Agenda Report

DATE: November 16, 2010

TO: The Mayor and City Council

FROM: Sean P. Quinn, City Manager
Eve Somjen, Director of Community Resources
Lark Ferrell, Sr. Project Manager

SUBJECT: Resolution Authorizing the Execution of a HOME Loan Agreement and Associated Loan Documents by and between the City and ANF Family Partners II for the Rehabilitation of Cottage Square Apartments

RECOMMENDED ACTION
Adopt resolution.

STATEMENT OF ISSUE
The attached resolution authorizes the Agency to enter into a HOME Loan Agreement and associated loan documents with ANF Family Partners II, a California limited partnership, in the amount of $1,688,005 for the rehabilitation of Cottage Square Apartments. This loan is funded by a HOME grant the City received from the State of California's HOME Program.

DISCUSSION
The City received a grant from the State Department of Housing and Community Development's HOME Program for the rehabilitation of Cottage Square Apartments. Cottage Square is a 46-unit apartment complex located at 1189 Tabor Avenue. ANF Family Partners II, a California limited partnership established by non-profit housing developer National CORE, acquired Cottage Square Apartments as part of a larger acquisition/rehabilitation project in the South PACE neighborhood.
MEETING DATE: November 16, 2010  
SUBJECT: Resolution Authorizing the Execution of the HOME Loan Agreement and Associated Loan Documents by and between the City and ANF Family Partners II, LP for the Rehabilitation of Cottage Square Apartments

The attached resolution authorizes the City to enter into a HOME Loan Agreement and associated loan documents with ANF Family Partners II in the amount of $1,688,005 to provide funding for the rehabilitation of Cottage Square. The HOME loan is a residual receipt loan at 3% interest due in 55 years. The HOME funds are being leveraged with a variety of other sources including funding from the Redevelopment Agency, tax credit investor and tax exempt bond proceeds.

FINANCIAL IMPACT
This resolution authorizes the execution of a HOME Loan Agreement and associated loan documents for a HOME loan in the amount of $1,688,005. This funding is provided by a grant from the State HOME Program which is specifically designated for this project.

PUBLIC CONTACT/ADVISORY BODY RECOMMENDATION
N/A

ALTERNATIVE ACTION
City Council could elect not to approve the resolution. However, this would create a $1,688,005 budget gap which, if not filled, would make the project infeasible.

DOCUMENTS ATTACHED
Attachment 1: Resolution
Attachment 2: HOME Loan Agreement
Attachment 3: HOME Promissory Note
Attachment 4: HOME Deed of Trust
Attachment 5: HOME Regulatory Agreement

STAFF CONTACT
Lark Ferrell, Sr. Project Manager  
(707) 428-7457  
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Coordinated with: City's legal counsel
RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE EXECUTION OF A HOME
LOAN AGREEMENT AND ASSOCIATED LOAN DOCUMENTS BY AND BETWEEN
THE CITY AND ANF FAMILY PARTNERS II FOR THE REHABILITATION OF
COTTAGE SQUARE APARTMENTS

WHEREAS, the City has received grant funds from the California Department of Housing
and Community Development’s HOME Investment Partnership Program (the “HOME
Program”) for the acquisition and rehabilitation of Cottage Square Apartments located at
1189 Tabor Avenue (the “Property”); and

WHEREAS, ANF Family Partners II, a California Limited Partnership, acquired the Property
with the intent to rehabilitate them and operate them as affordable housing; and

WHEREAS, the City desires to provide a $1,688,005 loan to ANF Family Partners II, a
California Limited Partnership, or an ANF Family Partners II limited partnership from the
HOME Program for the purpose of rehabilitating the Property.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY
RESOLVES:

Section 1. The City hereby finds and determines lending HOME funds to ANF Family
Partners II or an ANF Family Partners II limited partnership for the rehabilitation of the
Property will make the project financially feasible and improve and conserve the supply of
housing available to low-income households.

Section 2. The City Council hereby approves the HOME Loan Agreement and
associated loan documents in substantially the form submitted, subject to minor revisions
as the City’s legal counsel shall approve.

Section 3. The City Council authorizes the City Manager to implement this resolution.

PASSED AND ADOPTED this 16th day of November, 2010, by the following vote:

AYES: COUNCILMEMBERS: ________________________________

NOES: COUNCILMEMBERS: ________________________________

ABSENT: COUNCILMEMBERS: ________________________________

ABSTAIN: COUNCILMEMBERS: ________________________________

ATTEST:

______________________________
MAYOR

______________________________
CITY CLERK
Loan Agreement

HOME Investment Partnerships Program
ANF Family Partners II, LP
City of Fairfield, California

THIS AGREEMENT is made and entered into as of ___________________________ , 2010, by and between the City of Fairfield, a municipal corporation (“City”), and ANF Family Partners II, L.P., a California limited partnership (“Borrower”).

WITNESSETH

WHEREAS:

A. The Congress of the United States has enacted the HOME Investment Partnerships Act (“HOME Program”) as Title II of the Cranston-Gonzalez National Affordable Housing Act (“ACT”), and amendments thereto; and

B. City has submitted the required documents to the California Department of Housing and Community Development (“HCD”) for receipt of funds pursuant to the HOME Program; and

C. City is empowered under the HOME Program to administer funds pursuant to the HOME Program and to enter into project agreements with development organizations including limited partnerships; and

D. Borrower has requested a loan of HOME Program funds for costs related to the construction of the Cottage Square rental apartment unit project located at 1189 Tabor Avenue, Fairfield, California; and

E. City desires to assist Borrower by lending HOME Program funds for certain rehabilitation activities of the Project as more particularly described herein below.

NOW, THEREFORE, in consideration of the covenants and conditions herein contained, City and Borrower mutually agree as follows:

1. Definitions

Except to the extent modified or supplemented by the HOME Program Agreement between City and HCD, any term defined in the ACT or the HOME Program regulations at 24 CFR Part 92, as amended, shall have the same meaning when used herein.

a. “Activity” shall mean the rehabilitation activities to be carried out in part with City HOME Program funds in connection with the Project, more particularly described in the attached Schedule “A,” incorporated herein by this reference as if set forth in full.

b. “Borrower” shall mean ANF Family Partners II, L.P., a California limited partnership, whose principal place of doing business is located at 9065 Haven Avenue, Suite 100, Rancho Cucamonga, California 91730.
c. South PACE GP, LLC, a California limited liability company, shall mean the general partner of the Borrower whose principal place of doing business is located at 9065 Haven Avenue, Suite 100, Rancho Cucamonga, California 91730.

d. “Event of Default” shall mean the occurrence of any of the events listed in Section 36 hereof and the expiration of any applicable notice and cure period provided for in this Agreement and in all schedules, exhibits, and attachments that may be incorporated herein.

e. “HOME-assisted units” shall mean the units in the Project that are designated to be managed and rented with the HOME Program regulations throughout the Period of Affordability. Eleven (11) units in the Project, as agreed to by City and Borrower, will be designated as the HOME-assisted units.

f. “HOME Program” shall mean City’s HOME Investments Partnership Program, including the administration thereof, with respect to the terms of the agreements between HCD and the City which commit HOME Program funds to the City.

g. “Loan” shall mean the loan of HOME Program funds by the City to the Borrower for Activity costs.

h. “Loan Documents” shall mean Schedules “A” and “B,” and Exhibits “A” through “E,” attached hereto and incorporated herein by this reference.

i. “Period of Affordability” shall mean the time period beginning at Project Completion and ending on the date fifty-five (55) years thereafter, during which the Project must remain affordable in accordance with 24 CFR 92.252, as amended.

j. “Project” refers to Cottage Square Apartments, a development of forty-six (46) apartment units for persons who are low and very low income households, at a site located at 1189 Tabor Avenue, Fairfield, California (the “Property”), and more particularly described in Exhibit “A,” incorporated herein by this reference as if set forth in full.

k. “Project Completion” shall have the same meaning as set forth at 24 CFR 92.2, as amended.

l. “Project Premises” shall mean the Project real property and any structures, appurtenances, fixtures, personality and/or any equipment thereon, whether or not attached permanently to the real property.

2. The Loan

a. Purpose: The purpose of the Loan is to provide financing for the Activity costs incurred pursuant to this Agreement, as more fully described in the attached Schedule “A.”

b. Enforcement of Provisions: In order to enforce the terms of this Agreement, the Loan shall be evidenced by a Promissory Note (“Note”), a form of which is attached hereto as Exhibit “B.” The Note shall be secured by a Deed of Trust and Assignment of Rents from Borrower for the benefit of the City, or its assigns, for the outstanding amount of the Loan, (“Deed of Trust”), a form of which is attached hereto as Exhibit “C” and incorporated herein by this reference. The HOME Program affordability requirements shall be enforced on the Project through a Regulatory Agreement in accordance with 24 CFR 92.504(c)(13), as amended, (“Regulatory Agreement”), a form of which is attached hereto as Exhibit “D” and incorporated herein by this reference. The Regulatory Agreement shall be recorded against the Project...
Premises and shall be superior to all other liens on the Project Premises, except any lien approved in writing by the Director of Community Resources. In addition, Borrower shall execute and deliver to City any documents necessary for the City to file a UCC-1 against Borrower’s personal property on the Project Premises.

c. If the Project does not comply with the affordability requirements as set forth in 24 CFR 92.252, as amended, during the Period of Affordability, Borrower shall have sixty (60) days after receipt of written notice from City to cure the default, and such additional time as may be necessary to cure the default, up to an additional thirty (30) days, provided Borrower is diligently pursuing the cure of the default. If, after the expiration of such cure periods, Borrower shall have failed to cure the default, the Loan shall immediately become due and payable with interest accrued thereon plus costs to the City.

d. Unless otherwise approved in writing, the Deed of Trust shall be junior only to any and all Project construction and/or permanent financing trust deeds referred to in Schedule “A.”

e. Borrower hereby acknowledges and stipulates that any and all loan repayments by Borrower shall, when received, be the sole property of the City of Fairfield and, consistent with the law, can thereafter be used in any manner determined by the City Council.

3. Maximum Loan Funds Available Under Agreement and Mode of Payment

a. City agrees to pay and Borrower agrees to accept, as Loan disbursements, progress payments as reimbursement for Borrower’s costs incurred under this Agreement upon Borrower making satisfactory progress toward completion of the Activity as determined solely by City; provided, that the total Loan amount available to Borrower shall not exceed One Million Six Hundred Eighty-Eight Thousand Five and no/100’s Dollars ($1,688,005.00). Borrower agrees to accept sole financial responsibility for all other costs as shown in Schedule “B,” related to the Project in excess of the One Million Six Hundred Eighty-Eight Thousand Five and no/100’s Dollars ($1,688,005.00) made available by the City pursuant to this Agreement.

b. City’s duty to make Loan funds available to Borrower is expressly contingent on City’s receipt of HOME Program Funds from the Federal Government allocated for this Activity. In the event that HOME Program Funds are not received by City, Borrower agrees that City, at its sole option, may terminate or suspend this Agreement until such funds are received. Borrower hereby agrees to the foregoing without reservation or claim for future cause of action or suit in equity based thereon against City and agrees to hold City harmless.

c. Loan disbursements shall be made to Borrower as shown in Schedule “B,” after execution of the Note, upon Borrower’s submittal to City of certified claims executed by a properly designated official of Borrower indicating the percentage of the Activity that has been completed. Said certified claims shall be itemized and properly documented to show clearly the items, tasks or services for which Activity cost reimbursement is being claimed and the basis for cost computation whether by cost per hour, cost per weight, cost per task or other measurement as agreed by and between City and Borrower. Borrower agrees not to request Loan disbursements under this Agreement until funds are needed for payment of completed eligible Activity costs. Said certified claims shall also be itemized and properly documented to distinguish clearly among the items, tasks or services for which cost reimbursement is being claimed from the City Loan and from other sources of Project financing.

d. Upon receipt and approval by City of certified claims for Activity construction to be paid for under this Agreement with HOME Program Funds, City shall, pursuant to the budget
allocation for rehabilitation costs as shown in Schedule “B,” make Loan disbursements to Borrower, or its designee(s), in the maximum amounts permitted by HCD HOME rules and regulations. Advances on certified claims for any personal services contracts (e.g. services of mechanical engineer) shall be at one hundred percent (100%) of the claim amount. The balance of any and all HOME Program Funds retained by the City pursuant to HCD HOME rules and regulations shall be paid to Borrower thirty-five (35) days after Project Completion and compliance with all regulations applicable to this Agreement have been determined to the satisfaction of the City. Borrower agrees that the City is hereby empowered to make an independent determination of the percentage of the Activity which has been satisfactorily completed and any such determination by City is conclusive.

e. Borrower hereby acknowledges and covenants that all mitigation and permit fees, which would be required of any other privately owned multiple family project in the City of Fairfield of similar size and configuration, shall be paid from the proceeds of the Loan.

4. Term of Agreement

Except as otherwise provided at Sections 5 and 50, herein below, the term of this Agreement shall commence as of the first date written above, and continue until the Note is paid in full or the end of the Period of Affordability, which ever period is longer.

5. Termination of Agreement

City reserves the right to terminate this Agreement upon any breach of this Agreement and/or the Loan Documents by Borrower which continues beyond any stated cure period by giving Borrower written notice of its intention to terminate at least ten (10) days prior to the effective date of the termination, in which event City shall only loan funds for work successfully completed as determined solely by City prior to the effective date of termination.

6. Project Cost Evaluation

Until the time of Project Completion, Borrower shall supply City on a not less than a monthly basis certified information on the actual Project costs, uses of funds and other information relevant to this evaluation. Borrower further agrees that, if Project costs are less than estimated in Schedule “B,” and all costs advanced by the Borrower’s General Partner(s) and/or costs deferred by said General Partner(s), have been repaid or paid in full, with the approval of the City’s Director of Community Resources, the Loan funds available to Borrower for the Project shall be reduced to the amount required.

7. Borrower’s Obligations and Conditions

a. As a condition of the advance of any funds hereunder by City, Borrower hereby agrees:

1) to assure reasonable access to the Project Premises by City and its designees;

2) to execute the Note, the Deed of Trust and the Regulatory Agreement (the “Loan Documents”);

3) to provide to City a preliminary title report with such exceptions and liens as acceptable by City, and if requested by City, an appraisal that meets the standards specified by
the City. Such appraisal shall be from an appraiser acceptable to the City who is also licensed to practice in the State of California.

(4) to provide documentation to City that all funds necessary to complete the Project as shown in Schedule “A,” in the amount of not less than $10,221,762 will be available to Borrower;

(5) to immediately pay all costs related to acquisition and development of the Project Premises in excess of the HOME Program Funds obligated pursuant to this Agreement when due; and

(6) to provide proof of insurance as specified in Section 34 herein at the City Manager’s request for review and approval prior to start of Project construction.

b. Prior to and during the Period of Affordability, Borrower further agrees:

(1) to make improvements to the Project Premises in accordance with plans approved by the City’s Director of Community Resources for that purpose;

(2) to furnish City, prior to Borrower initially marketing the Project and taking any rental applications from any person, for City review, comment, and approval or disapproval, a copy of the marketing plan that Borrower plans to use to market and select occupants for the Project Premises. Borrower further agrees to make changes in the marketing plan in response to comments from City and to resubmit the marketing plan for City review and approval, so long as such changes are not in conflict with the provisions and requirements governing the Project Premises, as previously or concurrently agreed to by the Borrower pursuant to and in conformance with the rules and regulations of the California Housing Finance Agency (“CHFA”), the California Debt Limit Advisory Committee (“CDLAC”), and/or the California Tax Credit Allocation Committee (“CTCAC”). Subject to the above conditions, Borrower will follow the marketing plan that is approved by City in renting HOME-assisted units to the client population;

(3) to rent out the Project Premises to the client population in accordance with 24 CFR 92.252 and 253, as amended, and the provisions of Section 8, “Tenants,” below;

(4) to provide City with any and all reports required by this Agreement;

(5) to allow City, HCD, their agents and designee(s) reasonable access to the Project Premises for purposes related to this Agreement; and

(6) to maintain the Project Premises in a manner which meets the provisions of this Agreement, and to establish City approved performance standards for the management, operation and maintenance of the Project and the Premises for the life of the Project, which standards may be judicially enforceable by the City as a remedy in addition to any and all others which may be provided by law.

c. Borrower shall complete acquisition and rehabilitation of the Project Premises twelve (12) months from the date of this Agreement and will accept tenants not more than twenty-four (24) months from the date of this Agreement, except that this time can be extended with the written approval of the City’s Director of Community Resources.

d. Borrower shall be responsible for implementation of this Project. Implementation shall include, without limitation, preparation of specification documents and any required plans,
solicitation and hiring of contractors, construction engineering and inspection, contract administration and HCD compliance monitoring services. Borrower shall provide City with all plans and specifications, including changes requested by Borrower during construction, for the City’s Director of Community Resources’ review and approval prior to use.

e. Borrower shall be responsible for the maintenance and operation of the Project Premises during the Period of Affordability and Loan Term, whichever time period is greater.

f. All work performed by Borrower shall be completed satisfactorily and within the budgetary limits and time schedule milestones provided for in this Agreement. City shall not be obligated to loan or otherwise reimburse Borrower for work performed subject to this Agreement if said work is unsatisfactory to City or completed subsequent to the time or times specified in this Agreement. Any and all modifications to the Agreement time schedules are at the sole option of the City’s Director of Community Resources.

g. Borrower shall be responsible for complying with all applicable local, State, and Federal laws and regulations.

h. Borrower shall cooperate fully with City in undertaking the Project and shall assure and permit City and its representatives, inspectors and consultants to enter upon the Project Premises during normal business hours to inspect the Project and materials to be used therein and to examine all contracts, records, test reports, plans and shop drawings which are kept at the Project site or at Borrower’s offices. Borrower shall cooperate with and shall use its best efforts to cause the Project Premises’ general contractor and subcontractor(s) to cooperate with any such representatives, inspectors or consultants retained by City.

i. Borrower shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Activity to be completed under this Agreement, or the assignment of any of its obligations under this Agreement.

j. In its provision for construction of the improvements Borrower (in collaboration with the City) shall conduct, as appropriate, a preconstruction conference.

k. Borrower shall be responsible for the control and safety of Borrower officers, employees, agents, or invitees during the implementation of this Project. Borrower shall take all actions necessary to insure the safety of its employees and invitees during the implementation of the Project and during the operation of the improvements constructed pursuant to this Agreement.

l. Subsequent to bid openings, if the City’s Director of Community Resources determines that funds budgeted for the Project are insufficient to satisfactorily accomplish or complete the work referenced in this Agreement, Borrower shall have thirty (30) calendar days from the date of such determination to obtain additional Project funding beyond the City’s maximum financial obligation or satisfactorily and appropriately reduce the scope of the Project, as provided for herein above. If the reduction of Project scope is not successful in satisfactorily lowering overall Project costs, City and Borrower agree to mutually terminate this Agreement according to the requirements and standards of 24 CFR Part 85.44, “Termination for Convenience,” as amended. In the event of termination the Activity shall be abandoned; the City shall incur no liability whatsoever to Borrower for expenses incurred after termination of this Agreement, nor shall the City incur any liability whatsoever for costs related to any subsequent completion of the improvements herein contemplated.
m. As an express condition precedent to the Loan of any HOME Program Funds under the terms of this Agreement, Borrower shall execute and return to City the duly executed Loan Documents in forms acceptable to City.

n. Borrower shall comply with all applicable present and future Federal, State, and local laws, regulations and requirements including, but not limited to, all HOME Program regulations. If HCD directs City to modify the Agreement or any other aspect of the Project, Borrower shall amend this Agreement and/or modify the Project in a manner which is satisfactory to both HCD and City.

o. Borrower shall not permit any lien, levy, attachment or restraint to be made or filed against the Project Premises or the Project or permit any receiver, trustee or assignee for the benefit of creditors to be appointed to take possession of the Project Premises or any portion of the Project except with the prior written consent of City. Mechanics or material liens shall be handled as described in Section 7q. below.

p. Borrower shall obtain a policy of title insurance in the aggregate principal amount of the Note, free and clear of all encumbrances, except as approved by the City in writing on the date of the close of escrow.

q. Borrower shall promptly discharge or cause to be discharged any and all mechanic’s and/or materialmen’s liens or claims of lien filed or otherwise asserted against the Project Premises, the Project and any proceedings for enforcement thereof and shall promptly discharge or cause to be discharged any stop notices received by City.

8. Tenants

a. Partnership shall carry out City’s affirmative marketing responsibilities, as furnished by City in writing to Borrower.

b. During the Period of Affordability, eight (8) of the eleven (11) HOME-assisted Project units shall be occupied by families whose annual incomes do not exceed, at the time of occupancy, sixty percent (60%) of the median family income as established by HCD at rent levels that are consistent with 24 CFR 92.252, as amended, and a minimum of three (3) of the eleven (11) HOME-assisted Project Units shall be occupied by households whose annual incomes do not exceed, at the time of occupancy, fifty percent (50%) of the median family income as established by HCD at rent levels that are consistent with 24 CFR 92.252, as amended.

c. In all events, a minimum of twenty percent (20%) of all HOME-assisted Project units shall be occupied by Very Low-income households at rents that are no greater than the Low HOME rents, less the appropriate utility allowance established by the local housing authority. Furthermore, in no event shall rents for any HOME-assisted Project unit exceed the High HOME rents, less the appropriate utility allowance established by the local housing authority.

d. Borrower shall comply with 24 CFR 92.253, as amended, concerning tenant and participant protections.

