgment on such obligations, and the sole remedy of the City with respect to the repayment of the loan evidenced by this CDBG Note shall be against the Property; provided, however, that the foregoing shall not in any way affect any rights the City may have (as a secured party or otherwise) hereunder or under the Deed of Trust, or any other rights the City may have to: (a) recover directly from the Maker any funds, damages or costs (including, without limitation, reasonable attorneys' fees and costs) incurred by the City as a result of fraud, intentional misrepresentation or intentional waste by Maker; or (b) recover directly from the Maker any condemnation or insurance proceeds, or other similar funds or payments attributable to the Property which under the terms of the Deed of Trust should have been paid to the City, and any costs and expenses incurred by the City in connection therewith (including, without limitation, reasonable attorneys' fees and costs).

10. Late Charge.

In addition to the foregoing, if any installment due hereunder is not paid within thirty (30) days from the date due, Maker promises to pay a "late charge" of five percent (5%) of the

installment so overdue to defray the expense incident to handling any such delinquent payment or payments.

11. Severability.

If any provision of this CDBG Note is determined to be void by court of competent jurisdiction, such determination shall not affect any other provision of this CDBG Note, and such other provisions shall remain in full force and effect.

12. Non-Waiver.

No delay in demanding or failure to demand performance hereunder shall constitute a waiver by City of its right to subsequently demand such performance or to exercise any remedies for any default hereunder. Further, in order to be effective, any waiver of any of City's rights and remedies hereunder shall be expressed in a writing signed by City. Further waiver by City of any right hereunder shall not constitute a waiver of any other right, including but not limited to the right to exercise any and all remedies for a different or subsequent event of default hereunder.

13. Replacement Note.

The undersigned agrees that, in the event that this CDBG Note shall become lost or stolen, upon request of City, the undersigned shall execute a replacement CDBG Note incorporating the terms hereof, provided that City shall furnish a written agreement to indemnify the undersigned against all losses, costs, and damages arising from a duplicative demand for payment under this CDBG Note.

14. Interpretation.

This CDBG Note shall be governed and interpreted in accordance with applicable California law.

15. Signature Authority.

All individuals signing this CDBG Note for a party which is a corporation, a 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 City 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.

16. Subordination.

The Deed of Trust securing this CDBG Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Deed of Trust securing the Senior Loan as more fully set forth in the Subordination Agreement by and among Maker, the City and _____, recorded with the County Recorder of

San Diego County on or about the date of recordation of the Deed of Trust (“Subordination Agreement”). The rights and remedies of the payee and each subsequent holder of this CDBG Note under the Deed of Trust securing this CDBG Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this CDBG Note shall be deemed, by virtue of such holder’s acquisition of this CDBG Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Junior Lender under the Subordination Agreement.

Maker:

South Bay Community Services,
a California non-profit public benefit corporation

By: _____
Kathryn Lembo
President and Chief Executive Officer

Exhibit "A"

Residual Receipts Computation Form

In the event of any contradiction between this Exhibit A and the Loan Documents, then the Loan Documents shall prevail.

Payments from Residual Receipts, if any, shall be made as described in the Promissory Note in accordance with the Loan Agreement dated September 30, 2013, as amended and restated concurrently herewith. The Maker shall annually provide the Commission a Computation of Residual Receipts Report, which provides the basis for the Maker's calculation of the payment or nonpayment of Residual Receipts to the City. The form of the Computation of Residual Receipts is attached.

**COMPUTATION OF RESIDUAL RECEIPTS
FOR THE YEAR ENDING _____**

Maker:

Project Address:

Date Prepared:

Please complete the following information and execute the certification at the bottom of this form.

Gross Income

Please report Gross Income for the year ending _____ on the following lines:

Rental Payments (including Section 8 tenant assistance payments, if any) (1) \$ _____

Interest Income (2) \$ _____

Additional Income Related to Project Operations (for example, laundry income, and any other income from the project) (3) \$ _____

Total Gross Income (add lines 1, 2, and 3) (4) \$ _____

**COMPUTATION OF RESIDUAL RECEIPTS
FOR THE YEAR ENDING _____**

Annual Operating Expenses¹

Please report Annual Operating Expenses incurred in relation to the operations of the Project for the year ending _____ on the following lines:

Administrative Expenses (5)	\$ _____
Marketing Expenses (6)	\$ _____
Professional Fees (7)	\$ _____
Utilities (8)	\$ _____
Contract Services (9)	\$ _____
Cleaning (Painting Supplies, Ground Supplies) (10)	\$ _____
Taxes and Insurance (11)	\$ _____
Other Expenses Related to Operations of the Project:	
a) Other - City Monitoring Fees (12a)	\$ _____
b) Other – Service Amenities (12b)	\$ _____
(Note: in no event shall Service Amenities exceed \$ _____ per year.)	
c) Other – Replacement Reserves (\$ _____ per year (12c)	\$ _____
d) Other – GP Asset Management Fee (12d)	\$ _____
(Note: in no event shall Asset Management Fees exceed \$ _____ per year.)	
Total Annual Operating Expenses* (13)	\$ _____*
(Add lines 5, 6, 7, 8, 9, 10, 11 and 12)	

(Note: in no event shall this form’s total Annual Operating Expenses (line 13) exceed the \$ _____/unit/year (with inflation adjustment) as specifically stated under the Promissory Note’s definition of “Operating Expenses” (at page 2 of the Promissory Note).