9. Additional Security

In addition to any other security for the Loan provided herein, Borrower also gives to and confers upon City the right, power, and authority, during the term of this Agreement, to collect the rents, issues and profits of the Project Premises, reserving unto Borrower the right, prior to
any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the City may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said Project Premises or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses or for operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as the City may determine. The entering upon and taking possession of said Project Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

10. **Property Standards**

The Project shall meet the property standards of 24 CFR 92.251, as amended, including the Model Energy Code published by the Council of American Building Officials. Borrower shall provide City with a certification from Borrower with respect to the Project meeting these standards.

11. **City’s Obligations**

a. Any regulation enacted by City to facilitate the administration of the HOME Program shall be made available to Borrower by the City.

b. City shall process invoices of Borrower for the disbursement of Loan funds under this Agreement with due diligence.

12. **Laws and Regulations**

a. Borrower shall obey the provisions of the Act, any amendments thereto, the Federal regulations and guidelines now or hereafter enacted pursuant to the Act, terms of the HOME Program agreement (“Standard Agreement”) between HCD and City now or hereafter in effect, and the regulations now or hereafter enacted by the City to facilitate its administration of the HOME Program in the City of Fairfield, or any other statute, regulation or guideline applicable to the HOME Program. Partnership shall become familiar with the appropriate statutes, regulations and guidelines governing the HOME Program.

b. Borrower agrees to comply with all applicable provisions of the HOME Program regulations including, but not limited to, the Project Requirements of Subpart F of 24 CFR 92, as amended.

c. Borrower agrees that all provisions of State of California law are a part of this Agreement to the same extent as if set forth herein in full and shall be complied with by Borrower under this Agreement and any related agreements.

d. For the Period of Affordability the Project shall meet the Housing Quality Standards of 24 CFR 882.109, as amended, and local housing code requirements. Not less than annually, City shall have the right to inspect, or cause to be inspected, the Project Premises to determine compliance with these standards. City shall report all discovered noncompliance to Borrower and Borrower shall expeditiously take corrective actions to cure all such noncompliance.
e. Borrower will comply with all applicable laws, ordinances, rules and regulations of federal (including but not limited to the HUD housing quality standards pursuant to 24 CFR 887.109, Section 504 of the Rehabilitation Act of 1973, as amended, and the American Disabilities Act of 1992), state and local governments and agencies having jurisdiction over either the Borrower, the Project or the Project Premises and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency. All permits, consents, permissions and licenses required by any federal, state or local government or agency to which Borrower, the Project or the Project Premises is subject, which may be necessary in relation to this Agreement or the acquisition, development, construction or ownership of the Project, at or prior to the commencement of construction, have been, or will be, obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.

13. Records and Administration

Borrower agrees to comply with all applicable provisions and requirements in the administration and implementation of the Activity and in the maintenance of records. The following specific provisions apply to the Project:

a. Borrower shall keep accurate records of its efforts to market the Project to prospective tenants and results of those efforts. At least annually during the Period of Affordability but more often if requested by City, Borrower shall provide City with a report which includes at a minimum the following:

(1) a description of marketing and outreach carried out during the reporting period, including such items as clipped notices, flyers, advertisements, letters, etc.;

(2) records of the race or ethnicity, gender, and family size of each applicant; and

(3) records of the family income, rent paid, family size, race or ethnicity, and gender of each person who is a tenant during the reporting period.

b. In the event Borrower expends at least three hundred thousand dollars ($300,000) in Federal financial assistance in any single fiscal year, from all sources combined, it shall arrange at its own expense for performance of a “Single Audit” of its entire operation by an independent auditor. Such audit shall comply with the requirements and standards of OMB Circular A-87, “Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments.” Public Law 98-502, “Single Audit Act of 1984”; 24 CFR 85.26, “Non-Federal Audit”; and OMB Circular A-133, “Audits of States, Local Governments, and Other Non-Profit Organizations.” The results of the audit must be submitted to City within thirty (30) days of completion. Acceptance of Borrower’s audit reports by City does not prohibit City from performing any additional audit work required to follow-up on findings, as deemed necessary by City, or as necessary for City to comply with any administrative or audit requirements imposed by the Federal or State government.

c. As a condition of receiving Federal financial assistance under this Agreement, Borrower agrees to comply with 24 CFR 85.42, “Retention and Access Requirements for Records.” It is further agreed by Partnership that any agreement between Partnership and its independent auditor shall provide for access during normal business hours to the independent auditor’s work papers by Federal, State and City auditors, or their authorized agents, as may be deemed necessary to carry out their audit responsibilities. The audit agreement must also require
Borrower’s independent auditor to retain for review purposes said audit work papers for three (3) years from date of audit completion or until all related audit issues are resolved, whichever should occur later.


e. Borrower agrees to comply with the methods and procedures for payment as outlined in 24 CFR 85.21, “Payment,” except as modified by 24 CFR 570.513, “Lump Sum Drawdown for Financing of Property Rehabilitation Activities.”

f. Borrower shall comply with the standards and requirements of 24 CFR 85.32, “Equipment.”

g. Borrower shall comply with the requirements and standards of 24 CFR 85-22, “Allowable Costs.”

h. Borrower shall comply with the standards and requirements of 24 CFR 85.35, “Debarment and Suspension; Drug Free Workplace,” and 24 CFR 85.40, “Monitoring and Reporting Program Performance.” Borrower further agrees that City has the right to monitor and supervise the administration and/or implementation of the Project to be completed pursuant to this Agreement to help insure compliance with the requirements of the Act as now or hereinafter amended, the Federal regulations as now or hereafter promulgated pursuant to the Act, or guidelines developed by the Federal government for administering and/or implementing the Project, or any other statute, rule, regulation or guideline applicable to the administration and/or implementation of the HOME Program.

i. Borrower shall comply with the standards and requirements of 24 CFR 85.43, “Enforcement,” and 24 CFR 85.44, “Termination for Convenience.” Borrower also agrees that the City may, by unilateral action, terminate this Agreement upon any breach of this Agreement and/or the Loan Documents by Borrower which continues beyond any stated cure period by giving ten (10) days prior written notice to Borrower.

j. Borrower shall be accountable to City for any and all HOME Program funds expended by Borrower or any officer, employee, agent or representative thereof, whether or not such officer, employee, agent or representative thereof was acting within the scope of his employment. Borrower shall repay City the full amount of any improperly expended HOME Program funds upon demand and shall comply with the requirements of 24 CFR 85.51, “Later Disallowance’s and Adjustments.” City may retain any funds of Borrower in City’s possession to liquidate the acknowledged debt resulting from such improper expenditure.

k. Borrower shall comply with the standards and requirements of 24 CFR 84.73, “Collection of Amounts Due.”

l. City may withhold funds from Borrower if Borrower is not complying with any provisions of the Act, the Federal regulations thereunder, terms of the HOME Program, the regulations of the City to facilitate the administration of the HOME Program, the terms of this Agreement, or any other statute or regulation applicable to the HOME Program or administration thereof as determined solely by City. Should City become subject to any sanctions due to any failure by Borrower or Borrower’s agent to comply with all applicable Federal, State, and local laws and regulations, Borrower hereby agrees to be solely liable for any such sanctions and shall fully reimburse, hold harmless, and indemnify City for any payments made or funding lost and the City’s expenses related thereto, including City’s attorney’s fees, as a result of such sanctions.
m. Borrower agrees to keep the Project Premises in good condition and repair, not remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be added thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate; prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration's herein not excluding the general.

14. Political Activity

Borrower agrees that no HOME Program Funds shall be expended to finance any political activity in contravention of the Hatch Act found at Chapter 15 of Title 5 of the United States Code, as amended.

15. Prohibited Use of Federal Funds for Lobbying

The Lobbying Disclosure Act of 1995 prohibits the awarding of federal funds to non-profit organizations under Section 501 (c)(4) of the Internal Revenue Code, as amended, if they engage in lobbying.

Borrower certifies, to the best of its knowledge and belief, that no federally appropriated funds have been paid or will be paid, by or on behalf of Borrower, 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, or an employee of a Member 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 agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant, loan, or cooperative agreement.

Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (excluding subcontracts and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

16. Use of HOME Program Funds for Religious Purpose

Borrower agrees that no HOME Program Funds shall be expended for the design, construction, operation, or maintenance of any facility to be used for sectarian instruction or as a place for religious worship except in those cases where such use is incidental and does not favor one religious group over another.

17. Litigation Status

Borrower warrants and represents that there are no legal actions pending that would materially affect the Project.

18. Utilities, Etc.

Borrower warrants and represents that all necessary telephone services, gas, electric power, storm sewers, sanitary sewers and water facilities are or will be available to the Project Premises, adequate to serve the Project, exist at the boundary of the Project Premises and are not or will not be subject to any conditions, other than normal charges to the utility supplier, which
would limit the use of such utilities. All streets and easements necessary for construction and operation of the Project are available to the boundaries of the Project Premises, or any part thereof.

19. **No Condemnation**

Borrower represents and warrants that as of the date hereof, no condemnation or other like proceedings are pending or threatened against the Project which would impair the full utilization of the Project in any manner whatsoever.

20. **Prohibited Interest of Officials and Employees**

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. No member of the City Council of City or any other public official who exercises any functions or responsibilities with respect to the Program during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Agreement. Borrower shall incorporate or cause to be incorporated, in all contracts or subcontracts, relating in any manner to this Agreement, a provision prohibiting such interest.

The parties to this Agreement have read and are aware of the provisions of section 1090, *et seq.*, and section 87100, *et seq.*, of the Government Code relating to conflict of interest of public officers and employees. Borrower agrees that it is unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof. Borrower shall comply with the requirements of Government Code section 87100, *et seq.*, during the term of this Agreement.

21. **Equal Employment Opportunity**

In carrying out the Project, Borrower shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and the selection for training, including apprenticeship. Borrower shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by City and/or HCD setting forth the provisions of this nondiscrimination clause. Borrower shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin, age, or handicap.

Borrower hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the regulations of the Secretary of Labor and 41 CFR Subpart 60-1.3, as amended, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal government pursuant to a grant, contract, loan, insurance, or guarantee, the equal opportunity clause required by the law.

Borrower further agrees that it shall be bound by the equal opportunity clause required by the law with respect to its own employment practices when it participates in federally assisted construction work; provided, that the above equal opportunity clause is not applicable to any
subsidiary, parent or related organization of Borrower which does not participate in work on or under the contract.

Borrower agrees that it shall assist and cooperate actively with City, HCD, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it shall furnish City, HCD and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it shall otherwise assist City and HCD in the discharge of their primary responsibilities for securing compliance.

Borrower agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by HCD or the Secretary of Labor pursuant to Part 11, Subpart D of the Executive Order. In addition, Borrower agrees that if it fails or refuses to comply with these undertakings, HCD may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this Agreement; refrain from extending any further assistance to Borrower under the HOME Program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such; and refer the case to the Department of Justice for appropriate legal proceedings.

22. **Nondiscrimination Requirements**

In the provision of service under this and any related agreements, Borrower shall provide that no person shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME Program funds. In addition, HOME Program funds must be made available in accordance with the following:

a. The requirements of the Fair Housing Act and implementing regulations at 24 CFR 100, as amended;

b. Executive Order 11063 (Equal Opportunity in Housing), as amended; and
c. Title VI of the Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended, (nondiscrimination and fair housing on federally assisted programs).

In addition to the foregoing, Borrower shall comply with all nondiscrimination clauses required by law.

23. **Rehabilitation Act of 1973**

This Agreement is subject to the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973 (PL 930112), 29 USC 706, as amended, and attendant regulations at 24 CFR, Part 8, as amended, which provide that no otherwise qualified, handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance. Borrower shall cause or require to be inserted in full, in all contracts subject to such regulations, the clause, or any modification thereof, required by law.
24. **Nondiscrimination on the Basis of Age**

This Agreement is subject to the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94-135) and attendant Code of Federal Regulations at 48 CFR, Part 22, Subpart 22.9, as amended, which provides that, except as otherwise provided, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

25. **Relocation and Acquisition**

Borrower shall, in acquiring real property in connection with the HOME Program, comply to the greatest extent practicable under State law with the real property acquisition policies set out under Sections 301 and 302 of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L.-642, as amended, and shall comply with and pay or reimburse property owners for necessary expenses as specified in Sections 303 and 304 of the aforementioned Title 111, and implementing regulations at 49 CFR Part 24, as amended.

26. **Environmental Considerations**

In order to assure that the policies of the National Environmental Policy Act of 1969 (NEPA), as amended, and the California Environmental Quality Act of 1970 (CEQA), as amended, are most effectively implemented, Borrower shall comply with HCD Environmental Review Procedures (24 CFR Part 58), as amended, leading to certification of release of funds for particular projects, and the CEQA review procedure in connection with this Project.

27. **Lead-Based Paint Hazards**

As specified in the HOME regulations at 24 CFR 92.355, Borrower agrees to abide by the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) as amended, and 24 CFR Part 35 which prohibit the use of lead-based paint on applicable surfaces of any residential structures constructed or rehabilitated under any Federal or federally assisted program. Such regulations shall require Borrower to include or cause inclusion of appropriate provisions in contracts and subcontracts pursuant to which such federally assisted construction or rehabilitation is performed, prohibiting such use of lead-based paint. Borrower shall be responsible for inspection and certifications required for enforcement of such prohibitions.

28. **Hazardous Materials**

To the best of Borrower’s knowledge, the Project Premises are not in violation of any Federal, State or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Project Premises including, but not limited to, soil and groundwater conditions. Neither Borrower nor, to the best of Borrower’s knowledge, any third-party has constructed, used on or about the Project Premises or transported to or from the Project Premises any flammable explosives, radioactive materials, asbestos in any form which is friable or physically could become friable, hazardous wastes, toxic substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise (“Hazardous Materials”). For the purpose of this Agreement, Hazardous Materials shall include, but not be limited to, substances defined as “hazardous substances,” “hazardous materials,” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; the Resource Conservation and
Recovery Act, as amended, 42 U.S.C. §6901 et seq.; those substances defined as "hazardous waste" in Section 25117 of the California Health & Safety Code, as amended, or as "hazardous substances" in Section 25316 of the California Health & Safety Code, as amended; and in the regulations adopted and publications promulgated pursuant to said laws. Partnership agrees to submit, if requested by City at any time and from time-to-time, a current up-to-date report, satisfactory to City in its sole and absolute discretion, prepared by a consultant approved by City, certifying that the Project Premises and the improvements thereon are neither being used nor have they been used for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials, and City reserves the right, in its sole and absolute discretion, to retain, at Borrower's sole expense, an independent professional consultant to review such report. Borrower hereby grants to City, its agents, employees, consultants and contractors, the right to enter upon the Project Premises and the improvements thereon and to perform such tests as are reasonably necessary to conduct such a review.

Other than as required by Borrower in the ordinary course of maintaining the Project Premises (i.e., landscape gardening and janitorial maintenance), during the term of this Agreement, Borrower shall not keep, store or place in or on the Project Premises any material(s) that is in any way Hazardous Material, or which requires investigation or remediation under any Federal, State or local law, statute, regulation or ordinance ("Applicable Laws"). Borrower shall cleanup and dispose of any deposit, spill, discharge or other release of Hazardous Material which occurs during the term of this Agreement in accordance with all Applicable Laws. Borrower shall provide any information, make any and all submissions and take any steps mandated by any legal requirement or required by any governmental authority or court which has jurisdiction, with respect to any Hazardous Material which Borrower is required to cleanup. Borrower's obligations shall survive the termination of this Agreement.

29. **Flood Disaster Protection**

Borrower agrees to abide by the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234), as amended. No portion of the assistance provided under HOME Program funded agreements is approved for acquisition or construction purposes, as defined under Section 3(a) of the Flood Disaster Protection Act, for use in an area identified by the Secretary of the Department of Housing and Urban Development as having special flood hazards, which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201 (d) of the Flood Disaster Protection Act, and the use of any assistance provided under grant funded agreements for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Disaster Protection Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under HOME Program funded agreements shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provisions obligating the transferee and its successors or assigns to obtain and maintain, during ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with HOME Program assistance.

In its compliance with the Flood Disaster Protection requirements, Borrower hereby agrees to comply with the provisions of Executive Order 11296, relating to evaluation of flood
hazards, and with Executive Order 11288, relating to the prevention, control, and abatement of water pollution.

30. **Affirmative Action of Special Disabled and the Vietnam Era Veterans Provisions**

   Borrower shall comply with 48 CFR, Chapter 1, Subpart 22.13 as amended, and shall take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based on their disability or veterans status in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. In all contracts or agreements of ten thousand dollars ($10,000) or more relating to this Agreement, Borrower shall include or cause to be included the “Affirmative Action for Special Disabled and the Vietnam Era Veterans Provisions’ clause required by law.

31. **Americans with Disabilities Act of 1990**

   Borrower and all HOME Program contractors and subcontractors shall agree to abide by the requirements of the Americans with Disabilities Act of 1990, Public Law 101-336, as amended, and any regulations issued pursuant thereto, which prohibits, at Title I thereof, discrimination by any employer, employment agency, or labor organization against any qualified individual with a disability in regard to any term, condition, or privilege of employment; makes applicable, at Title II thereof, the prohibition against discrimination on the basis of disability to all programs, activities and services provided or made available by State and local agencies or instrumentality or agencies thereof, or by public entities that provide public transportation; prohibits, at Title III thereof, discrimination against disabled persons by privately operated public accommodations and in public transportation services provided by private entities; and which, at Titles IV and V thereof, makes further provision against discrimination against disabled persons.

32. **Architectural Barriers Act of 1968**

   This Agreement is subject to the requirements of the Architectural Barriers Act of 1968, as amended, and the regulations issued pursuant thereto, which provides, except as otherwise provided, that every building be designed, constructed, leased, or altered in accordance with the minimal standards in the “American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped,” published by the American National Standards Institute, Inc.

33. **Indemnification**

   Borrower agrees to indemnify, defend (upon written request by City) and hold harmless City, HCD, their agents, officers, employees and authorized representatives from any and all losses, liabilities, costs, expenses, charges, damages, claims, liens, and causes of action, of whatsoever kind or nature (including, but not limited to, reasonable attorneys’ fees) which are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence, whether active or passive, of Borrower or Borrower’s officers, agents, employees or authorized representatives, which relates in any manner to this Agreement, any work to be performed by Borrower under this Agreement, or any authority delegated to Borrower under this Agreement, even though the same may have resulted from the joint, concurred or contributory negligence, whether active or passive, of City or any other person or persons, unless the same is caused by the sole active negligence or willful misconduct of the party indemnified or held harmless. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons and damage to any
property, regardless of where located, including the property of City, and any liability of the City for private attorney general fee awards. It is further expressly understood and agreed that the duty to indemnify shall include, but not be limited to, any internal costs for staff time, investigation costs and expenses, and fees of City Counsel reasonably incurred as a result of any act, omission, fault or negligence, whether active or passive, of Borrower or Borrower's officers, agents, employees or authorized representatives, which relates in any manner to this Agreement, any work to be performed by Borrower under this Agreement, or any authority delegated to Borrower under this Agreement. The above indemnification is specifically intended to insure that there can be no recourse in any fashion to the City in the event of a default by Borrower or by its agents hereunder.

34. Insurance

Borrower, in order to protect City, HCD, their agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Borrower's actions in connection with the performance of Borrower's obligations, as required in this Agreement, shall secure and maintain insurance as described below in sub-paragraphs a. and b., and shall require that all contractors hired by Borrower to perform work on the Project Premises to secure and maintain insurance as described below in sub-paragraph c. Borrower shall be responsible for any deductibles under all required insurance policies.

a. Workers' Compensation Insurance Requirement: Borrower shall submit written proof that Borrower is insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the Labor Code.

In signing this Agreement, Borrower makes the following certification, required by Section 1861 of the Labor Code:

"It is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of the work of this Agreement."

b. Liability Insurance Requirements:

(1) Borrower shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance coverage:

   (a) Commercial General Liability Insurance coverage, including, but not limited to, Premises-Operations, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), and Personal Injury for liability arising out of Borrower's operations of the Project Premises, including any use or occupancy of its facilities, grounds and structures. Said insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) aggregate.

   (b) Automobile Liability Insurance with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence. Such insurance shall include coverage for all owned, hired and non-owned vehicles and shall be provided by a business or commercial vehicle policy.
(c) Upon acquisition of the Property (or if there are no improvements on the Property, upon completion of construction of any improvements) Borrower shall maintain Fire and Extended Coverage Insurance on a blanket basis or with an agreed amount clause in amounts not less than 100% of the Project’s replacement value.

(2) The Commercial General Liability Insurance required in this sub-

paragraph b. and sub-paragraph c. below shall include an endorsement naming the City, HCD and their officers, agents and employees as insured as their interests may appear.

(3) Upon acquisition of the Property by Borrower, evidence of insurance in compliance with the requirements above shall be furnished to the City by Certificate of Insurance. Said insurance shall not be reduced or canceled without thirty (30) days prior written notice to City.

c. Contractor Insurance Requirements

During the construction of the Project, Borrower shall require that all contractors hired by Borrower to perform work on the Project Premises maintain the following insurance coverage at all times during the performance of said work:

(1) Builders Risk Insurance to be written on an All Risk Completed Value form, in an aggregate amount equal to 100% of the completed insurable value of the improvements.

(2) Commercial General Liability Insurance with limits of not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) aggregate to protect Borrower during the construction phase from claims involving bodily injury and/or death and damage to the property of others. Said insurance shall include an endorsement to include owners’ and contractors’ protective coverage.

(3) Automobile Liability Insurance with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence. Such insurance shall include coverage for all owned, hired and non-owned vehicles and shall be provided by a business or commercial vehicle policy.

d. Cancellation of Insurance -- The above stated insurance coverage shall be maintained by Borrower until the expiration of this Agreement if an occurrence policy is used. Also, phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation working of the Certificate of Insurance.

e. All insurance shall be issued by a company or companies listed in the current “Best’s Key Rating Guide” publication with a minimum of a “B+;V” rating, or in special circumstances, be pre-approved by both the City’s Risk Management Division of the Human Resources Department and Director of Community Resources.

f. If Borrower is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Borrower shall provide coverage substantially equivalent to the insurance coverage and endorsements required above. The City’s Director of Community Resources, or her designee, and the City’s Risk Management Division, shall determine, in their sole discretion, whether the coverage proposed to be provided by Borrower is substantially equivalent to the above-required coverage.
g. Insurance coverage in the minimum amounts set forth herein shall not be
construed to relieve Borrower for liability in excess of such coverage, nor shall it preclude the
City from taking such other actions as are available to it under any other provision of this
Agreement or otherwise in law.

h. Failure by Borrower or Borrower’s contractor(s) to maintain all such insurance in
effect at all times required by this Agreement shall be a material breach of this Agreement by
Borrower. City, at its sole option, may terminate this Agreement and obtain damages from
Partnership resulting from said breach. Alternatively, City may purchase such required insurance
coverage, and without further notice to Borrower, City shall deduct from sums due to Borrower
any premiums and associated costs advanced by City for such insurance. If the balance of monies
obligated to Borrower pursuant to this Agreement are insufficient to reimburse City for the
premiums and any associated costs, Borrower agrees to reimburse City for the premiums and pay
for all costs associated with the purchase of said insurance. Any failure by City to take this
alternative action shall not work to relieve Borrower of its obligation to obtain and maintain the
insurance coverage required by this Agreement.

35. **Eminent Domain**

Subject to the parallel rights of any and all Project Premises and/or Project superior trust
deed holders, to which the City’s rights as set forth hereunder shall be subordinated, in the event
that any proceeding or action is commenced for the taking of the Project Premises or the Project,
or any part thereof or interest therein, for public or quasi-public use under the power of eminent
domain, by reason of any non-City public improvement or non-City condemnation proceeding,
or in any other manner, or should Borrower receive any notice or other information regarding
such proceeding, action, taking or damage, Borrower shall give prompt written notice thereof to
City. City shall be entitled, at its option, without regard to the adequacy of its security, to appear
in and prosecute in its own name any condemnation action or proceeding. City shall also be
entitled to make any compromise or settlement in connection with such taking or damage. After
deducting therefrom all costs and expenses (regardless of the particular nature thereof and
whether incurred with or without suit, including, without limitation, attorneys’ fees) incurred by
it in connection with any such action or proceeding, City shall distribute such condemnation
proceeds to Borrower to repair or replace the Project Premises or the Project with any balance
applied to the Loan. Notwithstanding the foregoing, City shall be under no obligation to
prosecute such condemnation action(s) or proceeding(s).

36. **Events of Default**

a. An Event of Default shall consist of any breach by Borrower of any covenant,
agreement, provision or warranty contained in this Agreement, and/or the Loan Documents,
including but not limited to the following:

(1) Borrower fails to pay all or any installment of principal, interest or cost
under the Note when due after seven (7) days written notice from the City; or

(2) Borrower fails to pay any other amount payable by Borrower under this
Agreement or the Loan Documents after seven (7) days written notice from the City when due; or

(3) Any lien is recorded against all or any part of the Project Premises or the
Project without the City’s prior written consent, whether such lien is prior or subordinate to the
liens of the Deed of Trust or the Regulatory Agreement, and such lien is not removed from the
title or otherwise remedied to the City’s satisfaction after thirty (30) days written notice from the
City; or

(4) Any representation or warranty made by Borrower in this Agreement and/or any Loan Document proves to have been incorrect in any material respect when made; or

(5) All or a substantial or material portion of the Project is damaged or destroyed by fire or other casualty, and the City has reasonably determined upon restoration or repair that the security of the Deed of Trust has been impaired or that the repair, restoration or replacement of the Project in accordance with the requirements of the Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance; or all or a substantial or material portion of the Project and/or Project Premises is condemned, seized or appropriated by any governmental agency or subject to any action or other proceeding instituted by any governmental agency for any such purpose such that the Project and/or Project Premises cannot be operated for their intended purpose; or

(6) Borrower is dissolved or liquidated or merged with or into any other entity; or for any period of more than ten (10) days Borrower ceases to exist in its present form and/or ceases to be in good standing and duly qualified under the laws of the State of California; or all or substantially all of the assets of Borrower are sold or otherwise transferred; or

(7) Borrower assigns or attempts to assign any rights or interest under this Agreement or any Loan Document, whether voluntarily or involuntarily, without the prior written consent of the City; or this Agreement or any Loan Document becomes or is claimed by Borrower to be unenforceable against Borrower; or the Deed of Trust ceases to constitute a valid and indefeasible perfected lien on the Project Premises; or

(8) A voluntary or involuntary filing for relief by or for Borrower under the United States Bankruptcy Code which is not stayed within thirty (30) days; or

(9) Borrower fails to perform or observe any other term, covenant or agreement contained in this Agreement or any Loan Documents and, unless a shorter cure period is stated in any of the Loan Documents, either (i) such failure continues for more than thirty (30) days, or (ii) such failure is not reasonably capable of being cured within such 30-day period, but is reasonably capable of being cured within sixty (60) days, but Borrower fails to commence action to cure such failure within such 30-day period and/or fails to diligently and continuously prosecute such action to completion within sixty (60) days.

b. On the occurrence of one or more Events of Default, in addition to its other rights in this Agreement or in any of the Loan Documents, and its rights and/or remedies at law, or in equity, the City may, without prior demand, exercise any one or more of the following rights and remedies:

(1) Termination of Disbursements: terminate its obligation to make Loan disbursements; and/or,

(2) Apply to any court, State or Federal, for specific performance of this Agreement and/or the Loan Documents or for the appointment of a receiver to take over and develop, manage and operate the Project in accordance with the terms of this Agreement and the Loan Documents, or for such other relief as may be appropriate. It is agreed by Borrower that the injury to City arising from a default under any of the terms of this Agreement or the Loan Documents would be irreparable and that the amount of compensation which would provide
adequate relief to City, in light of the purposes and requirements of the HOME Program, would be impossible to ascertain; and/or,

(3) Acceleration: declare the Note and all other sums owing to the City with respect to the Note delivered herewith immediately due and payable in full; and/or,

(4) Continuation of Loan Disbursements: make any Loan disbursements after the happening of any one (1) or more of the Events of Default, without waiving its right to demand payment of the Note and all other sums owing the City with respect to the Note and/or any other rights or remedies and without liability to make any other or further Loan disbursements, regardless of the City’s previous exercise of any rights and remedies; and/or,

(5) Legal and Equitable Remedies: proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Agreement and/or the Loan Documents.

c. Borrower agrees to pay all of City’s costs, fees and expenses, including attorney’s fees, costs and expenses, with respect to the City’s exercise of any of its rights and remedies under this Agreement.

d. In the event of a conflict between an Event of Default under this Agreement and the Deed of Trust, the terms of this Agreement shall control.

37. “Section 3 Compliance in the Provision of Training, Employment and Business Opportunities for Lower-Income Persons”

This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, the HCD regulations issued pursuant thereto at 24 CFR Part 135, and any applicable rules and orders of HCD issued thereunder. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HCD assistance or HCD-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 HCD assistance for housing.

Borrower shall cause or require to be inserted in full in all contracts and subcontracts for work financed, in whole or in part, with assistance provided under this Agreement, the Section 3 clause entitled, “Training, Employment and Business Opportunity,” as required by law.

Borrower shall provide such copies of 24 CFR Part 135 as may be necessary for the information of the parties to contracts required to contain the Section 3 clause.

38. Small Business Concerns

This Agreement is subject to the requirements of the Small Business Act (15 USC 631 et seq.), as amended, the HCD applicable regulations issued pursuant thereto at 48 CFR, Part 19, and any applicable rules and orders of HCD issued thereunder requiring aid, counseling, assistance, and protection, insofar as possible, with, for, or of the interests of small business concerns in order to preserve free competitive enterprise; and placement with small business concerns of a fair proportion of the total Federally funded purchases and contracts for property and services.
Borrower shall implement the specific small business policies herein below stated in order to further applicable requirements of the Small Business Act:

a. Small business concerns shall be afforded an equitable opportunity to compete for prime contracts and subcontracts. The “Utilization of Small Business Concerns” clause as required by law shall be included by Borrower in all contracts in connection with this Activity in amounts which may exceed ten thousand dollars ($10,000) except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, and (ii) contracts for services which are personal in nature. The “Small Business Subcontracting Program” clause as required by law shall be included by Borrower in all contracts in connection with this Project which may exceed five hundred thousand dollars ($500,000) and which, in the opinion of the City, offer substantial subcontracting possibilities.

b. Bidders’ mailing lists shall include established and potential qualified small business concerns.

c. Invitations for bids or requests for proposals shall be sent to all firms on the appropriate mailing list except that where use of less than a complete list is appropriate, a pro rata number of small business concerns shall be solicited.

d. Proposed procurements and contract awards shall be publicized in accordance with these policies.

e. Procurement of property and services shall be divided into reasonably small lots (not less than economic production runs) in order to permit bidding on quantities less than the total requirements.

f. The maximum amount of time practical shall be allowed for preparation and submission of bids and proposals.

g. Delivery schedules shall be established on a realistic basis which will encourage small business participation to the extent consistent with the actual requirements of the Small Business Act.

h. Applicable specifications, plans, and drawings either shall be furnished with invitations for bids and requests for proposals or, when not so furnished, information as to locations where they may be obtained or examined shall be furnished.

i. In the event of equal low bids, awards shall be in accordance with 48 CFR Subpart 14.407-6, “Equal Low Bids.”

j. Subcontracting to enroll business concerns shall be encouraged.

k. Placement of small purchases (amounts under $25,000) with small business concerns shall be encouraged.

l. Small business concerns seeking Federal contracts, but found to lack qualifications as prime contractors, should be referred to the City and the Small Business Administration for assistance as may be appropriate.

m. Offers from small business concerns otherwise qualified to perform specific Federal contracts but ineligible under Walsh-Healey Public Contract Acts, 41 USC 35 et seq.,
shall be referred to the City and Small Business Administration for possible certification of eligibility to receive and perform the contract.

n. To the extent practicable, work to be performed which exceeds the maximum amount of any contract for which a surety may be guaranteed against loss shall be placed so that more than one small business concern may perform the work.

o. A small business concern otherwise qualified to receive and perform specific Federal contracts but determined to be nonresponsible may be certified to be competent by the Small Business Administration under the provisions of the Small Business Act.


Borrower and all contractors engaged under contracts for the construction, alteration, and/or repair of any project with twelve (12) of more HOME-assisted units shall comply with HCD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Part 3, 5, and 5a, as amended, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve the Partnership or contractors of their obligation, if any, to require payment of higher rates. Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, the appropriate clause(s), or any modification thereof, as required by law.

No awards of contracts covered under this Section of this Agreement shall be made to any contractor who is ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

40. Compliance with Clean Air and Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., Executive Order 11738, dated September 10, 1973, and the regulations of the Environmental Protection Agency with respect thereto at 40 CFR Part 15, as amended.

Borrower shall cause or require to be inserted in full in all contracts and subcontracts in connection with this Activity with respect to any nonexempt transaction (exceeds $100,000, or involves a facility which is the subject of a conviction under the Clean Air Act, or the Federal Waste Pollution Control Act, and listed by the Environmental Protection Agency, or not otherwise exempt) thereunder funded with assistance provided under this Agreement, the appropriate clause(s) as required by law.

Furthermore, Borrower shall cause or require to be inserted in full the appropriate provisions required by law in each solicitation and resulting contract and contracts awarded without reference to a solicitation.

In no event shall any amount of assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 11 3(c)(1) of the Clean Air Act or Section 309(C) of the Federal Water Pollution Control Act.
41. **Successors and Assigns of City and Partner**

   This Agreement shall be binding and inure to the benefit of the successors to or assigns of the City and Borrower. This Agreement shall not be assigned without the prior written consent of the City.

42. **Concurrent Remedy**

   No right or remedy herein conferred on or reserved to City is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

43. **No Waiver**

   No covenant or condition of this Agreement can be waived except by the written consent of City. Forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Borrower. A waiver of one (1) covenant or condition by City does not grant or imply a waiver of any other covenant or condition to be performed by Borrower. City shall be entitled to invoke any remedy available to City under this Agreement or by law or in equity despite said forbearance or indulgence.

44. **Incorporation of Prior Agreements and Amendments**

   This Agreement contains the sum total of all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

45. **Severability**

   The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way effect the validity of any other provision hereof.

46. **Independent Contractor**

   In the performance of the activities herein provided for, Borrower shall be, and is, an independent contractor and is not a partner, an agent or employee of City. Borrower has and shall retain the right to exercise full control and supervision of the activities to be performed under this Agreement and full control over the employment, direction, compensation, and discharge of all persons assisting Borrower in the performance of said activities. Borrower shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security withholding, State and Federal taxes, and all other regulations governing such matters.

47. **Relationship of Parties**

   The relationship of Partnership and City under this Agreement is, and shall at all times remain, solely that of lender and borrower. City neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Project or the Project Premises, except as expressly provided in this Agreement.
48. **Venue**

If either party to this Agreement initiates any legal or equitable action to enforce the terms of this Agreement and/or any of the Loan Documents, to declare the rights of the parties under this Agreement and/or Loan Documents, or which relates to this Agreement and/or Loan Documents in any manner, City and Borrower agree that the proper venue for any such action is the Superior Court of the State of California of and for the County of Solano.

49. **Authority**

Each individual executing this Agreement on behalf of Borrower represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Borrower and that this Agreement is binding on Borrower in accordance with its terms.

50. **Procedure to Modify and Limitation of Term of Agreement**

a. Except as otherwise provided herein, the terms of this Agreement may only be modified by the written consent of the parties hereto.

b. This Agreement shall be in effect through the Period of Affordability or ending with repayment with interest of HOME Program Funds loaned by City to Borrower, whichever time period is greater, except that Borrower shall retain records as is required in Section 13 of this Agreement entitled “Records and Administration.”

51. **Notices**

Notices shall be sufficiently given hereunder if personally served upon the parties as addressed below or if sent by United States Mail, postage prepaid, addressed:

If directed to City: Director of Community Resources
City of Fairfield
1000 Webster Street
Fairfield, CA 94533

If directed to Borrower: ANF Family Partners II, L.P.
9065 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730
Attn: CFO

Any change in notice shall be delivered solely by certified mail, return receipt requested.

*Signatures appear on next page.*
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers and agents as of the day and year first above written.

CITY:
CITY OF FAIRFIELD

By ________________________________
Sean P. Quinn
City Manager

BORROWER:
ANF FAMILY PARTNERS II, L.P., a California Limited Partnership
By its General Partner:
South PACE GP, LLC,
a California limited liability company
By its Manager/Member
National Community Renaissance of Northern California
By: ________________________________
Richard J. Whittingham, CFO

APPROVED AS TO FORM:

By: ________________________________
City Attorney
EXHIBIT A

Legal Description of the Property

1189 Tabor, Fairfield, California:

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

Beginning at the northeast corner of Lot 5 in Block B, as shown on that certain map entitled: "Windsor Heights, Unit No. 1", filed on December 7, 1961 in Book 19 of Maps, Page 99, Solano County Records, said point also being in the East line of Lot 37 of Locke Paddon, Addition to Fairfield, filed for record March 18, 1912 in Book 4 of Maps, Page 9; thence North 0° 09' 50" West along the East line of said Lot 37 and Lot 36 of said Locke Paddon Addition to Fairfield, a distance of 360 feet, more or less to a point in the Southerly line of Tabor Avenue as designated on said Map of Windsor Heights Unit No. 1; thence North 89° 23' 23" West a distance of 259.919 feet; thence Westerly along a curve to the left with a radius of 30 feet through a central angle of 90° 45' 37" a distance of 47.522 feet to a point in the East line of Bristol Lane as shown on the Map of Windsor Heights Unit No. 1, hereinbefore referred to; thence along said East line South 0° 09' 00" East, 269.520 feet and southerly along a curve to the right with a radius of 180 feet through a central angle of 19° 27' 04" a distance of 61.107 feet to the Northwest corner of Lot 15 in Block B of Windsor Heights No. 1 hereinbefore referred to; thence South 89° 23' 23" East, 300.681 feet to the point of beginning.

APN: 0033-012-260
SCHEDULE A

Description of the Activity

Project is for the acquisition and rehabilitation of the 46-unit apartment project located at 1189 Tabor Avenue, Fairfield, California. This shall include, but is not limited to, the rehabilitation of bathrooms, kitchens, and exterior improvements to the property.

This shall be funded from the following funding sources – lien position to be determined:

<table>
<thead>
<tr>
<th>Permanent Conventional Financing</th>
<th>$2,252,049</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Credit Investor Equity</td>
<td>$998,738</td>
</tr>
<tr>
<td>Redevelopment Agency</td>
<td>$4,890,371</td>
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<tr>
<td>Deferred Developer Fee</td>
<td>$392,599</td>
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<tr>
<td>HOME</td>
<td>$1,688,005</td>
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<tr>
<td>Total</td>
<td>$10,221,762</td>
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</tbody>
</table>

This shall be funded from the following funding sources – lien position to be determined:
SCHEDULE B

Budget and Disbursements
### Cottage Square Apartments - City of Fairfield

#### CONSTRUCTION FINANCING
<table>
<thead>
<tr>
<th>Financing Type</th>
<th>Amount</th>
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<tr>
<td>Private Construction Loan</td>
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<tr>
<td>City of Fairfield Redevelopment Loan</td>
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#### PERMANENT FINANCING
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<td>Private Permanent Loan</td>
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<tr>
<td>State HOME</td>
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<tr>
<td>Fairfield RDA Loan</td>
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<td>FHILB AHP</td>
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<td>Deferred Developer Fee</td>
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<td>Tax Credit Equity</td>
<td>$998,738</td>
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#### DEVELOPMENT COST
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<td>Demolition</td>
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<td>Legal &amp; Closing Costs</td>
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<td>Environmental Remediation</td>
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<td>Site Work</td>
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<td>Structures</td>
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<td>General Requirements</td>
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<td>Contractor Profit</td>
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<td>Other: Performance Bonds</td>
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<td>Site Work (hard costs)</td>
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<td>General Requirements</td>
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<td>Contractor Overhead</td>
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<td>Contractor Profit</td>
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<td>Credit Enhancement &amp; App. Fee</td>
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### Cottage Square Apartments - City of Fairfield

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<td>Prevailing Wage Monitor</td>
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<td>Syndication Legal Fees</td>
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<table>
<thead>
<tr>
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<th>Cost</th>
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<td>Project Administration</td>
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<td>Guarantee Fees</td>
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<td>Broker Fees Paid to Related Party</td>
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<td>Construction Oversight &amp; Mgmt.</td>
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<tr>
<td><strong>Total Development Cost</strong></td>
<td><strong>$10,221,762</strong></td>
</tr>
</tbody>
</table>

*Payments will be reduced for 10% retention which shall be disbursed within 35 days of Notice of Completion.*
EXHIBIT B

Promissory Note
PROMISSORY NOTE
SECURED BY DEED OF TRUST
WITH ASSIGNMENT
OF RENTS AS ADDITIONAL SECURITY

Fairfield, California

$1,688,005.00 __________, 2010

1. **Promise to Pay.** For value received, the undersigned, ANF Family Partners II, L.P., a California limited partnership, with its principal place of business located at 9065 Haven Avenue, Suite 100, Rancho Cucamonga, CA 91730 (the “Maker”) hereby promises to pay to the City of Fairfield, a municipal corporation (“Payee”), or order, the principal sum of One Million Six Hundred Eighty-Eight Thousand Five and no/100’s Dollars ($1,688,005.00) (hereinafter, the “Loan”) plus interest accrued thereon or the aggregate unpaid amount of disbursements to Maker for costs incurred upon the Project (defined herein below) as determined solely by Payee pursuant to the terms of this note (hereinafter the “Note”). The Loan consists of funds in the amount of One Million Six Hundred Eighty-Eight Thousand Five and no/100’s Dollars ($1,688,005.00) committed through the HOME Agreement (defined herein below).

2. **Interest.** The principal due under this Note shall bear simple interest at the rate of three percent (3%) per annum, or at the Applicable Federal Rate, whichever is lower, with interest to accrue as Loan funds are disbursed to Maker on the date of each City warrant. Interest shall be computed on the basis of a 360-day year. For accounting purposes, interest attributed to the construction period will end with the issuance of Certificate(s) of Occupancy on all Project units by the City of Fairfield, and interest attributed to the Loan period will begin on the following day.

3. **Term.** This Note shall have a term of fifty-five (55) years from the date of this Note (the “Term”), unless otherwise extended by the Payee.

4. **Definitions.** All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Loan Agreement of even date herewith, entered into between Maker and Payee (the “HOME Agreement”). In addition, as used in this Note, the following terms will have the following meanings:

   A. **Cash Flow Balance.** Cash Flow Balance means the balance shown on an annual Cash Flow Statement of the Maker’s operations for each calendar year during the Term. The Cash Flow Statement shall be based on the total cash receipts and disbursements received and made by Maker during the calendar year in question and, to the extent permitted by generally accepted accounting principles, shall also be based upon audited Financial Statements prepared according to generally accepted accounting principles by an independent, certified public accountant. The annual Cash Flow Statement shall include the return of any funds to Payee as an application of funds to the Loan balance. There shall be a Cash Flow Balance in each applicable year in which the Maker’s operating income exceeds its operating expenses, debt service payments, and reserve deposits, all of which shall be reasonable and subject to the approval of the City.
Notwithstanding the foregoing, expenditures shall not include depreciation of buildings or improvements or other non-cash items or non-cash deductions from income.

B. **Calendar Year.** Calendar Year shall mean the period beginning January 1 and ending on December 31 of each year of the Term.

C. **Project.** Project shall mean site acquisition, off-site improvements and development of forty-six (46) apartment units, a minimum of ten (10) of which shall be occupied by low and very low income households as defined by the HOME Program regulations, and known as the Cottage Square Apartments.

5. **Terms of Payment**

A. Until the end of the first Calendar Year following issuance of the Certificate of Occupancy for the Project, all payments on principal and interest shall be deferred. If not sooner paid, for each subsequent Calendar Year in which there is a Cash Flow Balance for the remainder of the Term, an amount equal to fifty percent (50%) of the Cash Flow Balance (the “Payable 50%) shall be paid to the City and the Redevelopment Agency of the City of Fairfield (the “Agency”) on a pro rata basis toward the debt to the City under this Note and the debt to the Agency for its loan on the Project reflecting the relative City and Agency contributions to the Project, which means that twenty six percent (26%) of the Payable 50% shall be due the City and seventy-four percent (74%) of the Payable 50% shall be due the Agency. Payments, if any, shall be made annually on April 15th beginning the second Calendar Year following the issuance of the Certificate of Occupancy. If not sooner paid, the unpaid principal balance of this Note, plus any unpaid interest thereon and any other amounts due and payable hereunder, shall be due and payable in full fifty-five (55) years from the date hereof.

B. The payments on this Note shall first be applied to interest then to unpaid costs and finally principal obligated through the HOME Agreement, provided however, in no event shall additional interest be earned on unpaid interest which has accrued.

C. The principal of this Note and any unpaid interest accrued thereon may be prepaid in whole or in part at any time without premium or penalty.

D. In order to determine the amount of each annual payment due under the Note, Maker shall, no later than April 15th of each Calendar Year until the end of the Term, provide Payee with the Cash Flow Statement (as defined in Section 4(a) above) for the prior Calendar Year’s operation. Any unpaid principal and interest remaining at the end of the Term shall be immediately due and payable.

E. The payments due under this Note shall be paid in currency of the United States of America, which at the time of payments is lawful for the payment of public and private debts.

F. The payments on this Note shall be made to the Payee at 1000 Webster, Fairfield, CA 94533, or to such other place as the Payee may from time to time designate.
G. Maker agrees that if any installment payment provided in this Note is late for at least ten (10) days, it would be impracticable or extremely difficult to fix the actual damages resulting to the Payee. Therefore, Maker agrees to pay to the Payee the sum of One Thousand Dollars ($1,000) on default, as liquidated damages and not as a penalty, to compensate the Payee for the expenses of administering the default. Only one late charge will be collected on any installment, regardless of the period during which it remains in default.

6. Security. This Note is secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (hereinafter the “Deed of Trust”) of even date herewith given by the Maker, as Trustor to Fidelity National Title Company, as Trustee, for the benefit of the Payee, as the Beneficiary, which Deed of Trust is to be recorded against the certain property in the City of Fairfield as more particularly described in the Deed of Trust, and incorporated herein by this reference as if set forth herein (hereinafter the “Property”). This Note is also subject to a Regulatory Agreement of even date herewith given by Maker to Payee.

7. Acceleration.

A. This Note and all other obligations, direct or contingent, of the Maker under this Note to Payee will become due and payable immediately, except as otherwise stated in this section 7, without presentment for payment or any notice, if:

1) Maker fails to pay the monies due under this Note within seven (7) days after the receipt of notice from the Payee:

2) Maker of this Note:

   (i) Fails, after demand and the expiration of thirty (30) days notice, to furnish the annual Cash Flow Statement described above; or

   (ii)Suspends business; or

   (iii) Is in default under the HOME Agreement after the expiration of any applicable cure periods as specifically provided in the HOME Agreement; or

   (iv) Fails to comply with, perform or observe any of the covenants, representations and/or warranties made by Maker under the HOME Agreement if not cured within the applicable cure period, if any, as set forth in the HOME Agreement; or

   (v) Fails to comply with, perform or observe any obligation or condition of the Regulatory Agreement and/or the Deed of Trust within any applicable cure periods specified in the HOME Agreement; or

   (vi) Fails to procure or maintain the insurance policies and/or bonds required by Payee under the HOME Agreement and does not cure...
such failure within the applicable cure period set forth in the HOME Agreement; or

(vii) Sells, transfers, leases, or otherwise transfers the Property or Project except as otherwise agreed to in writing by Payee.

3) Payee discovers that any misrepresentation was made to Payee on behalf of Maker to obtain the Loan or an extension of the Loan which materially adversely affects Payee’s security.

8. Waivers. Maker expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Payee may accept security or release any security for this Note, all without in any way affecting the liability of Maker. The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct, or withhold any payments or charges due under this Note for any reason whatsoever.

9. Notices. All notices to Payee or Maker shall be made in writing and shall be deemed received when personally delivered, received by the United States certified mail, return receipt requested, postage prepaid, or delivered by courier service addressed as follows:

If directed to City:  City of Fairfield
                        1000 Webster Street
                        Fairfield, CA 94533
                        Attn: Director of Community Resources

If directed to Maker:  ANF Family Partners II, L.P.
                        9065 Haven Avenue, Suite 100
                        Rancho Cucamonga, CA 91730
                        Attn: CFO

Any change in notice shall be delivered solely by certified mail, return receipt requested.

10. Nonrecourse. This Note shall be nonrecourse. No judgment, or execution thereof, entered in any action, legal or equitable, on this Note or the Deed of Trust securing this Note shall be enforced personally against Maker, any officer, director or employees of Maker, or against any assignee of Maker, or any general or limited partner of any assignee, or any officer, director or employee of any general or limited partner of any assignee, but shall be enforced only against the collateral described in the Deed of Trust and such other or further security as, from time to time, may be hypothecated for this Note.

11. Costs and Attorneys’ Fees. If Maker or Payee initiates any legal or equitable action to enforce the terms of this Note, to declare the rights of the parties hereunder, or which relates to this Note in any manner, the unsuccessful party in such action shall be liable to the other for all reasonable costs and expenses, including reasonable attorney’s fees, incurred by the successful party in such action.

12. Modification. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge
is sought. Consent by Payee to late payments does not waive its right to declare indebtedness immediately due and payable.

13. **Governance.** This Note shall be governed by and construed in accordance with the laws of the State of California.

14. **Timeliness.** The times for the performance of any obligation hereunder shall be strictly construed, time being of the essence.

15. **Severability.** If any provision or provisions of this Note are held to be invalid, illegal or unenforceable in any respect, this Note shall be construed as not containing that provision or provisions and all other provisions of this Note shall remain in full force and effect.

16. **Venue.** If Maker or Payee initiates any legal or equitable action to enforce the terms of this Note, to declare the rights of the parties hereunder, or which relates to this Note in any manner, Maker and Payee agree that the proper venue for any such action is the Superior Court of the State of California of and for the County of Solano.

**MAKER:**

ANF FAMILY PARTNERS II, L.P.,
a California limited partnership

By its General Partner:

South PACE GP, LLC,
a California limited liability company

By its Manager/Member:

National Community Renaissance of Northern California

By: ________________________________

Richard J. Whittingham, CFO
EXHIBIT C

Deed of Trust
RECORDING REQUESTED BY 
AND WHEN RECORDED MAIL TO:

City of Fairfield 
1000 Webster Street 
Fairfield, California 94533

Attention: Eve Somjen, 
Director of Community Resources

WITH A COPY TO:

ANF Family Partners II, L.P. 
9060 Haven Avenue, Suite 100 
Rancho Cucamonga, CA 91730 
Attention: Richard J. Whittingham, CFO

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103.

DEED OF TRUST

With Assignment of Rents, Security Agreement, and Fixture Filing

THIS DEED OF TRUST is made this ____________, 201__, by and between ANF Family Partners II, L.P., a California limited liability company (“Trustor”), FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation (“Trustee”), and the CITY OF FAIRFIELD, a municipal corporation (“Beneficiary”).

Trustor grants, transfers, and assigns to Trustee in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, and right of entry and possession, all of Trustor’s interest in that real property in the County of Solano, State of California, described in Exhibit “A” attached hereto and incorporated herein by this reference;

Together with the rents, issues, and profits thereof, subject, however, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and
other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Together with all building materials and equipment now or hereafter delivered to the premises and intended to be installed therein; and

Together with all articles of personal property owned by the Trustor now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands described which are necessary for the comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the building or buildings in any manner.

To have and to hold the property herebefore described together with appurtenances to the Trustee, its or his successors and assigns (the “Property”) forever.

FOR THE PURPOSE of securing performance of each agreement and covenant of Trustor herein or contained in (a) that certain Loan Agreement (the “Agreement”) dated 2010, between Trustor and Beneficiary and (b) that certain Regulatory Agreement dated , 2010 between Trustor and Beneficiary (the “Regulatory Agreement”); and securing payment of indebtedness of the Trustor to the Beneficiary in the initial principal sum of One Million Six Hundred Eighty-eight Thousand Five and 9/100 Dollars ($1,688,005.00), as evidenced by that certain promissory note (the “Note”) of even date herewith, along with such other sums as may be advanced to Trustor under the Agreement. The Note, Agreement, and the Regulatory Agreement (collectively, the “Agreements”) are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced.

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

1. That it faithfully perform each and every convent contained in the Agreements;

2. That it will not permit or suffer the use of any of the Property for any purpose other than the use described in the Agreements as they may be amended from time to time.

3. That all rents, profits and income from the Property are hereby assigned to the Beneficiary for the purpose of securing the obligations of Trustor pursuant to the Agreements. Permission is hereby given to Trustor so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Agreements.

4. That upon default hereunder or under the aforementioned Agreements, remaining uncured after thirty (30) days from receipt of written notice thereof from Beneficiary, or, if the nature of the default is such that more than thirty (30) days are reasonably required for its cure,
then the Trustor has not commenced a cure within the 30-day period and thereafter diligently prosecuted such cure to completion within ninety (90) days after receipt of written notice thereof, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property and operate same and collect the rents, profits and income therefrom;

5. That the Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies as may be required from time to time by the Beneficiary (earthquake insurance not required), and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than one hundred (100%) percent of the insurable value or not less than the unpaid balance of the insured Deed of Trust, whichever is less, and in default thereof the Beneficiary shall have the right to effect insurance. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and shall be deposited with the Beneficiary;

6. To pay, before delinquency, any taxes and assessments affecting the Property including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust;

7. To keep the Property in good condition and repair, not to remove or demolish any buildings thereon unless authorized by the Agreements; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair; to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law and/or covenants, conditions and/or restrictions affecting the Property; not to permit or suffer any substantial alteration of or addition to the buildings or improvements hereafter constructed in or upon the Property without the consent of the Beneficiary;

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

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

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

11. Except as may be restricted by the nonrecourse provisions of the Note, to pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditures at the rate of the Eleventh Federal Reserve District Cost of Funds;

12. The Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the rehabilitation or construction of any and all buildings now being rehabilitated or constructed or to be rehabilitated or constructed on the Property, or will cause the release of or will provide a bond against any such liens within ten (10) days of Trustor’s receipt of notice of the lien or liens. Nothing herein contained shall be deemed to prohibit the Trustor from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Trustor;

13. That the improvements upon the Property, and all plans and specifications, comply with all municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

IT IS MUTUALLY AGREED THAT:

14. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, the Beneficiary shall be entitled subject to the rights of the holder of the first deed of trust to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to the Beneficiary subject to the rights of the holder of the first deed of trust. After deducting therefrom all its expenses, including attorneys’ fees, and if Trustor is not in default, Beneficiary shall apply all such proceeds to restoring the Property, or in the event of Trustor’s default or in the event Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount of principal and interest due under the Notes. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.
15. Upon default by Trustor in making any payments provided for herein or in the notes secured hereby, or if the Property, or any portion thereof or interest therein, is sold, transferred, assigned or refinanced without the prior written approval of Agency (except as expressly authorized in the Agreement), or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust after receiving thirty (30) days prior written notice of such failure from Beneficiary, and if such default is not cured within thirty (30) days after receipt of written notice thereof from Beneficiary, or, if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the Trustor has not commenced a cure within the 30-day period and thereafter diligently prosecuted such cure to completion within ninety (90) days after receipt of written notice thereof, the Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and the Beneficiary may foreclose this Deed of Trust in the manner provided by law. Beneficiary shall also deposit with Trustee this Deed, the notes and all documents evidencing expenditures secured hereby;

16. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of 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 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 its Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (a) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee’s fees or attorneys’ fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (b) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee’s Deed, if the latter is not paid by buyer; (c) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the notes; (d) all other sums then secured hereby; and (e) the remainder, if any, to the person or persons legally entitled thereto;

17. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee;
18. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed is hereby waived to the full extent permissible by law;

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

20. The trust created hereby is irrevocable by Trustor;

21. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall include not only the original Beneficiary hereunder but also any future owner and holder including pledges, of the notes secured hereby. In this Deed, whenever the context so requires, the masculine gender includes the feminine, and the singular number includes the plural;

22. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee; and

23. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the following addresses, or to such other address as Trustor may provide in writing to Trustee from time to time:

ANF Family Partners II, L.P.
c/o National Community Renaissance of California
9065 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730

and

ANF Family Partners II, L.P.
c/o Boston Capital Partners
One Boston Place, 21st Floor
Boston, MA 02108
Attn: South PACE Asset Management.

24. The attached 5-page Rider to Deed of Trust is hereby incorporated into this Deed of Trust.

[Signatures appear on next page.]
IN WITNESS WHEREOF the Trustor has executed this Deed of Trust as of the day and year set forth above.

ANF FAMILY PARTNERS II, L.P.,
a California limited liability company

By its General Partner:

South PACE GP, LLC,
a California limited liability company

By its Manager/Member:

National Community Renaissance of Northern California

By: ________________________________

Richard J. Whittingham, CFO
EXHIBIT A

Legal Description of the Property

1189 Tabor, Fairfield, California:

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

Beginning at the northeast corner of Lot Lot 5 in Block B, as shown on that certain map entitled: "Windsor Heights, Unit No. 1", filed on December 7, 1961 in Book 19 of Maps, Page 99, Solano County Records, said point also being in the East line of Lot 37 of Locke Paddon, Addition to Fairfield, filed for record March 18, 1912 in Book 4 of Maps, Page 9; thence North 0° 09' 50" West along the East line of said Lot 37 and Lot 36 of said Locke Paddon Addition to Fairfield, a distance of 360 feet, more or less to a point in the Southerly line of Tabor Avenue as designated on said Map of Windsor Heights Unit No. 1; thence North 89° 23' 23" West a distance of 259.919 feet; thence Westerly along a curve to the left with a radius of 30 feet through a central angle of 90° 45' 37" a distance of 47.522 feet to a point in the East line of Bristol Lane as shown on the Map of Windsor Heights Unit No. 1, hereinbefore referred to; thence along said East line South 0° 09' 00" East, 269.520 feet and southerly along a curve to the right with a radius of 180 feet through a central angle of 19° 27' 04" a distance of 61.107 feet to the Northwest corner of Lot 15 in Block B of Windsor Heights No. 1 hereinbefore referred to; thence South 89° 23' 23" East, 300.681 feet to the point of beginning.

APN: 0033-012-260
RIDER TO DEED OF TRUST

This Rider to Deed of Trust ("Rider") is made a part of and attached to that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") dated as of February 24, 2010, made by ANF Family Partners II, L.P., a California limited partnership (as "Trustor") in favor of the City of Fairfield, a municipal corporation (as "Beneficiary") granting the Beneficiary a security interest in the real property described in Exhibit A to that Deed of Trust (the "Property" or the "Project"). In the event of any inconsistency between this Rider and the Deed of Trust, this Rider shall control.

1. No Discrimination. The 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 preference, marital status, family status, source of income, physical or mental handicap, medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Trustor 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 Project.

2. Subordination. Beneficiary agrees that the terms and conditions of the Note and this Deed of Trust shall be subject to the following documents recorded on or about the date of the Deed of Trust: a deed of trust securing a loan from Wells Fargo Bank in the aggregate principal amount of up to $5,100,000 and a deed of trust securing a loan from the Redevelopment Agency of the City of Fairfield in the aggregate principal amount of up to $8,900,644. Upon the request of Trustor, Beneficiary will not unreasonably withhold approval or unreasonably refuse to subordinate the Note and this Deed of Trust to financing secured by the Trustor in excess of the limit set forth above, provided Trustor determines that the improvements funded by any such additional financing will be of benefit to the Project.

3. Default. Notwithstanding any other provisions in this Deed of Trust, the occurrence of any of the following shall constitute an event of default under the Note and this Deed of Trust, and a default may be declared under this Deed of Trust solely upon the occurrence of any of the following: (i) Any failure by Trustor to pay any amount due under the Note within fifteen (15) days of its due date; or (ii) Any default by Trustor under the terms of the Loan Agreement or the Regulatory Agreement recorded against the Project after expiration of applicable notice and cure periods; or (iii) A default declared by another lender under any loan secured by a deed of trust on the Project senior to this Deed of Trust; or (iv) Unless approved in writing by Beneficiary, any sale, transfer, disposition or further encumbrance of all or any portion of the Project or improvements thereon; or (v) Material injury or destruction of the Project or improvements thereon, by fire, other casualty or otherwise, which is not repaired to the condition prior to such damage or destruction, unless Trustor determines that such repair or restoration is not economically feasible; or (vi) Trustor becomes insolvent, or the subject of bankruptcy or other voluntary or involuntary proceeding for the adjustment of debtor-creditor relationships, if either has been consented to or has not been dismissed within sixty days.


a. As used in this Section 4, the following terms shall have the following meanings:

(i) "Environmental Laws" means all statutes, ordinances, orders, rules, regulations, plans, policies or decrees and the like now or hereafter in effect relating to (A) Hazardous Substance Activity or Hazardous Substances; (B) the generation, use, storage, transportation or disposal of Hazardous Substances, or solid waste; or (C) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Hazardous Material Transportation Act (49 U.S.C. Section 180 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Clean Air Act (42 U.S.C. Section 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); the Porter-Cologne Water Quality Control Act (California Water Code Section 13020 et seq.); the Safe
Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code Section 25249.5 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.); the Hazardous Waste Control Act (California Health & Safety Code Section 25100 et seq.); The California Environmental Quality Act (California Public Resources Code Section 2100 et seq.); and the rules, regulations and ordinances of the City of Brawley or County of Imperial or any applicable federal, state and local agencies or bureaus, as amended from time to time.

(ii) “Foreclosure Transfer” means the transfer of title to all or any part of the Project or the Trust Estate at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust, or by deed in lieu of such foreclosure.

(iii) “Hazardous Substances” means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “infectious waste,” “biohazardous waste,” “toxic substance,” “pollutant,” “toxic pollutant,” “contaminant” as well as any other formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “EP toxicity” or “TCLP toxicity”; (B) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (C) “hazardous substance” as defined in Section 2782.6(d) of the California Civil Code; (D) “waste” as defined in Section 13050(d) of the California Water Code; (E) asbestos in any form; (F) urea formaldehyde foam insulation; (G) polychlorinated biphenyls (PCBs); (H) radon; and (I) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(iv) “Hazardous Substance Activity” means any actual, proposed, or threatened use, storage, holding, existence, location, release (including, without limitation, any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water or the air), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling, or transportation of any Hazardous Substance from, under, in, into, or on the Project, including without limitation, the movement or migration of any Hazardous Substances from surrounding Project, surface water, groundwater or any body of water, or the air under, in, into or onto the Project and any residual Hazardous Substances contamination in, on, or under the Project.

(v) “Losses” means all charges, losses, liabilities, damages (whether actual, consequential, punitive, or otherwise denominated), costs, fees, demands, claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, causes of action, assessments, fines, penalties, costs, and expenses of any kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, the following: (A) the reasonable fees and expenses of outside legal counsel; (B) the reasonable fees and expenses of accountants, third-party consultants, and other independent contractors retained by an Beneficiary; (C) costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person that is required by Environmental Laws or administrative ruling or directive because of the presence, suspected presence, release or suspected release of Hazardous Substances in violation of Environmental Laws in the air, soil, surface water or groundwater at the Project; (D) any and all diminution in value of the Project, loss of use or damage to the Project, or loss of profits or loss of business opportunity; and (E) reasonable costs and expenses of enforcing this Section 4.a.

(vi) “Environmental Losses” means Losses rising out of or as a result of: (A) the occurrence of any Hazardous Substance Activity; (B) any violation of any applicable Environmental laws relating to the Project or to the ownership, use, occupancy or operation thereof; (C) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity; or (D) any
claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (A), (B), or (C), or any allegation of any such matters.

b. Trustor represents and warrants to Beneficiary that Trustor has conducted an appropriate inquiry and investigation, and, to the best of Trustor’s knowledge, based on such inquiry and investigation, no portion of the Project is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances, nor have any Hazardous Substances migrated onto or from the Project. Neither the Project nor Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law. Trustor’s prior and intended use of the Project will not result in the disposal or release of any Hazardous Substances on, under, about, or to the Project or the migration of any Hazardous Substances from the Project. The foregoing representations 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 and warranties shall survive such release.

c. Trustor represents and warrants to Beneficiary that Trustor has complied with all recommendations by any engineers retained by Trustor and all requirements of any applicable department of environmental resources, environmental protection agency or similar governmental agency, and there are no recommendations by said engineers or requirements ordered by said agency or any other governmental body for environmental investigation or cleanup with respect to the Project.

d. On and after the date hereof, Trustor shall not (a) allow any Hazardous Substances to be installed, used, introduced, stored, treated, disposed of, generated, manufactured, discharged, dumped, transported or brought in, upon or over the Project in violation of applicable law; (b) allow any soil or ground water contamination or pollution with any Hazardous Substances on the Project in violation of applicable law; (c) allow any Hazardous Substances to migrate from the Project in violation of applicable law; (d) allow any Hazardous Substances to migrate onto the Project from any adjacent properties in violation of applicable law; or (e) allow or cause the Project to be in violation of, or to trigger a duly initiated and prosecuted investigation of the Project by any governmental authority under applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules or timetables contained in any local, state and/or federal laws, regulations, codes, ordinances, plans, administrative or judicial orders, decrees, judgments, notices or demand letters issued, entered, promulgated or approved thereunder relating to the environment, land use, water and air quality and Hazardous Substances (“Environmental Requirements”).

e. If the presence of any Hazardous Substances on the Project caused or permitted by Trustor results in any contamination of the Project, Trustor shall promptly take all actions, at its sole expense, as are necessary to return the Project to the condition existing prior to the introduction of any such Hazardous Substances to the Project; provided that Beneficiary’s approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

f. At any time after the occurrence and during the continuance of any default under this Section 4, Beneficiary shall have the following rights and remedies, in addition to any other rights and remedies Beneficiary has under this Deed of Trust:

(i) As provided in California Code of Civil Procedure Section 564, Beneficiary or its employees, acting by themselves or through a court-appointed receiver may do any of the following: (i) enter upon, possess, manage, operate, dispose of, and contract to dispose of the Project or any part thereof; (ii) take custody of all accounts; (iii) negotiate with governmental authorities with respect to the Project’s environmental compliance and remedial measures; (iv) take any action necessary to enforce compliance with environmental provisions, including spending Rent Payments to abate any environmental problem; (v) make, terminate, enforce or modify leases of part or all of the Project; (vi) contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Project necessary in Beneficiary’s judgment to protect or enhance the security hereof; and/or (vii) take any and all other actions which may be necessary or desirable to comply with Trustor’s obligations hereunder and under the Loan Documents. All sums realized by the receiver or Beneficiary under this
subparagraph, less all costs and expenses incurred by either of them under this subparagraph, including attorneys’ fees, and less such sums as Beneficiary or the receiver deems appropriate as a reserve to meet future expenses under this subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness, nor any other action taken by Beneficiary or the receiver under this subparagraph shall cure or waive any default or notice of default hereunder, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to the adequacy of the security for the indebtedness secured hereunder, the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or the filing of a notice of default.

(ii) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor or in connection with any such default, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Project or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including of any of Beneficiary’s other rights: (i) to obtain a court order to enforce Beneficiary’s right to enter and inspect the Project under California Civil Code Section 2929.5 (in respect of which the decision of Beneficiary as to whether there exists a release or threatened release of hazardous substance, as defined therein, onto the Project shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed under California Code of Civil Procedure Section 564 to enforce Beneficiary’s right to enter and inspect the Project for hazardous substances as defined therein. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents or employees may conduct, including the fees of engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustee and Beneficiary pursuant to this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date they are incurred until said sums have been paid.

(iii) Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth above in this Section 4, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Project or after foreclosure of the Project, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary or advanced by Beneficiary (collectively, the “Environmental Costs”) relating to the cleanup, remediation or other response action required by applicable law or which Beneficiary believes necessary to protect the Project, it being conclusively presumed between Beneficiary and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation, or other response action respecting the Project were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Project held hereunder, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

(iv) As provided in California Code of Civil Procedure Section 726.5, Beneficiary may waive its lien against the Project or any portion thereof, to the extent such Project is found to be environmentally impaired as defined therein, and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor’s assets and Project for the recovery of any deficiency and Environmental Costs, including seeking an attachment order under California Code of Civil Procedure Section 483.010. Beneficiary and Trustor each represents and warrants for itself that it has no actual knowledge of any release of any Hazardous Substance (as defined in Section 726.5) on, to or under the Project. As between Beneficiary and Trustor, for purposes of California Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) did not cause or contribute to, and was not in any way negligent in permitting, any release or threatened release of the Hazardous Substance.

(v) Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or in the Loan Documents, the Environmental Costs and all judgments and awards entered against Trustor pursuant to Section 4(f)(iv) above shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and
Trustor shall be fully and personally liable for the Environmental Costs and such judgments and awards and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Project or this Deed of Trust.

g. Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from and against any and all Environmental Losses.

[End of Rider]
EXHIBIT D

Regulatory Agreement
RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of Fairfield
1000 Webster Street
Fairfield, CA 94533
Attn: Eve Somjen,
Director of Community Resources

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103.

REGULATORY AGREEMENT
between
CITY OF FAIRFIELD and ANF FAMILY PARTNERS II, L.P.
in respect to
HOME INVESTMENT PARTNERSHIPS PROGRAM

THIS REGULATORY AGREEMENT is made as of ____________, 2010 between ANF Family Partners II, L.P., a California limited partnership with its principal place of business located at 9065 Haven Avenue, Suite 100, Rancho Cucamonga, California 91730 (hereinafter referred to as the “Borrower”) and the City of Fairfield, a municipal corporation (hereinafter referred to as the “City”).

RECITALS

Pursuant to the Loan Agreement between the City and the Borrower with respect to the HOME Investment Partnerships Program dated as of ____________, __________ (hereinafter referred to as the “Loan Agreement”), the City has agreed to loan to the Borrower an amount not to exceed One Million Six Hundred Eighty-eight Thousand Five and no/100th Dollars ($1,688,005.00) (hereinafter referred to as the “Loan”) for the purpose of assisting the Borrower in the rehabilitation of that certain real property located at 1189 Tabor Avenue, Fairfield, California, and more particularly described in Exhibit “A,” attached hereto and made a part hereof (hereinafter referred to as the “Property”).

The Loan is being made pursuant to the HOME Investment Partnerships Program (hereinafter referred to as the “HOME Program”) established and governed by the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992, as implemented by and subject to Title 24 Code of Federal Regulations Part 92.

The Loan is composed of an amount not to exceed One Million Six Hundred Eighty-eight Thousand Five and no/100th Dollars ($1,688,005.00) received from the HOME Program. The Loan is evidenced by that certain promissory note (hereinafter referred to as the “Note”) dated of even date herewith and is secured by that certain Deed of Trust of even date herewith.

As a condition of receiving Loan funds for the rehabilitation of forty-six (46) units, of which ten
(10) units are considered to be HOME-assisted (hereinafter referred to as the “Project”), the Borrower must agree to place specified restrictions upon the use and transfer of the Property found at 24 CFR 92.252. It is the intent of the parties hereto to evidence the Borrower’s compliance with the Loan requirements of the HOME Program and place such restrictions upon the use and transfer of the Property, to ensure continued Project affordability, as are required by HOME Program regulations.

NOW THEREFORE, in consideration of the Loan and other valuable consideration, the parties hereto covenant and agree as follows:

1. **Recitals.** The foregoing recitals are a part of this Agreement.

2. **Definitions.** Except to the extent modified or supplemented by the HOME Program Agreement between the City and HCD, any term defined in the ACT or the HOME Program regulations at 24 CFR Part 92, as amended, shall have the same meaning when used herein.
   
   a. “AMI” means the Area Median Income for the Project area as determined by HUD.
   
   b. “Displacement” means the temporary or permanent movement of a Household and/or its personal property from the Property as a direct result of the rehabilitation, demolition, and/or acquisition (or written notice of intent to acquire, or initiation of negotiations to acquire) of the Property. The temporary movement of a Household from the Property which exceeds one year in duration is defined as permanent.
   
   c. “HOME Rents” means rents calculated annually by HUD and are:
      
      1) “High HOME Rents” which are the lesser of the Fair Market Rents, as determined by HUD, or a rent that does not exceed 30 percent of 65 percent of Area Median Income as determined by HUD.
      
      2) “Low HOME Rents” which are a rent that does not exceed 30 percent of 50 percent of Area Median Income as determined by HUD.
   
   d. “HUD” means the United States Department of Housing and Urban Development.


   f. “Lower income household” means persons or families whose incomes are 80 percent or less of the Area Median Income as determined by HUD.

   g. “Period of Affordability” means a period of 55 years beginning from the date of Project Completion as defined by 24 CFR 92.2 wherein the project must meet the affordability requirements contained herein.

   h. “Very Low-Income Household” means low-income persons or families whose incomes are 50 percent or less of the Area Median Income as determined by HUD.

3. **HOME-Assisted Units & Unit Schedule.** Upon occupancy and for the entire Period of Affordability, the project shall have eleven (11) HOME-assisted units. These units shall be “Floating” units for the purposes of Section 7.c below, and shall be rented according to the following schedule of units:
<table>
<thead>
<tr>
<th></th>
<th>1 Bedroom</th>
<th>2 bedroom</th>
<th>3 bedroom</th>
<th>4 bedroom</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Low HOME rent</strong></td>
<td>--</td>
<td>3</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td><strong>High HOME rent</strong></td>
<td>--</td>
<td>8</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

**Tenant Income Standards**

a. **Initial Occupancy.** During the initial year of occupancy, ninety percent (90%) of HOME-assisted units shall be occupied by households whose incomes do not exceed sixty percent (60%) of the area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended.

b. **Period of Affordability.**

1) During the Period of Affordability, one hundred percent (100%) of HOME-assisted units must be occupied by households earning no more than eighty percent (80%) of area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended, unless this requirement is superseded by the statutory requirements of other state or federal funding sources or tax credit program requirements.

2) A minimum of twenty percent (20%) or two (2) of the ten (10) HOME-assisted Project units shall be occupied by households whose annual incomes do not exceed fifty percent (50%) of the area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended.

4. **Tenant Selection Standards.** During the Period of Affordability the Borrower shall select tenants in conformance with HOME Program requirements and California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8305.

a. Borrower shall rent vacant Assisted Units in the Development only to eligible households in accordance with a Management Plan approved by the City. Such Management Plan may be periodically altered and such alteration must be submitted to and approved by the City prior to use. The Management Plan shall include:

1) Reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

2) Prohibition of local residency requirements;

3) Prohibition of local residency preferences, except where accompanied by an equal preference for employment in the local area and applied to areas not
4. **Tenant Income Standards**

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2) A minimum of twenty percent (20%) or two (2) of the ten (10) HOME-assisted Project units shall be occupied by households whose annual incomes do not exceed fifty percent (50%) of the area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended.

**Tenant Selection Standards.** During the Period of Affordability the Borrower shall select tenants in conformance with HOME Program requirements and California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8305.

c. **Borrower shall rent vacant Assisted Units in the Development only to eligible households in accordance with a Management Plan approved by the City.** Such Management Plan may be periodically altered and such alteration must be submitted to and approved by the City prior to use. The Management Plan shall include:

1) Reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

2) Prohibition of local residency requirements;

3) Prohibition of local residency preferences, except where accompanied by an equal preference for employment in the local area and applied to areas not
smaller than municipal jurisdictions or recognized communities within unincorporated areas;

4) Tenant selection procedures that include the following components, and that are available to prospective tenants upon request:

a) Selection of tenants based on order of application, lottery or other reasonable method approved by the City;

b) Notification to tenant applicants of eligibility for residency and, based on turnover history for Assisted Units in the Development, the approximate date when an Assisted Unit may be available;

c) Notification of tenant applicants who are found ineligible to occupy an Assisted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;

d) Maintenance of a waiting list of applicant households eligible to occupy Assisted Units and non-assisted units designated for various tenant income levels, which shall be made available to prospective tenants upon request;

e) Targeting specific special needs populations in accordance with this Agreement and applicable laws; and

f) Affirmative fair housing marketing procedures as specified in the Affirmative Fair Housing Marketing Plan Compliance Regulations of HUD, 24 CFR Part 200.620(a)-(c), or similar affirmative fair marketing housing plan as approved by the City.

d. Borrower shall rent vacant units to households with no less than the number of people specified in the following schedule:

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>Minimum Number of Persons in Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>SRO</td>
<td>1</td>
</tr>
<tr>
<td>0-BR</td>
<td>1</td>
</tr>
<tr>
<td>1-BR</td>
<td>1</td>
</tr>
<tr>
<td>2-BR</td>
<td>2</td>
</tr>
<tr>
<td>3-BR</td>
<td>4</td>
</tr>
<tr>
<td>4-BR</td>
<td>6</td>
</tr>
<tr>
<td>5-BR</td>
<td>8</td>
</tr>
</tbody>
</table>

Borrower may assign tenant households to units of sizes other than those indicated as appropriate in the table above if the Borrower reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant’s file. The Borrower’s determination is subject to approval by the City. Through the Management Plan, Borrower may receive advance City approval of categorical exceptions to the above schedule.
5. **Certification of Tenant Income and Household Size.**
   
a. The income and household size of all household occupying HOME-assisted units shall be certified by the Borrower prior to occupancy and recertified annually thereafter in a manner approved by the City and specified in the Project’s Management Plan.
   
b. If the income of a tenant upon re-certification exceeds the upper limit for Lower Income households, and there are no other requirements statutorily imposed by other state or federal funding sources or tax credit program, that tenant shall not have its lease terminated as a result thereof, but shall be charged rents as provided in Section 7.
   
c. Where a tenant occupying a unit designated for occupancy by a Very Low Income household no longer qualifies to reside therein at re-certification, but qualifies as an otherwise eligible household, the rent level appropriate for that income level shall be charged pursuant to Section 7.
   
d. If at the time of re-certification a tenant’s household size has changed and no longer meets the occupancy standards pursuant to Section 3b, the Borrower may require the tenant to move to the next available appropriately sized unit.
   
6. **Rent Limitations.** Rents of HOME-assisted units shall not exceed the LOW and HIGH HOME rents allowed under 24 CFR 92.252, as amended, except as noted below.
   
a. In a project with 5 or more HOME-assisted units, a minimum of twenty percent (20%) of all HOME-assisted units shall be occupied by Very Low-Income households with rents not exceeding LOW HOME rents, except as noted in b. below.
   
b. HOME-assisted units receiving state or federal project-based rental subsidies may exceed HIGH or LOW HOME rents if the household qualifies to reside in the unit based on income and household size and the tenant-based portion of the rent does not exceed thirty percent (30%) of the household’s adjusted income. The HOME-assisted unit’s maximum rent (tenant contribution and project-based rental subsidy) becomes the rent allowable under the state or federal project-based subsidy.
   
c. If the HOME-assisted units are designated as “Floating” units in Section 1 above, any household certified as an Eligible Household upon occupancy but whose income increases above the eligibility level must pay rent the lesser of the amount payable by the tenant under state or local law or thirty percent (30%) of the household’s adjusted monthly income for rent and utilities, except that the rent may not exceed the market rent for comparable, unassisted units in the neighborhood. HOME-assisted units subject to low-income housing tax credit rules under Section 42 of the Internal Revenue Code shall be governed by such rules.
   
d. If the HOME-assisted units are designated as “Fixed” units in Section 1 above, any household certified as an Eligible Household upon occupancy but whose income increases above the eligibility level must pay rent the lesser of the amount payable by the tenant under state or local law or 30 percent of the household’s adjusted monthly income for rent and utilities, except that the rent may equal the market rent...
for comparable, unassisted units in the neighborhood. HOME-assisted units subject to low-income housing tax credit rules under Section 42 of the Internal Revenue Code shall be governed by such rules.

7. **Marketing Plan**

a. Borrower shall prepare and implement a Marketing Plan, subject to prior approved by the City, that specifies how the Borrower intends to market the project to prospective tenants in the Project’s market area. The Marketing Plan shall specifically address how the Borrower intends to market the Project to underserved populations in Project market area and the frequency of marketing efforts. The City agrees that the Borrower may utilize the HUD 935.2 Affirmative Fair Housing Marketing Plan for these purposes.

b. Borrower agrees to evaluate the effectiveness of the Marketing Plan in reaching underserved populations on an annual basis and to revise it as necessary to better reach underserved populations that are not being reached. The revised Marketing Plan shall be submitted to the City for approval prior to implementation.

8. **Assisted Unit Standards**

a. Restricted Units (HOME-assisted units) shall not differ substantially in size or amenity level from non-Restricted Units with the same number of bedrooms, and Units shall not differ in size or amenity level on the basis of income-level restrictions. Restricted Units shall not be segregated from non-Restricted Units, and Units shall not be segregated from each other on the basis of income-level restrictions. The Borrower may, within these limits, change the designation of a particular Unit from Assisted to non-Assisted or from one income-restriction to another over time. For Projects involving rehabilitation or conversion, the Department may permit certain Units to be designated as exclusively market-rate Units where necessary for fiscal integrity and where all other Program requirements are satisfied.

b. For the full loan term, the number, size, type, and amenity level of Assisted Units shall not be fewer than the number nor different from the size, type and amenity level described in Section 1 and Recitals Paragraph 4 above.

9. **Rental Agreement and Grievance Procedures.** The rental agreement and grievance procedures shall be in accordance with California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8307.

a. **One-year Term.** All rental or occupancy agreements for HOME-assisted units shall be for a term of not less than one year unless by mutual agreement between the tenant and the Borrower.

b. **City Approval.** All rental or occupancy agreements are subject to City approval; and shall include the following:

1) Provisions requiring good cause for termination of tenancy;

2) A provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;
3) A notice of grievance procedures for hearing complaints of tenants and appeal of management action; and

4) A requirement that the tenant annually recertify household income and size.

c. **Termination of Tenancy.** The Borrower shall not terminate the tenancy or refuse to renew the lease of a tenant of an HOME-assisted unit except for serious or repeated violation of the terms and conditions of the Lease; for violation of applicable federal, state, or local law; for completion of transitional housing tenancy period; or for other good cause.

d. **Written Notice.** To terminate or refuse to renew tenancy, the Borrower must serve written notice upon the tenant specifying the grounds for the action at least 30 days prior to the termination of the tenancy.

e. **“Good Cause”.** One or more of the following constitute “good cause”:

1) Failure by the tenant to maintain applicable eligibility requirements under the Program or other eligibility requirements as imposed by the City or other state or federal funding sources or tax credits;

2) Material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:

   a) Adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;

   b) Substantially interfere with the management, maintenance, or operation of the Project; or

   c) Result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the 3-day notice period;

3) Material failure by the tenant to carry out obligations under federal, state, or local law;

4) Subletting by the tenant of all or any portion of the HOME-assisted unit;

5) Any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only be eviction of the tenant, provided that the Borrower has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size; or
6) For Transitional Housing, the end of the maximum term prescribed for tenant occupancy by the Program operated in a particular Transitional Housing Project.

f. **Prohibited Lease Provisions.** The Lease may not contain any of the following provisions:

1) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Borrower or Borrower’s agent in a lawsuit brought in connection with the lease;

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

3) Agreement by the tenant not to hold the Borrower or Borrower’s agent(s) legally responsible for any action or failure to act, whether intentional or negligent;

4) Agreement of the tenant that the Borrower or Borrower’s agent may institute a lawsuit without notice to the tenant;

5) Agreement by the tenant that the Borrower or Borrower’s agent may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

6) Agreement by the tenant to waive any right to a trial by jury;

7) Agreement by the tenant to waive tenant’s right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

8) Agreement by the tenant to pay attorneys’ fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

g. **Rules of Conduct.** The Borrower shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and HOME regulations. Said rules shall be in writing and shall be given to each tenant upon occupancy. Any changes shall become effective no fewer than 30 days after giving written notice thereof to each tenant household.

h. **Appeal & Grievance Procedures.** The Borrower shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Borrower with respect to tenants’ occupancy in the Project, and prospective tenants’ applications for occupancy. The Borrower’s appeal and grievance procedures shall be subject to City approval and, at a minimum, shall include the following:
1) A requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;

2) Procedures for informal dispute resolution;

3) A right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and

4) Procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.

10. **Period of Affordability.** The Borrower acknowledges that the Loan is being made to the Borrower under the terms and conditions of the HOME Program as part of a public program to ensure affordable housing for project tenants. To preserve affordability of the HOME-assisted Project units, the Borrower covenants that the HOME-assisted Project units shall remain affordable for a period of fifty-five years (55) (hereinafter referred to as the “Period of Affordability”) from the date of “Project Completion” as specified at 24 CFR 92.2. It is intended by the parties to this Regulatory Agreement, that this covenant shall run with the land in accordance with the provisions of 24 CFR 92.252, with the benefit of this covenant running to the City, in order to preserve the public interest in maintaining the affordability of the HOME-assisted Project units. The Period of Affordability will remain without regard to the term of any mortgage or the transfer of the Property ownership, other than by foreclosure or deed in lieu of foreclosure.

11. **Foreclosure after Project Completion.** The Borrower promises, covenants, warrants and represents that it shall complete the Project. Whether or not the Project is in fact completed shall be solely determined by the City. Should the Project in fact have been completed, then the Period of Affordability shall terminate upon foreclosure or transfer in lieu of foreclosure, except that the Affordability restrictions shall be revived according to the original terms if, (a) during the original Period of Affordability, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or the Property, or if (b) the foreclosing entity or transferee in lieu of foreclosure assumes in writing and agrees to be bound by the terms of the HOME Agreement and the Loan Documents, as that term is defined in the HOME Agreement.

12. **Restrictions on Sale or Transfer.**

a. Upon any sale or transfer, including transfer by gift, devise, decent, foreclosure, assignment, deed in lieu of foreclosure, condemnation, and voluntary or involuntary bankruptcy, of the Property without the prior written approval of the City, all principal, interest and costs then owing upon the Loan will become immediately due and payable to the City.

b. The City shall approve a sale, transfer or conveyance of the Property provided that all of the following conditions are met: (i) the existing Borrower is in compliance with this Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Regulatory Agreement; (ii) the successor-in-interest to the Borrower agrees to assume all obligations of the existing Borrower
pursuant to this Regulatory Agreement and the HOME Program; (iii) the successor-in-interest demonstrates to the City’s satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements; and (iv) any terms of the sale transfer or conveyance shall not threaten the City’s security or the successor’s ability to comply with all requirements of the HOME Program and this Regulatory Agreement.

c. The Borrower agrees to secure advance written State HOME Program approval for any conversion to market rate housing, conversion to homeownership, demolition, or any other action that would prevent the full affordability period noted herein from being satisfied.

13. Restrictions on Encumbrances. The Borrower covenants that the Borrower has not, and shall not, enter into or execute any other agreement with provisions contrary to the provisions of this Regulatory Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 3, above; provided, however, that Borrower may, without the written consent of the City, enter into a Regulatory Agreement and First Deed of Trust, Absolute Assignment of Rents, Security Agreement and Fixture filing with the state affordable housing agency with regard to the tax exempt bond financing. In all cases, the provisions of 24 CFR 92.252(c) shall continue to apply to the Project.

14. Reserve for Replacement. Reserves for replacement shall be in accordance with the requirements of the HOME Program regulations and as required by the Senior Lender. In Years 1 through 5, the annual deposit to the replacement reserve account shall be in the amount of Five Hundred Ten Dollars ($510.00) per unit per year. The annual deposit amount for Years 6 through 55 shall be based on a third-party physical needs assessment to be prepared at the Borrower’s expense every five (5) years from the date of this agreement assessing the replacement needs of the development. If such a replacement reserve account is established and maintained by Borrower to satisfy the requirements of a senior lender, amounts deposited annually and maintained in such replacement reserve account shall be credited toward satisfying Borrower’s annual deposit obligation to City under the provisions of this Section 15. Said needs assessment shall be provided to the City for its review and approval at least ninety (90) days prior to the end of every 5th Calendar Year. Any withdrawals from the replacement reserve shall require the prior written approval of City.

15. Superiority of Regulatory Agreement. Except as set forth in Section 8 above, The Borrower covenants that the Borrower has not, and shall not, enter into or execute any other agreement with provisions contrary to the provisions of this Regulatory Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 3, above.

16. Violation of Regulatory Agreement by Borrower. In the event of a breach or violation of the provisions of this Regulatory Agreement, the City may give written notice to the Borrower thereof by certified mail or any express delivery service with a delivery receipt addressed to the Borrower at its principal place of business listed above. If the breach or violation is not cured to the satisfaction of the City within the time period specified in the notice, which shall not be less than 30 days, the City may declare a default and may seek legal remedies.
17. **Interpretation of Affordability.** It is the intention of the parties to this Regulatory Agreement that affordability be interpreted in view of the express goals of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992. It is the purpose of this Regulatory Agreement to limit and restrict use and resale of the Property in order to maintain the Property’s affordability for the entire Period of Affordability.

18. **Recordkeeping and Reports.** The management agent designated by Borrower, and as approved by the City, will be responsible for recordkeeping and reports, including those required to comply with Fair Housing and Equal Opportunity requirements. The management agent will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to the directives of the Borrower in order to assist the City in meeting federal and state recordkeeping and reporting requirements. All records, books, and accounts will be subject to examination at reasonable hours by any authorized representative of the City.

19. **Maintenance and Management.**

a. Borrower is specifically responsible for all maintenance, repair, and management functions for the Project, including without limitation, selection of tenants, certification and re-certification of household income and size, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes, HUD housing quality standards pursuant to 24 CFR 882.109.

b. Borrower may contract with a management agent for the performance of the services or duties required in paragraph a. above. However, doing so does not relieve the Borrower of responsibility for proper performance of said duties. Any such contract shall contain a provision allowing the Borrower to terminate the contract without penalty with no more than thirty (30) days notice. Upon determination by the City and notice to the Borrower thereof that the City has determined that the contracted management agent has failed to operate the Project in accordance with this Agreement, the Borrower shall exercise such right of termination forthwith and shall immediately make arrangements, subject to City approval, for continuing performance of the requirements of this Agreement.

c. If the Borrower operates the Project directly without contracting with a management agent and the City determines that the Project is not being operated in accordance with this Agreement, the City may provide notice to the Borrower thereof, and may require the Borrower to contract with a management agent to operate the Project, or to make such other arrangements as the City deems necessary to ensure performance of the requirements of this Agreement.

20. **Inspections.**

a. Borrower shall allow City access to the Project to conduct inspections on an annual basis, or more frequently, with thirty (30) days written notice to Borrower.
b. Borrower shall provide tenants with a minimum of twenty-four (24) hours written notice prior to seeking access to a tenant unit for inspection purposes. In said notice, Borrower shall clearly inform tenant of the purposes of the inspection.

21. **Hazard and Liability Insurances.**

a. The Borrower shall at all times keep the development insured against loss by fire, flood (as required pursuant to 24 CFR 92.358), and other such hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as set forth in Exhibit B attached and made part hereof. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the City. Property insurance policies shall name the City as additionally insured in a manner approved by the City.

b. Insurance proceeds and condemnation awards for any loss to or taking of the Project, or any portion thereof, shall be applied or utilized by Borrower as provided in the Deed of Trust, executed by Borrower and referred to in the Recitals hereof.

22. **Governing Law.** This Regulatory Agreement shall be construed in accordance with and be governed by the laws of the State of California.

23. **Successors and Assigns.** This Regulatory Agreement and all the covenants, promises, and agreements contained in it shall be binding on and inure to the benefit of the respective legal and personal representatives, devisees, heirs, successors, and assigns of the Borrower and the City.

24. **Severability.** If any provision of this Regulatory Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless, in the sole discretion of the City, the invalidity, or unenforceability of the provision negates the program purpose and/or threatens the security of the City.

25. **Venue.** If either party to this Regulatory Agreement initiates any legal or equitable action to enforce the terms of this Regulatory Agreement, to declare the rights of the parties under this Regulatory Agreement, or which relates to this Regulatory Agreement in any manner, the City and the Borrower agree that the proper venue for any such action is the Superior Court of the State of California of and for the County of Solano.

26. **Costs of Enforcement.** The Borrower agrees to pay any and all of the City’s costs with respect to enforcement of this Regulatory Agreement, including the City’s reasonable attorneys’ fees, costs and expenses.

27. **Counterparts/Originals.** This Regulatory Agreement may be executed in counterparts, which together shall constitute one (1) entire Regulatory Agreement.

[Signatures appear on next page.]
By signing below, Borrower accepts and agrees to the terms and covenants contained in this Regulatory Agreement.

CITY OF FAIRFIELD

By ________________________________

Sean P. Quinn
City Manager

APPROVED AS TO FORM:

By: ________________________________

City Attorney

ANF FAMILY PARTNERS II, L.P.

By its General Partner:

South PACE GP, LLC, a California limited liability company

By its Manager/Member

National Community Renaissance of Northern California

By: ________________________________

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

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

WITNESS my hand and official seal.

Signature

(seal)

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

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

WITNESS my hand and official seal.

Signature

(seal)
EXHIBIT A

Legal Description of Property

1189 Tabor, Fairfield, California:

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

Beginning at the northeast corner of Lot Lot 5 in Block B, as shown on that certain map entitled: "Windsor Heights, Unit No. 1", filed on December 7, 1961 in Book 19 of Maps, Page 99, Solano County Records, said point also being in the East line of Lot 37 of Locke Paddock, Addition to Fairfield, filed for record March 18, 1912 in Book 4 of Maps, Page 9; thence North 0° 09' 50" West along the East line of said Lot 37 and Lot 36 of said Locke Paddock Addition to Fairfield, a distance of 360 feet, more or less to a point in the Southerly line of Tabor Avenue as designated on said Map of Windsor Heights Unit No. 1; thence North 89° 23' 23" West a distance of 259.919 feet; thence Westerly along a curve to the left with a radius of 30 feet through a central angle of 90° 45' 37" a distance of 47.522 feet to a point in the East line of Bristol Lane as shown on the Map of Windsor Heights Unit No. 1, hereinbefore referred to; thence along said East line South 0° 09' 00" East, 269.520 feet and southerly along a curve to the right with a radius of 180 feet through a central angle of 19° 27' 04" a distance of 61.107 feet to the Northwest corner of Lot 15 in Block B of Windsor Heights No. 1 hereinbefore referred to; thence South 89° 23' 23" East, 300.681 feet to the point of beginning.

APN: 0033-012-260
EXHIBIT “B”

INDEMNIFICATION AND INSURANCE REQUIREMENTS

BORROWER shall procure and maintain insurance on all of its operations on the Property, from the time of acquisition, with insurance companies admitted in California and a minimum Bests' rating of A:VII, on forms acceptable to the CITY, for the following minimum insurance coverages.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

   a) Commercial General Liability (CGL) coverage (Insurance Services Office (ISO) occurrence Form CG 00 01) with minimum limits of $1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, property damage, and unmodified contractual liability coverage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location (ISO form CG 25 03 is acceptable) or the general aggregate limit shall be twice the required occurrence limit.

   b) Automobile Liability coverage (ISO Form CA 00 01 with Code 1 – any auto) with minimum limits of $1,000,000 per accident for bodily injury and property damage.

   c) Workers’ Compensation insurance as required by the State of California and Employers’ Liability insurance, each in the amount of $1,000,000 per accident for bodily injury or disease. Policy shall be endorsed to contain a waiver of subrogation as respects the CITY.

   d) Property insurance covering loss or damage to the Property including all improvements thereon, in the amount of the full replacement value thereof, as the same may exist from time to time, but in no event less than the replacement value of all improvements at the Property, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and shall, during construction, include a course of construction endorsement issued prior to the commencement of the Rehabilitation. City shall be named as a mortgagee loss payee on such policy.

2) INSURANCE PROVISIONS

   a)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 shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the BORROWER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Upon notice of any actual or alleged claim or loss arising out of CONTRACTOR'S work hereunder, BORROWER shall immediately satisfy in full the self insured retention provisions of the policy in order to
trigger coverage for the CITY and additional insureds.

b) The general and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

i) The CITY, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the BORROWER; products and completed operations of the OWNER; premises owned, occupied or used by the BORROWER; or automobiles owned, leased, hired or borrowed by the BORROWER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.

ii) For any claims related to this project and Additional Insured Endorsements provided to the CITY, the BORROWER’s insurance coverage shall be endorsed to provide primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the BORROWER’s insurance and shall not contribute with it.

iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

iv) The BORROWER’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the CITY.

vi) The policy coverage and limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the BORROWER’s coverage or policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. BORROWER shall furnish the CITY with original endorsements effecting coverage required by this Exhibit B. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Additional Insured endorsements are to be on forms provided by the CITY or on coverage forms at least as broad as ISO forms CG 20 10 10 01 and CG 20 37 10 01 or earlier editions (CG 20 10 11 85 is an acceptable substitute for both) endorsed to provide primary and non contributory coverage subject to CITY approval. All endorsements required above, together with the
Endorsement or CGL Declarations page listing all policy forms and endorsements, shall be attached to the Certificates of Insurance and are to be received and approved by the CITY before work commences. At the request of the CITY, BORROWER shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

e) **SUB-CONTRACTORS.** BORROWER shall require all sub-Contractors to procure and maintain insurance policies subject to the requirements of this Exhibit B. Failure of BORROWER to verify existence of sub-contractor’s insurance shall not relieve BORROWER from any claim arising from sub-contractor’s work on behalf of BORROWER.

f) The Insurance requirements contained herein are the minimum necessary and may not provide adequate coverage nor shall they in any way act to relieve BORROWER of the full obligations under this agreement. BORROWER and their advisors shall have the sole responsibility to determine coverages necessary to adequately protect CONTRACTOR. The minimum Insurance coverages and limits required above shall not in any way act to reduce or restrict the full coverages or limits of any of BORROWER’s coverages that shall be available to the CITY for any claims.

g) At the discretion of the CITY, no payment shall be made to BORROWER until BORROWER has demonstrated compliance with these insurance requirements.

3) **INDEMNITY:**

BORROWER agrees to and shall indemnify, defend, protect, and hold harmless CITY from and against any and all claims, losses, proceedings, damages, cause of action, liabilities, costs and expenses (including attorneys’ fees), arising from or in connection with, or caused by (i) any act, omission or negligence of BORROWER, or any lessee of BORROWER, or their respective contractors, licensees, invitees, agents, sublessees, servants or employees, wherever on or adjacent to the Property the same may occur; (ii) any use of the Property, or any accident, injury, death or damage to any person or property occurring in, on or about the Property, or any part thereof, or from the conduct of BORROWER’S business or from any activity, work or thing done, permitted or suffered by BORROWER or its sublessees, contractors, employees, or invitees, in or about the Property (other than to the extent arising as a result of CITY’s sole active negligence or to the extent of any willful misconduct of CITY; and (iii) any default in the performance of any obligations on BORROWER’S part to be performed under the terms of this Regulatory Agreement, or arising from any negligence of BORROWER, or any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against CITY by reason of any such claim, BORROWER upon notice from CITY shall defend the same at its expense by counsel reasonably satisfactory to CITY.

BORROWER further agrees to waive all rights of recovery and subrogation against CITY.

The procuring of policies of insurance required shall not be construed to limit,
restrict or reduce BORROWER'S liability hereunder, or to fulfill the indemnification provisions and requirements of this agreement. Notwithstanding the insurance policies, BORROWER shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect suffered or incurred by CITY arising out of this agreement or in connection with the Rehabilitation, or the use, development, or occupancy of the Property.

These indemnity and defense obligations shall survive the completion or termination of the contract and shall be for the full period of time allowed by law.
PROMISSORY NOTE
SECURED BY DEED OF TRUST
WITH ASSIGNMENT
OF RENTS AS ADDITIONAL SECURITY

Fairfield, California

$1,688,005.00

______, 2010

1. **Promise to Pay.** For value received, the undersigned, ANF Family Partners II, L.P., a California limited partnership, with its principal place of business located at 9065 Haven Avenue, Suite 100, Rancho Cucamonga, CA 91730 (the “Maker”) hereby promises to pay to the City of Fairfield, a municipal corporation (“Payee”), or order, the principal sum of One Million Six Hundred Eighty-Eight Thousand Five and no/100’s Dollars ($1,688,005.00) (hereinafter, the “Loan”) plus interest accrued thereon or the aggregate unpaid amount of disbursements to Maker for costs incurred upon the Project (defined herein below) as determined solely by Payee pursuant to the terms of this note (hereinafter the “Note”). The Loan consists of funds in the amount of One Million Six Hundred Eighty-Eight Thousand Five and no/100’s Dollars ($1,688,005.00) committed through the HOME Agreement (defined herein below).

2. **Interest.** The principal due under this Note shall bear simple interest at the rate of three percent (3%) per annum, or at the Applicable Federal Rate, whichever is lower, with interest to accrue as Loan funds are disbursed to Maker on the date of each City warrant. Interest shall be computed on the basis of a 360-day year. For accounting purposes, interest attributed to the construction period will end with the issuance of Certificate(s) of Occupancy on all Project units by the City of Fairfield, and interest attributed to the Loan period will begin on the following day.

3. **Term.** This Note shall have a term of fifty-five (55) years from the date of this Note (the “Term”), unless otherwise extended by the Payee.

4. **Definitions.** All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Loan Agreement of even date herewith, entered into between Maker and Payee (the “HOME Agreement”). In addition, as used in this Note, the following terms will have the following meanings:

   A. **Cash Flow Balance.** Cash Flow Balance means the balance shown on an annual Cash Flow Statement of the Maker’s operations for each calendar year during the Term. The Cash Flow Statement shall be based on the total cash receipts and disbursements received and made by Maker during the calendar year in question and, to the extent permitted by generally accepted accounting principles, shall also be based upon audited Financial Statements prepared according to generally accepted accounting principles by an independent, certified public accountant. The annual Cash Flow Statement shall include the return of any funds to Payee as an application of funds to the Loan balance. There shall be a Cash Flow Balance in each applicable year in which the Maker’s operating income exceeds its operating expenses, debt service payments, and reserve deposits, all of which shall be reasonable and subject to the approval of the City.
Notwithstanding the foregoing, expenditures shall not include depreciation of buildings or improvements or other non-cash items or non-cash deductions from income.

B. **Calendar Year.** Calendar Year shall mean the period beginning January 1 and ending on December 31 of each year of the Term.

C. **Project.** Project shall mean site acquisition, off-site improvements and development of forty-six (46) apartment units, a minimum of ten (10) of which shall be occupied by low and very low income households as defined by the HOME Program regulations, and known as the Cottage Square Apartments.

5. **Terms of Payment**

A. Until the end of the first Calendar Year following issuance of the Certificate of Occupancy for the Project, all payments on principal and interest shall be deferred. If not sooner paid, for each subsequent Calendar Year in which there is a Cash Flow Balance for the remainder of the Term, an amount equal to fifty percent (50%) of the Cash Flow Balance (the "Payable 50") shall be paid to the City and the Redevelopment Agency of the City of Fairfield (the "Agency") on a pro rata basis toward the debt to the City under this Note and the debt to the Agency for its loan on the Project reflecting the relative City and Agency contributions to the Project, which means that twenty six percent (26%) of the Payable 50 shall be due the City and seventy-four percent (74%) of the Payable 50 shall be due the Agency. Payments, if any, shall be made annually on April 15th beginning the second Calendar Year following the issuance of the Certificate of Occupancy. If not sooner paid, the unpaid principal balance of this Note, plus any unpaid interest thereon and any other amounts due and payable hereunder, shall be due and payable in full fifty-five (55) years from the date hereof.

B. The payments on this Note shall first be applied to interest then to unpaid costs and finally principal obligated through the HOME Agreement, provided however, in no event shall additional interest be earned on unpaid interest which has accrued.

C. The principal of this Note and any unpaid interest accrued thereon may be prepaid in whole or in part at any time without premium or penalty.

D. In order to determine the amount of each annual payment due under the Note, Maker shall, no later than April 15th of each Calendar Year until the end of the Term, provide Payee with the Cash Flow Statement (as defined in Section 4(a) above) for the prior Calendar Year's operation. Any unpaid principal and interest remaining at the end of the Term shall be immediately due and payable.

E. The payments due under this Note shall be paid in currency of the United States of America, which at the time of payments is lawful for the payment of public and private debts.

F. The payments on this Note shall be made to the Payee at 1000 Webster, Fairfield, CA 94533, or to such other place as the Payee may from time to time designate.
G. Maker agrees that if any installment payment provided in this Note is late for at least ten (10) days, it would be impracticable or extremely difficult to fix the actual damages resulting to the Payee. Therefore, Maker agrees to pay to the Payee the sum of One Thousand Dollars ($1,000) on default, as liquidated damages and not as a penalty, to compensate the Payee for the expenses of administering the default. Only one late charge will be collected on any installment, regardless of the period during which it remains in default.

6. Security. This Note is secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (hereinafter the “Deed of Trust”) of even date herewith given by the Maker, as Trustor to Fidelity National Title Company, as Trustee, for the benefit of the Payee, as the Beneficiary, which Deed of Trust is to be recorded against the certain property in the City of Fairfield as more particularly described in the Deed of Trust, and incorporated herein by this reference as if set forth herein (hereinafter the “Property”). This Note is also subject to a Regulatory Agreement of even date herewith given by Maker to Payee.

7. Acceleration.

A. This Note and all other obligations, direct or contingent, of the Maker under this Note to Payee will become due and payable immediately, except as otherwise stated in this section 7, without presentment for payment or any notice, if:

1) Maker fails to pay the monies due under this Note within seven (7) days after the receipt of notice from the Payee:

2) Maker of this Note:

   (i) Fails, after demand and the expiration of thirty (30) days notice, to furnish the annual Cash Flow Statement described above; or

   (ii)Suspends business; or

   (iii) Is in default under the HOME Agreement after the expiration of any applicable cure periods as specifically provided in the HOME Agreement; or

   (iv) Fails to comply with, perform or observe any of the covenants, representations and/or warranties made by Maker under the HOME Agreement if not cured within the applicable cure period, if any, as set forth in the HOME Agreement; or

   (v) Fails to comply with, perform or observe any obligation or condition of the Regulatory Agreement and/or the Deed of Trust within any applicable cure periods specified in the HOME Agreement; or

   (vi) Fails to procure or maintain the insurance policies and/or bonds required by Payee under the HOME Agreement and does not cure
such failure within the applicable cure period set forth in the HOME Agreement; or

(vii) Sells, transfers, leases, or otherwise transfers the Property or Project except as otherwise agreed to in writing by Payee.

3) Payee discovers that any misrepresentation was made to Payee on behalf of Maker to obtain the Loan or an extension of the Loan which materially adversely affects Payee’s security.

8. Waivers. Maker expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Payee may accept security or release any security for this Note, all without in any way affecting the liability of Maker. The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct, or withhold any payments or charges due under this Note for any reason whatsoever.

9. Notices. All notices to Payee or Maker shall be made in writing and shall be deemed received when personally delivered, received by the United States certified mail, return receipt requested, postage prepaid, or delivered by courier service addressed as follows:

If directed to City: City of Fairfield
                1000 Webster Street
                Fairfield, CA 94533
                Attn: Director of Community Resources

If directed to Maker: ANF Family Partners II, L.P.
                9065 Haven Avenue, Suite 100
                Rancho Cucamonga, CA 91730
                Attn: CFO

Any change in notice shall be delivered solely by certified mail, return receipt requested.

10. Nonrecourse. This Note shall be nonrecourse. No judgment, or execution thereof, entered in any action, legal or equitable, on this Note or the Deed of Trust securing this Note shall be enforced personally against Maker, any officer, director or employees of Maker, or against any assignee of Maker, or any general or limited partner of any assignee, or any officer, director or employee of any general or limited partner of any assignee, but shall be enforced only against the collateral described in the Deed of Trust and such other or further security as, from time to time, may be hypothecated for this Note.

11. Costs and Attorneys’ Fees. If Maker or Payee initiates any legal or equitable action to enforce the terms of this Note, to declare the rights of the parties hereunder, or which relates to this Note in any manner, the unsuccessful party in such action shall be liable to the other for all reasonable costs and expenses, including reasonable attorney’s fees, incurred by the successful party in such action.

12. Modification. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge
is sought. Consent by Payee to late payments does not waive its right to declare indebtedness immediately due and payable.

13. **Governance.** This Note shall be governed by and construed in accordance with the laws of the State of California.

14. **Timeliness.** The times for the performance of any obligation hereunder shall be strictly construed, time being of the essence.

15. **Severability.** If any provision or provisions of this Note are held to be invalid, illegal or unenforceable in any respect, this Note shall be construed as not containing that provision or provisions and all other provisions of this Note shall remain in full force and effect.

16. **Venue.** If Maker or Payee initiates any legal or equitable action to enforce the terms of this Note, to declare the rights of the parties hereunder, or which relates to this Note in any manner, Maker and Payee agree that the proper venue for any such action is the Superior Court of the State of California of and for the County of Solano.

**MAKER:**

ANF FAMILY PARTNERS II, L.P.,
a California limited partnership

By its General Partner:

South PACE GP, LLC,
a California limited liability company

By its Manager/Member:

National Community Renaissance of Northern California

By: ____________________________

Richard J. Whittingham, CFO
DEED OF TRUST

With Assignment of Rents, Security Agreement, and Fixture Filing

THIS DEED OF TRUST is made this __________, 201__, by and between ANF Family Partners II, L.P., a California limited liability company ("Trustor"), FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation ("Trustee"), and the CITY OF FAIRFIELD, a municipal corporation ("Beneficiary").

Trustor grants, transfers, and assigns to Trustee in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, and right of entry and possession, all of Trustor’s interest in that real property in the County of Solano, State of California, described in Exhibit “A” attached hereto and incorporated herein by this reference;

Together with the rents, issues, and profits thereof, subject, however, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and
other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Together with all building materials and equipment now or hereafter delivered to the premises and intended to be installed therein; and

Together with all articles of personal property owned by the Trustor now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands described which are necessary for the comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the building or buildings in any manner.

To have and to hold the property hereinafter described together with appurtenances to the Trustee, its or his successors and assigns (the “Property”) forever.

FOR THE PURPOSE of securing performance of each agreement and covenant of Trustor herein or contained in (a) that certain Loan Agreement (the “Agreement”) dated ____________________ 2010, between Trustor and Beneficiary and (b) that certain Regulatory Agreement dated ____________________, 2010 between Trustor and Beneficiary (the “Regulatory Agreement”); and securing payment of indebtedness of the Trustor to the Beneficiary in the initial principal sum of One Million Six Hundred Eighty-eight Thousand Five and no/100th Dollars ($1,688,005.00), as evidenced by that certain promissory note (the “Note”) of even date herewith, along with such other sums as may be advanced to Trustor under the Agreement. The Note, Agreement, and the Regulatory Agreement (collectively, the “Agreements”) are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced.

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

1. That it faithfully perform each and every convent contained in the Agreements;

2. That it will not permit or suffer the use of any of the Property for any purpose other than the use described in the Agreements as they may be amended from time to time.

3. That all rents, profits and income from the Property are hereby assigned to the Beneficiary for the purpose of securing the obligations of Trustor pursuant to the Agreements. Permission is hereby given to Trustor so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Agreements.

4. That upon default hereunder or under the aforementioned Agreements, remaining uncured after thirty (30) days from receipt of written notice thereof from Beneficiary, or, if the nature of the default is such that more than thirty (30) days are reasonably required for its cure,
then the Trustor has not commenced a cure within the 30-day period and thereafter diligently prosecuted such cure to completion within ninety (90) days after receipt of written notice thereof, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property and operate same and collect the rents, profits and income therefrom;

5. That the Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies as may be required from time to time by the Beneficiary (earthquake insurance not required), and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than one hundred (100%) percent of the insurable value or not less than the unpaid balance of the insured Deed of Trust, whichever is less, and in default thereof the Beneficiary shall have the right to effect insurance. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and shall be deposited with the Beneficiary;

6. To pay, before delinquency, any taxes and assessments affecting the Property including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust;

7. To keep the Property in good condition and repair, not to remove or demolish any buildings thereon unless authorized by the Agreements; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair; to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law and/or covenants, conditions and/or restrictions affecting the Property; not to permit or suffer any substantial alteration of or addition to the buildings or improvements hereafter constructed in or upon the Property without the consent of the Beneficiary;

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

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

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

11. Except as may be restricted by the nonrecourse provisions of the Note, to pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditures at the rate of the Eleventh Federal Reserve District Cost of Funds;

12. The Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the rehabilitation or construction of any and all buildings now being rehabilitated or constructed or to be rehabilitated or constructed on the Property, or will cause the release of or will provide a bond against any such liens within ten (10) days of Trustor’s receipt of notice of the lien or liens. Nothing herein contained shall be deemed to prohibit the Trustor from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Trustor;

13. That the improvements upon the Property, and all plans and specifications, comply with all municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

IT IS MUTUALLY AGREED THAT:

14. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, the Beneficiary shall be entitled subject to the rights of the holder of the first deed of trust to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to the Beneficiary subject to the rights of the holder of the first deed of trust. After deducting therefrom all its expenses, including attorneys’ fees, and if Trustor is not in default, Beneficiary shall apply all such proceeds to restoring the Property, or in the event of Trustor’s default or in the event Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount of principal and interest due under the Notes. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.
15. Upon default by Trustor in making any payments provided for herein or in the notes secured hereby, or if the Property, or any portion thereof or interest therein, is sold, transferred, assigned or refinanced without the prior written approval of Agency (except as expressly authorized in the Agreement), or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust after receiving thirty (30) days prior written notice of such failure from Beneficiary, and if such default is not cured within thirty (30) days after receipt of written notice thereof from Beneficiary, or, if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the Trustor has not commenced a cure within the 30-day period and thereafter diligently prosecuted such cure to completion within ninety (90) days after receipt of written notice thereof, the Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and the Beneficiary may foreclose this Deed of Trust in the manner provided by law. Beneficiary shall also deposit with Trustee this Deed, the notes and all documents evidencing expenditures secured hereby; 

16. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of 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 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 its Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (a) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee’s fees or attorneys’ fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (b) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee’s Deed, if the latter is not paid by buyer; (c) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the notes; (d) all other sums then secured hereby; and (e) the remainder, if any, to the person or persons legally entitled thereto;

17. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee;
18. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed is hereby waived to the full extent permissible by law;

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

20. The trust created hereby is irrevocable by Trustor;

21. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall include not only the original Beneficiary hereunder but also any future owner and holder including pledges, of the notes secured hereby. In this Deed, whenever the context so requires, the masculine gender includes the feminine, and the singular number includes the plural;

22. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee; and

23. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the following addresses, or to such other address as Trustor may provide in writing to Trustee from time to time:

ANF Family Partners II, L.P.
c/o National Community Renaissance of California
9065 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730

and

ANF Family Partners II, L.P.
c/o Boston Capital Partners
One Boston Place, 21st Floor
Boston, MA 02108
Attn: South PACE Asset Management.

24. The attached 5-page Rider to Deed of Trust is hereby incorporated into this Deed of Trust.

[Signatures appear on next page.]
IN WITNESS WHEREOF the Trustor has executed this Deed of Trust as of the day and year set forth above.

ANF FAMILY PARTNERS II, L.P.,
a California limited liability company

By its General Partner:

South PACE GP, LLC,
a California limited liability company

By its Manager/Member:

National Community Renaissance of Northern California

By: ____________________________
Richard J. Whittingham, CFO
EXHIBIT A

Legal Description of the Property

1189 Tabor, Fairfield, California:

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

Beginning at the northeast corner of Lot Lot 5 in Block B, as shown on that certain map entitled: "Windsor Heights, Unit No. 1", filed on December 7, 1961 in Book 19 of Maps, Page 99, Solano County Records, said point also being in the East line of Lot 37 of Locke Paddock, Addition to Fairfield, filed for record March 18, 1912 in Book 4 of Maps, Page 9; thence North 0° 09’ 50” West along the East line of said Lot 37 and Lot 36 of said Locke Paddock Addition to Fairfield, a distance of 360 feet, more or less to a point in the Southerly line of Tabor Avenue as designated on said Map of Windsor Heights Unit No. 1; thence North 89° 23’ 23” West a distance of 259.919 feet; thence Westerly along a curve to the left with a radius of 30 feet through a central angle of 90° 45’ 37” a distance of 47.522 feet to a point in the East line of Bristol Lane as shown on the Map of Windsor Heights Unit No. 1, hereinbefore referred to; thence along said East line South 0° 09’ 00” East, 269.520 feet and southerly along a curve to the right with a radius of 180 feet through a central angle of 19° 27’ 04” a distance of 61.107 feet to the Northwest corner of Lot 15 in Block B of Windsor Heights No. 1 hereinbefore referred to; thence South 89° 23’ 23” East, 300.681 feet to the point of beginning.

APN: 0033-012-260
RIDER TO DEED OF TRUST

This Rider to Deed of Trust ("Rider") is made a part of and attached to that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") dated as of 2010, made by ANF Family Partners II, L.P., a California limited partnership (as "Trustor") in favor of the City of Fairfield, a municipal corporation (as "Beneficiary") granting the Beneficiary a security interest in the real property described in Exhibit A to that Deed of Trust (the "Property" or the "Project"). In the event of any inconsistency between this Rider and the Deed of Trust, this Rider shall control.

1. **No Discrimination.** The 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 preference, marital status, family status, source of income, physical or mental handicap, medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Trustor 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 Project.

2. **Subordination.** Beneficiary agrees that the terms and conditions of the Note and this Deed of Trust shall be subject to the following documents recorded on or about the date of the Deed of Trust: a deed of trust securing a loan from Wells Fargo Bank in the aggregate principal amount of up to $5,100,000 and a deed of trust securing a loan from the Redevelopment Agency of the City of Fairfield in the aggregate principal amount of up to $8,900,644. Upon the request of Trustor, Beneficiary will not unreasonably withhold approval or unreasonably refuse to subordinate the Note and this Deed of Trust to financing secured by the Trustor in excess of the limit set forth above, provided Trustor determines that the improvements funded by any such additional financing will be of benefit to the Project.

3. **Default.** Notwithstanding any other provisions in this Deed of Trust, the occurrence of any of the following shall constitute an event of default under the Note and this Deed of Trust, and a default may be declared under this Deed of Trust solely upon the occurrence of any of the following: (i) Any failure by Trustor to pay any amount due under the Note within fifteen (15) days of its due date; or (ii) Any default by Trustor under the terms of the Loan Agreement or the Regulatory Agreement recorded against the Project after expiration of applicable notice and cure periods; or (iii) A default declared by another lender under any loan secured by a deed of trust on the Project senior to this Deed of Trust; or (iv) Unless approved in writing by Beneficiary, any sale, transfer, disposition or further encumbrance of all or any portion of the Project or improvements thereon; or (v) Material injury or destruction of the Project or improvements thereon, by fire, other casualty or otherwise, which is not repaired to the condition prior to such damage or destruction, unless Trustor determines that such repair or restoration is not economically feasible; or (vi) Trustor becomes insolvent, or the subject of bankruptcy or other voluntary or involuntary proceeding for the adjustment of debtor-creditor relationships, if either has been consented to or has not been dismissed within sixty days.

4. **Hazardous Substances.**

   a. As used in this Section 4, the following terms shall have the following meanings:

   (i) **Environmental Laws** means all statutes, ordinances, orders, rules, regulations, plans, policies or decrees and the like now or hereafter in effect relating to (A) Hazardous Substance Activity or Hazardous Substances; (B) the generation, use, storage, transportation or disposal of Hazardous Substances, or solid waste; or (C) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Hazardous Material Transportation Act (49 U.S.C. Section 180 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Clean Air Act (42 U.S.C. Section 740 et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); the Porter-Cologne Water Quality Control Act (California Water Code Section 13020 et seq.); the Safe
Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code Section 25249.5 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.); the Hazardous Waste Control Act (California Health & Safety Code Section 25100 et seq.); The California Environmental Quality Act (California Public Resources Code Section 2100 et seq.); and the rules, regulations and ordinances of the City of Brawley or County of Imperial or any applicable federal, state and local agencies or bureaus, as amended from time to time.

(ii) **Foreclosure Transfer** means the transfer of title to all or any part of the Project or the Trust Estate at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust, or by deed in lieu of such foreclosure.

(iii) **Hazardous Substances** means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “infectious waste,” “biohazardous waste,” “toxic substance,” “pollutant,” “toxic pollutant,” “contaminant” as well as any other formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “EP toxicity” or “TCLP toxicity”; (B) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (C) “hazardous substance” as defined in Section 2782.6(d) of the California Civil Code; (D) “waste” as defined in Section 13050(d) of the California Water Code; (E) asbestos in any form; (F) urea formaldehyde foam insulation; (G) polychlorinated biphenyls (PCBs); (H) radon; and (I) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(iv) **Hazardous Substance Activity** means any actual, proposed, or threatened use, storage, holding, existence, location, release (including, without limitation, any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water or the air), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling, or transportation of any Hazardous Substances from, under, in, into, or on the Project, including without limitation, the movement or migration of any Hazardous Substances from surrounding Project, surface water, groundwater or any body of water, or the air under, in, into or onto the Project and any residual Hazardous Substances contamination in, on, or under the Project.

(v) **Losses** means all charges, losses, liabilities, damages (whether actual, consequential, punitive, or otherwise denominated), costs, fees, demands, claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, causes of action, assessments, fines, penalties, costs, and expenses of any kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, the following: (A) the reasonable fees and expenses of outside legal counsel; (B) the reasonable fees and expenses of accountants, third-party consultants, and other independent contractors retained by an Beneficiary; (C) costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person that is required by Environmental Laws or administrative ruling or directive because of the presence, suspected presence, release or suspected release of Hazardous Substances in violation of Environmental Laws in the air, soil, surface water or groundwater at the Project; (D) any and all diminution in value of the Project, loss of use or damage to the Project, or loss of profits or loss of business opportunity; and (E) reasonable costs and expenses of enforcing this Section 4.a.

(vi) **Environmental Losses** means Losses rising out of or as a result of: (A) the occurrence of any Hazardous Substance Activity; (B) any violation of any applicable Environmental laws relating to the Project or to the ownership, use, occupancy or operation thereof; (C) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity; or (D) any
claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (A), (B), or (C), or any allegation of any such matters.

b. Trustor represents and warrants to Beneficiary that Trustor has conducted an appropriate inquiry and investigation, and, to the best of Trustor’s knowledge, based on such inquiry and investigation, no portion of the Project is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances, nor have any Hazardous Substances migrated onto or from the Project. Neither the Project nor Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law. Trustor’s prior and intended use of the Project will not result in the disposal or release of any Hazardous Substances on, under, about, or to the Project or the migration of any Hazardous Substances from the Project. The foregoing representations 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 and warranties shall survive such release.

c. Trustor represents and warrants to Beneficiary that Trustor has complied with all recommendations by any engineers retained by Trustor and all requirements of any applicable department of environmental resources, environmental protection agency or similar governmental agency, and there are no recommendations by said engineers or requirements ordered by said agency or any other governmental body for environmental investigation or cleanup with respect to the Project.

d. On and after the date hereof, Trustor shall not (a) allow any Hazardous Substances to be installed, used, introduced, stored, treated, disposed of, generated, manufactured, discharged, dumped, transported or brought in, upon or over the Project in violation of applicable law; (b) allow any soil or ground water contamination or pollution with any Hazardous Substances on the Project in violation of applicable law; (c) allow any Hazardous Substances to migrate from the Project in violation of applicable law; (d) allow any Hazardous Substances to migrate onto the Project from any adjacent properties in violation of applicable law; or (e) allow or cause the Project to be in violation of, or to trigger a duly initiated and prosecuted investigation of the Project by any governmental authority under applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules or timetables contained in any local, state and/or federal laws, regulations, codes, ordinances, plans, administrative or judicial orders, decrees, judgments, notices or demand letters issued, entered, promulgated or approved thereunder relating to the environment, land use, water and air quality and Hazardous Substances ("Environmental Requirements").

e. If the presence of any Hazardous Substances on the Project caused or permitted by Trustor results in any contamination of the Project, Trustor shall promptly take all actions, at its sole expense, as are necessary to return the Project to the condition existing prior to the introduction of any such Hazardous Substances to the Project; provided that Beneficiary’s approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

f. At any time after the occurrence and during the continuance of any default under this Section 4, Beneficiary shall have the following rights and remedies, in addition to any other rights and remedies Beneficiary has under this Deed of Trust:

(i) As provided in California Code of Civil Procedure Section 564, Beneficiary or its employees, acting by themselves or through a court-appointed receiver may do any of the following: (i) enter upon, possess, manage, operate, dispose of, and contract to dispose of the Project or any part thereof; (ii) take custody of all accounts; (iii) negotiate with governmental authorities with respect to the Project’s environmental compliance and remedial measures; (iv) take any action necessary to enforce compliance with environmental provisions, including spending Rent Payments to abate any environmental problem; (v) make, terminate, enforce or modify leases of part or all of the Project; (vi) contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Project necessary in Beneficiary’s judgment to protect or enhance the security hereof; and/or (vii) take any and all other actions which may be necessary or desirable to comply with Trustor’s obligations hereunder and under the Loan Documents. All sums realized by the receiver or Beneficiary under this
subparagraph, less all costs and expenses incurred by either of them under this subparagraph, including attorneys’ fees, and less such sums as Beneficiary or the receiver deems appropriate as a reserve to meet future expenses under this subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness, nor any other action taken by Beneficiary or the receiver under this subparagraph shall cure or waive any default or notice of default hereunder, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to the adequacy of the security for the indebtedness secured hereunder, the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or the filing of a notice of default.