Net Operating Income (subtract line 13 from line 4) (14) \$ _____*

¹ Do not include expenses unrelated to the Project’s operations, such as depreciation, amortization, accrued principal and interest expenses on deferred payment debt, or charges to replacement reserves.

**COMPUTATION OF RESIDUAL RECEIPTS
FOR THE YEAR ENDING _____**

The Executive Director or Chief Financial Officer of the Maker or the Managing General Partner of the Maker shall execute the following certification.

I, hereby, certify under penalty of perjury under the laws of the State of California that the information provided in this form is true, complete, correct and accurate in all respects and I understand that the City of Chula Vista will rely on this certification in calculating the residual receipts payments to which it is entitled. I further certify under penalty of perjury under the laws of the State of California that the undersigned have/has the authority to execute this certification and that sufficient and adequate due diligence has been performed by the undersigned or at the undersigned direction to make these certifications. The undersigned further acknowledges that a false statement made under penalty of perjury to a state agency has potential criminal consequences and ramifications.

Executed this ___ day of _____, 20___ at Chula Vista, California

MAKER:

By: _____
(Print or Type Name)

(Title)

**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

**DEED OF TRUST
(LANDIS STUDIOS)
(City CDBG Residual Receipts Loan)**

THIS DEED OF TRUST is made as of the ____ day of _____, 2014, by South Bay Community Services, California non-profit public benefit corporation (“Trustor”), whose address is 430 F Street Chula Vista, CA 91910, Attention: Kathryn Lembo, President and Chief Executive Officer and [Insert Trustee Name] (“Trustee”) and the City of Chula Vista (“Beneficiary”), whose address is City of Chula Vista, Development Services-Housing Division , 276 Fourth Avenue, Chula Vista, California, 91910.

TRUSTOR HEREBY irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of Chula Vista, County of San Diego, State of California, described as:

(See Legal Description - Exhibit “A”)

FOR THE PURPOSE OF SECURING:

- a) Payment of the indebtedness evidenced by a promissory note of even date herewith executed by Trustor, in the principal sum of Four Hundred-Fifty Thousand and No/100 Dollars (\$450,00.00), and any renewal, extension, or modification of the promissory note (the “CDBG Note”);
- b) Any additional sums and interest that may hereafter be loaned to the then record owner of the Property by Beneficiary, when evidenced by another note or notes reciting that it or they are so secured;
- c) The performance of each agreement contained in this Deed of Trust, the terms being synonymous, and the CDBG Note; and

- d) The performance of each agreement and covenant of Trustor under that certain Affordable Housing Agreement and Declaration of Covenants, Conditions and Restrictions (City CDBG Residual Receipts Loan) (“Restrictions”) of even date herewith and recorded concurrently herewith affecting the Property.

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. Maintenance and Repair. To keep the Property in good condition and repair (normal wear and tear excepted); not to remove or demolish any buildings on the Property; to complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed on the Property; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property (reasonable wear and tear excepted); not to commit, suffer, or permit any act upon the Property in violation of law; and to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts that from the character or use of the Property may be reasonably necessary.
2. Fire Insurance. To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary as its interest may appear. Subject to the rights of any senior lenders, the amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice. Notwithstanding the foregoing, in the event of any fire or other casualty to the Property, Trustor shall have the right to rebuild the Property, and to use all available insurance proceeds therefor, provided that (a) such proceeds are sufficient to rebuild the Property in a manner that provides adequate security to Beneficiary for repayment of the indebtedness secured hereby or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve (which shall not be unreasonably withheld or delayed) plans and specifications for any major rebuilding and the right to approve (which shall not be unreasonably withheld or delayed) disbursements of insurance proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists hereunder or under the CDBG Note. If the casualty affects only part of the Property and total rebuilding is not feasible, then proceeds may be used for partial rebuilding and partial repayment of the indebtedness secured hereby in a manner that provides adequate security to Beneficiary for repayment of the remaining indebtedness secured hereby.
3. Defense of Security. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary, or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys’ fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

4. Payment of Liens and Taxes. To pay, before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock, all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Deed of Trust. Subject to the rights of senior lenders, if Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand upon Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter upon the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs, including reasonable attorneys' fees.
5. Payment and Reimbursement of Costs. That Trustor will pay the HOME Note at the time and in the manner provided therein. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the amount allowed by law in effect at the date of this Deed of Trust, and to pay any amount demanded by Beneficiary (up to the maximum allowed by law at the time of the demand) for any statement regarding the obligation secured by this Deed of Trust.
6. Use. That Trustor will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.
7. Incorporation of Agreements. That the HOME Note, the Loan Agreement, and the Restrictions are incorporated herein by reference and made a part of this Deed of Trust, although not attached. Copies are on file in the office of the Beneficiary.
8. Performance of Other Obligations. To perform, in a timely manner, each agreement and covenant by and between Trustor on any and all notes, loans and deeds of trust that are senior and/or junior to this Deed of Trust. To perform, in a timely manner, each of the Trustor's obligations under that certain Amended and Restated Ground Lease by and between Family Health Centers of San Diego and the Trustor which is being recorded against the Property in the Office of the Recorder of San Diego County concurrently with recordation of the Deed of Trust ("Ground Lease"). A default in any of these obligations and the expiration of any applicable notice or cure period shall constitute a default under this Deed of Trust. In the event of a default by Trustor under the Ground Lease: (i) such default shall be a default under this Deed of Trust; (ii) in the event the Beneficiary cures any such default by Trustor under the Ground Lease, any and all costs and expenses,

including without limitation, reasonable attorneys' fees, which were incurred by the Beneficiary, shall be added to the principal amount of the NSP Note; and (iii) any cure by the Beneficiary of any default by Trustor under the Ground Lease shall not cure Trustor's default hereunder, unless and until, the Trustor reimburses the Beneficiary for any and all costs and expenses, including without limitation, reasonable attorneys' fees, which were incurred by the Beneficiary.

B. THE PARTIES AGREE THAT:

1. Condemnation Award. Any award of damages in connection with any taking or condemnation, or for injury to the Property by reason of public use, or for damages for private trespass or injury to the Property, is hereby assigned and shall be paid to Beneficiary (subject to the rights of any senior lenders), as its interest may appear as further security for all obligations secured by this Deed of Trust. Upon receipt of such proceeds, Beneficiary shall apply or release the proceeds in the same manner and with the same effect as provided in Section 2 of this Deed of Trust for the disposition of proceeds of fire or other insurance.
2. Waiver of Late Payments. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.
3. Trustee's Powers. Upon written request of Beneficiary and presentation of this Deed of Trust and the CDBG Note for endorsement, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the repayment of the full amount secured by this Deed of Trust.
4. Full Reconveyance. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid, surrender of this Deed of Trust, the CDBG Note, and any other notes secured by this Deed of Trust to Trustee for cancellation and retention, and payment of Trustee's fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. The recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of the full reconveyance, Trustee may destroy the CDBG Note and this Deed of Trust, unless directed in the request to retain them.
5. Assignment of Rents. As additional security, Trustor hereby gives to and confers upon

Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default, which shall continue beyond any applicable notice and cure periods, by Trustor in payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. Upon any such default and after expiration of any applicable notice and cure periods, Beneficiary may, subject to the rights of senior lenders, without notice and without regard to the adequacy of the security for the indebtedness secured by this Deed of Trust, either personally or by agent or court-appointed receiver, do the following: enter upon and take possession of the Property or any part of the Property; sue for or otherwise collect all rents, issues, and profits, including those past due and unpaid; and apply these rents, issues, and profits, less costs and expenses of operation and collection (including reasonable attorneys' fees), upon any indebtedness secured by this Deed of Trust, in any order determined by Beneficiary. The exercise of the foregoing rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

6. Default in Foreclosure. Upon default by Trustor in the payment of any indebtedness secured by this Deed of Trust or in the performance of any material obligation under this Deed of Trust, and the expiration of any and all applicable notice or cure periods, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. 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, Trustee, without demand on Trustor, 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. Trustee may postpone sale of all or any portion of the 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 fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale. After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds. Beneficiary agrees that, notwithstanding its rights to invoke the remedies permitted by any Loan Document (as defined in the Loan Agreement), Beneficiary shall not, so long as the Limited Partner (as defined in the Loan Agreement) has a continuing ownership interest in Trustor, conduct a foreclosure sale of

the Property or receive a deed-in-lieu of foreclosure, until such time as the Limited Partner has first been given 30 days written notice of such default and has failed, within such 30-day period to cure such default; provided, however, that Beneficiary shall be entitled, during such 30-day period, to continue to accelerate the CDBG Note and to pursue its remedies.