(ii) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor or in connection with any such default, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Project or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including of any of Beneficiary’s other rights: (i) to obtain a court order to enforce Beneficiary’s right to enter and inspect the Project under California Civil Code Section 2929.5 (in respect of which the decision of Beneficiary as to whether there exists a release or threatened release of hazardous substance, as defined therein, onto the Project shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed under California Code of Civil Procedure Section 564 to enforce Beneficiary’s right to enter and inspect the Project for hazardous substances as defined therein. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents or employees may conduct, including the fees of engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustee and Beneficiary pursuant to this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date they are incurred until said sums have been paid.

(iii) Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth above in this Section 4, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Project or after foreclosure of the Project, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary or advanced by Beneficiary (collectively, the “Environmental Costs”) relating to the cleanup, remediation or other response action required by applicable law or which Beneficiary believes necessary to protect the Project, it being conclusively presumed between Beneficiary and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation, or other response action respecting the Project were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Project held hereunder, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

(iv) As provided in California Code of Civil Procedure Section 726.5, Beneficiary may waive its lien against the Project or any portion thereof, to the extent such Project is found to be environmentally impaired as defined therein, and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor’s assets and Project for the recovery of any deficiency and Environmental Costs, including seeking an attachment order under California Code of Civil Procedure Section 483.010. Beneficiary and Trustor each represents and warrants for itself that it has no actual knowledge of any release of any Hazardous Substance (as defined in Section 726.5) on, to or under the Project. As between Beneficiary and Trustor, for purposes of California Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) did not cause or contribute to, and was not in any way negligent in permitting, any release or threatened release of the Hazardous Substance.

(v) Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or in the Loan Documents, the Environmental Costs and all judgments and awards entered against Trustor pursuant to Section 4(f)(iv) above shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and
Trustor shall be fully and personally liable for the Environmental Costs and such judgments and awards and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Project or this Deed of Trust.

    g. Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from and against any and all Environmental Losses.

    [End of Rider]
RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of Fairfield
1000 Webster Street
Fairfield, CA 94533
Attn: Eve Somjen,
Director of Community Resources

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103.

REGULATORY AGREEMENT
between
CITY OF FAIRFIELD and ANF FAMILY PARTNERS II, L.P.
in respect to
HOME INVESTMENT PARTNERSHIPS PROGRAM

THIS REGULATORY AGREEMENT is made as of ________________, 2010 between ANF Family Partners II, L.P., a California limited partnership with its principal place of business located at 9065 Haven Avenue, Suite 100, Rancho Cucamonga, California 91730 (hereinafter referred to as the “Borrower”) and the City of Fairfield, a municipal corporation (hereinafter referred to as the “City”).

RECITALS

Pursuant to the Loan Agreement between the City and the Borrower with respect to the HOME Investment Partnerships Program dated as of _______________, __________ (hereinafter referred to as the “Loan Agreement”), the City has agreed to loan to the Borrower an amount not to exceed One Million Six Hundred Eighty-eight Thousand Five and no/100th Dollars ($1,688,005.00) (hereinafter referred to as the “Loan”) for the purpose of assisting the Borrower in the rehabilitation of that certain real property located at 1189 Tabor Avenue, Fairfield, California, and more particularly described in Exhibit “A,” attached hereto and made a part hereof (hereinafter referred to as the “Property”).

The Loan is being made pursuant to the HOME Investment Partnerships Program (hereinafter referred to as the “HOME Program”) established and governed by the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992, as implemented by and subject to Title 24 Code of Federal Regulations Part 92.

The Loan is composed of an amount not to exceed One Million Six Hundred Eighty-eight Thousand Five and no/100th Dollars ($1,688,005.00) received from the HOME Program. The Loan is evidenced by that certain promissory note (hereinafter referred to as the “Note”) dated of even date herewith and is secured by that certain Deed of Trust of even date herewith.

As a condition of receiving Loan funds for the rehabilitation of forty-six (46) units, of which ten
(10) units are considered to be HOME-assisted (hereinafter referred to as the “Project”), the 
Borrower must agree to place specified restrictions upon the use and transfer of the Property found 
at 24 CFR 92.252. It is the intent of the parties hereto to evidence the Borrower’s compliance with 
the Loan requirements of the HOME Program and place such restrictions upon the use and transfer 
of the Property, to ensure continued Project affordability, as are required by HOME Program 
regulations.

NOW THEREFORE, in consideration of the Loan and other valuable consideration, the parties 
hereto covenant and agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.

2. Definitions. Except to the extent modified or supplemented by the HOME Program 
Agreement between the City and HCD, any term defined in the ACT or the HOME 
Program regulations at 24 CFR Part 92, as amended, shall have the same meaning when 
used herein.

   a. “AMI” means the Area Median Income for the Project area as determined by HUD.

   b. “Displacement” means the temporary or permanent movement of a Household 
and/or its personal property from the Property as a direct result of the rehabilitation, 
demolition, and/or acquisition (or written notice of intent to acquire, or initiation of 
negotiations to acquire) of the Property. The temporary movement of a Household 
from the Property which exceeds one year in duration is defined as permanent.

   c. “HOME Rents” means rents calculated annually by HUD and are:

      1) “High HOME Rents” which are the lesser of the Fair Market Rents, as 
determined by HUD, or a rent that does not exceed 30 percent of 65 percent 
of Area Median Income as determined by HUD.

      2) “Low HOME Rents” which are a rent that does not exceed 30 percent of 50 
percent of Area Median Income as determined by HUD.

   d. “HUD” means the United States Department of Housing and Urban Development.


   f. “Lower income household” means persons or families whose incomes are 80 
percent or less of the Area Median Income as determined by HUD.

   g. “Period of Affordability” means a period of 55 years beginning from the date of 
Project Completion as defined by 24 CFR 92.2 wherein the project must meet the 
affordability requirements contained herein.

   h. “Very Low-Income Household” means low-income persons or families whose 
incomes are 50 percent or less of the Area Median Income as determined by HUD.

3. HOME-Assisted Units & Unit Schedule. Upon occupancy and for the entire Period of 
Affordability, the project shall have eleven (11) HOME-assisted units. These units shall be 
“Floating” units for the purposes of Section 7.c below, and shall be rented according to the 
following schedule of units:
<table>
<thead>
<tr>
<th></th>
<th>1 Bedroom</th>
<th>2 bedroom</th>
<th>3 bedroom</th>
<th>4 bedroom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low HOME rent</td>
<td>--</td>
<td>3</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>High HOME rent</td>
<td>--</td>
<td>8</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

**Tenant Income Standards**

a. **Initial Occupancy.** During the initial year of occupancy, ninety percent (90%) of HOME-assisted units shall be occupied by households whose incomes do not exceed sixty percent (60%) of the area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended.

b. **Period of Affordability.**

1) During the Period of Affordability, one hundred percent (100%) of HOME-assisted units must be occupied by households earning no more than eighty percent (80%) of area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended, unless this requirement is superseded by the statutory requirements of other state or federal funding sources or tax credit program requirements.

2) A minimum of twenty percent (20%) or three (3) of the eleven (11) HOME-assisted Project units shall be occupied by households whose annual incomes do not exceed fifty percent (50%) of the area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended.

4. **Tenant Selection Standards.** During the Period of Affordability the Borrower shall select tenants in conformance with HOME Program requirements and California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8305.

a. Borrower shall rent vacant Assisted Units in the Development only to eligible households in accordance with a Management Plan approved by the City. Such Management Plan may be periodically altered and such alteration must be submitted to and approved by the City prior to use. The Management Plan shall include:

1) Reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

2) Prohibition of local residency requirements;

3) Prohibition of local residency preferences, except where accompanied by an equal preference for employment in the local area and applied to areas not
smaller than municipal jurisdictions or recognized communities within unincorporated areas;

4) Tenant selection procedures that include the following components, and that are available to prospective tenants upon request:

a) Selection of tenants based on order of application, lottery or other reasonable method approved by the City;

b) Notification to tenant applicants of eligibility for residency and, based on turnover history for Assisted Units in the Development, the approximate date when an Assisted Unit may be available;

c) Notification of tenant applicants who are found ineligible to occupy an Assisted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;

d) Maintenance of a waiting list of applicant households eligible to occupy Assisted Units and non-assisted units designated for various tenant income levels, which shall be made available to prospective tenants upon request;

e) Targeting specific special needs populations in accordance with this Agreement and applicable laws; and

f) Affirmative fair housing marketing procedures as specified in the Affirmative Fair Housing Marketing Plan Compliance Regulations of HUD, 24 CFR Part 200.620(a)-(c), or similar affirmative fair housing marketing plan as approved by the City.

b. Borrower shall rent vacant units to households with no less than the number of people specified in the following schedule:

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>Minimum Number of Persons in Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>SRO</td>
<td>1</td>
</tr>
<tr>
<td>0-BR</td>
<td>1</td>
</tr>
<tr>
<td>1-BR</td>
<td>1</td>
</tr>
<tr>
<td>2-BR</td>
<td>2</td>
</tr>
<tr>
<td>3-BR</td>
<td>4</td>
</tr>
<tr>
<td>4-BR</td>
<td>6</td>
</tr>
<tr>
<td>5-BR</td>
<td>8</td>
</tr>
</tbody>
</table>

Borrower may assign tenant households to units of sizes other than those indicated as appropriate in the table above if the Borrower reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant’s file. The Borrower’s determination is subject to approval by the City. Through the Management Plan, Borrower may receive advance City approval of categorical exceptions to the above schedule.
5. Certification of Tenant Income and Household Size.
   a. The income and household size of all household occupying HOME-assisted units shall be certified by the Borrower prior to occupancy and recertified annually thereafter in a manner approved by the City and specified in the Project’s Management Plan.
   b. If the income of a tenant upon re-certification exceeds the upper limit for Lower Income households, and there are no other requirements statutorily imposed by other state or federal funding sources or tax credit program, that tenant shall not have its lease terminated as a result thereof, but shall be charged rents as provided in Section 7.
   c. Where a tenant occupying a unit designated for occupancy by a Very Low Income household no longer qualifies to reside therein at re-certification, but qualifies as an otherwise eligible household, the rent level appropriate for that income level shall be charged pursuant to Section 7.
   d. If at the time of re-certification a tenant’s household size has changed and no longer meets the occupancy standards pursuant to Section 3b, the Borrower may require the tenant to move to the next available appropriately sized unit.

6. Rent Limitations. Rents of HOME-assisted units shall not exceed the LOW and HIGH HOME rents allowed under 24 CFR 92.252, as amended, except as noted below.
   a. In a project with 5 or more HOME-assisted units, a minimum of twenty percent (20%) of all HOME-assisted units shall be occupied by Very Low-Income households with rents not exceeding LOW HOME rents, except as noted in b. below.
   b. HOME-assisted units receiving state or federal project-based rental subsidies may exceed HIGH or LOW HOME rents if the household qualifies to reside in the unit based on income and household size and the tenant-based portion of the rent does not exceed thirty percent (30%) of the household’s adjusted income. The HOME-assisted unit’s maximum rent (tenant contribution and project-based rental subsidy) becomes the rent allowable under the state or federal project-based subsidy.
   c. If the HOME-assisted units are designated as “Floating” units in Section 1 above, any household certified as an Eligible Household upon occupancy but whose income increases above the eligibility level must pay rent the lesser of the amount payable by the tenant under state or local law or thirty percent (30%) of the household’s adjusted monthly income for rent and utilities, except that the rent may not exceed the market rent for comparable, unassisted units in the neighborhood. HOME-assisted units subject to low-income housing tax credit rules under Section 42 of the Internal Revenue Code shall be governed by such rules.
   d. If the HOME-assisted units are designated as “Fixed” units in Section 1 above, any household certified as an Eligible Household upon occupancy but whose income increases above the eligibility level must pay rent the lesser of the amount payable by the tenant under state or local law or 30 percent of the household’s adjusted monthly income for rent and utilities, except that the rent may equal the market rent...
for comparable, unassisted units in the neighborhood. HOME-assisted units subject to low-income housing tax credit rules under Section 42 of the Internal Revenue Code shall be governed by such rules.

7. Marketing Plan

a. Borrower shall prepare and implement a Marketing Plan, subject to prior approved by the City, that specifies how the Borrower intends to market the project to prospective tenants in the Project’s market area. The Marketing Plan shall specifically address how the Borrower intends to market the Project to underserved populations in Project market area and the frequency of marketing efforts. The City agrees that the Borrower may utilize the HUD 935.2 Affirmative Fair Housing Marketing Plan for these purposes.

b. Borrower agrees to evaluate the effectiveness of the Marketing Plan in reaching underserved populations on an annual basis and to revise it as necessary to better reach underserved populations that are not being reached. The revised Marketing Plan shall be submitted to the City for approval prior to implementation.

8. Assisted Unit Standards

a. Restricted Units (HOME-assisted units) shall not differ substantially in size or amenity level from non-Restricted Units with the same number of bedrooms, and Units shall not differ in size or amenity level on the basis of income-level restrictions. Restricted Units shall not be segregated from non-Restricted Units, and Units shall not be segregated from each other on the basis of income-level restrictions. The Borrower may, within these limits, change the designation of a particular Unit from Assisted to non-Assisted or from one income-restriction to another over time. For Projects involving rehabilitation or conversion, the Department may permit certain Units to be designated as exclusively market-rate Units where necessary for fiscal integrity and where all other Program requirements are satisfied.

b. For the full loan term, the number, size, type, and amenity level of Assisted Units shall not be fewer than the number nor different from the size, type and amenity level described in Section 1 and Recitals Paragraph 4 above.

9. Rental Agreement and Grievance Procedures. The rental agreement and grievance procedures shall be in accordance with California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8307.

a. One-year Term. All rental or occupancy agreements for HOME-assisted units shall be for a term of not less than one year unless by mutual agreement between the tenant and the Borrower.

b. City Approval. All rental or occupancy agreements are subject to City approval; and shall include the following:
   1) Provisions requiring good cause for termination of tenancy;
   2) A provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;
3) A notice of grievance procedures for hearing complaints of tenants and appeal of management action; and

4) A requirement that the tenant annually recertify household income and size.

c. **Termination of Tenancy.** The Borrower shall not terminate the tenancy or refuse to renew the lease of a tenant of an HOME-assisted unit except for serious or repeated violation of the terms and conditions of the Lease; for violation of applicable federal, state, or local law; for completion of transitional housing tenancy period; or for other good cause.

d. **Written Notice.** To terminate or refuse to renew tenancy, the Borrower must serve written notice upon the tenant specifying the grounds for the action at least 30 days prior to the termination of the tenancy.

e. **“Good Cause”**. One or more of the following constitute “good cause”:

1) Failure by the tenant to maintain applicable eligibility requirements under the Program or other eligibility requirements as imposed by the City or other state or federal funding sources or tax credits;

2) Material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:
   a) Adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;
   b) Substantially interfere with the management, maintenance, or operation of the Project; or
   c) Result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the 3-day notice period;

3) Material failure by the tenant to carry out obligations under federal, state, or local law;

4) Subletting by the tenant of all or any portion of the HOME-assisted unit;

5) Any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only be eviction of the tenant, provided that the Borrower has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size; or
6) For Transitional Housing, the end of the maximum term prescribed for tenant occupancy by the Program operated in a particular Transitional Housing Project.

f. **Prohibited Lease Provisions.** The Lease may not contain any of the following provisions:

1) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Borrower or Borrower’s agent in a lawsuit brought in connection with the lease;

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

3) Agreement by the tenant not to hold the Borrower or Borrower’s agent(s) legally responsible for any action or failure to act, whether intentional or negligent;

4) Agreement of the tenant that the Borrower or Borrower’s agent may institute a lawsuit without notice to the tenant;

5) Agreement by the tenant that the Borrower or Borrower’s agent may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

6) Agreement by the tenant to waive any right to a trial by jury;

7) Agreement by the tenant to waive tenant’s right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

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

g. **Rules of Conduct.** The Borrower shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and HOME regulations. Said rules shall be in writing and shall be given to each tenant upon occupancy. Any changes shall become effective no fewer than 30 days after giving written notice thereof to each tenant household.

h. **Appeal & Grievance Procedures.** The Borrower shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Borrower with respect to tenants’ occupancy in the Project, and prospective tenants’ applications for occupancy. The Borrower’s appeal and grievance procedures shall be subject to City approval and, at a minimum, shall include the following:
1) A requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;

2) Procedures for informal dispute resolution;

3) A right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and

4) Procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.

10. **Period of Affordability.** The Borrower acknowledges that the Loan is being made to the Borrower under the terms and conditions of the HOME Program as part of a public program to ensure affordable housing for project tenants. To preserve affordability of the HOME-assisted Project units, the Borrower covenants that the HOME-assisted Project units shall remain affordable for a period of fifty-five years (55) (hereinafter referred to as the “Period of Affordability”) from the date of “Project Completion” as specified at 24 CFR 92.2. It is intended by the parties to this Regulatory Agreement, that this covenant shall run with the land in accordance with the provisions of 24 CFR 92.252, with the benefit of this covenant running to the City, in order to preserve the public interest in maintaining the affordability of the HOME-assisted Project units. The Period of Affordability will remain without regard to the term of any mortgage or the transfer of the Property ownership, other than by foreclosure or deed in lieu of foreclosure.

11. **Foreclosure after Project Completion.** The Borrower promises, covenants, warrants and represents that it shall complete the Project. Whether or not the Project is in fact completed shall be solely determined by the City. Should the Project in fact have been completed, then the Period of Affordability shall terminate upon foreclosure or transfer in lieu of foreclosure, except that the Affordability restrictions shall be revived according to the original terms if; (a) during the original Period of Affordability, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or the Property, or if (b) the foreclosing entity or transferee in lieu of foreclosure assumes in writing and agrees to be bound by the terms of the HOME Agreement and the Loan Documents, as that term is defined in the HOME Agreement.

12. **Restrictions on Sale or Transfer.**

   a. Upon any sale or transfer, including transfer by gift, devise, decent, foreclosure, assignment, deed in lieu of foreclosure, condemnation, and voluntary or involuntary bankruptcy, of the Property without the prior written approval of the City, all principal, interest and costs then owing upon the Loan will become immediately due and payable to the City.

   b. The City shall approve a sale, transfer or conveyance of the Property provided that all of the following conditions are met: (i) the existing Borrower is in compliance with this Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Regulatory Agreement; (ii) the successor-in-interest to the Borrower agrees to assume all obligations of the existing Borrower
pursuant to this Regulatory Agreement and the HOME Program; (iii) the successor-in-interest demonstrates to the City’s satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements; and (iv) any terms of the sale transfer or conveyance shall not threaten the City’s security or the successor’s ability to comply with all requirements of the HOME Program and this Regulatory Agreement.

c. The Borrower agrees to secure advance written State HOME Program approval for any conversion to market rate housing, conversion to homeownership, demolition, or any other action that would prevent the full affordability period noted herein from being satisfied.

13. Restrictions on Encumbrances. The Borrower covenants that the Borrower has not, and shall not, enter into or execute any other agreement with provisions contrary to the provisions of this Regulatory Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 3, above; provided, however, that Borrower may, without the written consent of the City, enter into a Regulatory Agreement and First Deed of Trust, Absolute Assignment of Rents, Security Agreement and Fixture filing with the state affordable housing agency with regard to the tax exempt bond financing. In all cases, the provisions of 24 CFR 92.252(e) shall continue to apply to the Project.

14. Reserve for Replacement. Reserves for replacement shall be in accordance with the requirements of the HOME Program regulations and as required by the Senior Lender. In Years 1 through 5, the annual deposit to the replacement reserve account shall be in the amount of Five Hundred Ten Dollars ($510.00) per unit per year. The annual deposit amount for Years 6 through 55 shall be based on a third-party physical needs assessment to be prepared at the Borrower’s expense every five (5) years from the date of this agreement assessing the replacement needs of the development. If such a replacement reserve account is established and maintained by Borrower to satisfy the requirements of a senior lender, amounts deposited annually and maintained in such replacement reserve account shall be credited toward satisfying Borrower’s annual deposit obligation to City under the provisions of this Section 15. Said needs assessment shall be provided to the City for its review and approval at least ninety (90) days prior to the end of every 5th Calendar Year. Any withdrawals from the replacement reserve shall require the prior written approval of City.

15. Superiority of Regulatory Agreement. Except as set forth in Section 8 above, The Borrower covenants that the Borrower has not, and shall not, enter into or execute any other agreement with provisions contrary to the provisions of this Regulatory Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 3, above