7. Due on Sale or Further Encumbrance. Except as otherwise provided in the CDBG Loan Agreement, should the undersigned agree to or actually sell, convey, transfer, or dispose of, or further encumber the real property described in this Deed of Trust, or any part of it, or any interest in it, without first obtaining the written consent of the Beneficiary, then all obligations secured by the CDBG Note and this Deed of Trust may be declared due and payable, at the option of the Beneficiary. Consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions.
8. General Provisions. This Deed of Trust applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the holder and owner, including pledgee, of the CDBG Note, whether or not named as a beneficiary in this Deed of Trust, and the heirs, legatees, devisees, administrators, executors, and assigns of any such person. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
9. Acceptance by Trustee. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.
10. Substitution of Trustees. Beneficiary, or any successor in ownership of any indebtedness secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall contain the name of the original Trustor, Trustee, and Beneficiary under this Deed of Trust, the book and page where this Deed is recorded, and the name and address of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers, and duties.
11. Co-trustees. If two or more persons are designated as Trustee in this Deed of Trust, any, or all, power granted in this Deed of Trust to Trustee may be exercised by any of those persons, if the other person or persons are unable, for any reason, to act. Any recital of this inability in any instrument executed by any of those persons shall be conclusive against Trustor and Trustor's heirs and assigns.

12. Cumulative Powers and Remedies. The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.
13. Conclusiveness of Recitals. The recitals contained in any reconveyance, trustee's deed, or any other instrument executed by Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions. Further, the recitals shall be binding and conclusive upon Trustor, its heirs, executors, administrators, successors, and assigns, and all other persons.
14. Attorneys' Fees. If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys' fees; and these sums shall be secured by this Deed of Trust.
15. Request for Notices of Default and Sale. In accordance with Section 2924b of the California Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under any Deeds of Trust executed by Trustor, and recorded in the Official Records of San Diego County, California, in which Beneficiary, is named as beneficiary, be mailed to:

City of Chula Vista
c/o Development Services-Housing Division
276 Fourth Avenue
Chula Vista, California, 91910

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

The undersigned Trustor requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at the address of Trustor set forth above.

16. Inspections. Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, upon twenty-four (24) hours written notice (unless Trustor is in default under any of the Loan Documents or in the event of an emergency in which event no notice shall be required). Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the Property and the general operation of the Property.

17. Hazardous Materials Defined. For purposes of this Deed of Trust, “Hazardous Materials” mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended (42 U.S.C. §9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. §1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §6901, *et seq.*), and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect. Notwithstanding the foregoing, the term “Hazardous Materials” shall not include small amounts of chemicals, cleaning agents and the like commonly employed in routine household uses in a manner typical of occupants in other similar residential properties provided they are used in compliance with applicable laws.

18. Trustor’s Hazardous Materials Representations and Warranties and Indemnity. In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:

- a) Neither Trustor nor, to the best knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by Trustor or, to the best knowledge of Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials. “Hazardous Materials” for purposes of this Paragraph 26(a) shall not include substances typically used in the ordinary course of developing, operating and maintaining apartment complexes, provided that such substances are used in accordance with all applicable laws.
- b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Beneficiary, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under

CERCLA, any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials) regardless of whether or not caused by or within the control of Trustor. The foregoing indemnification shall not apply to any liability resulting from (i) an event that occurs after a transfer of the Property due to any foreclosure sale (judicial or nonjudicial) or a deed in lieu of foreclosure, or (ii) acts or omissions of Beneficiary or its agents.

- c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge, or cleanup of any Hazardous Materials (“Hazardous Discharge”) affecting Trustor or the Property or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Trustor or the Property (“Environmental Complaint”) from any person or entity, including, without limitation, the United States Environmental Protection Agency (“EPA”). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.
- d) Without limitation of Beneficiary’s rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the Property which, if true, could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the note secured hereby.
- e) The foregoing representation, covenants, indemnities and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations, covenants, indemnities and warranties shall survive such release.
- f) Choice of Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

19. Non-Discrimination. Trustor 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 Trustor 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. The foregoing covenants shall run with the land.

20. Provisions to be Included in Documents. Trustor 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 for the rental, lease or sale of the Property or any dwelling unit, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a) 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.”

b) 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.”

c) Contracts. In contracts for the rental, lease or sale of the Property or any dwelling unit “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.”

21. Authority to Sign. All individuals signing this Deed of Trust for a party which is a corporation, a 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 Beneficiary 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.

TRUSTOR:

South Bay Community Services,
a California non-profit public benefit corporation

By: _____
Kathryn Lembo,
President and Chief Executive Officer

ACKNOWLEDGMENT

State of California)

)

County of San Diego)

On _____, 2014 before me, _____, 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)

ACKNOWLEDGMENT

State of California)

)

County of San Diego)

On _____, 2014 before me, _____, 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 leasehold interest in the real property situated in the City of Chula Vista, County of San Diego, State of California, described as follows:

APN: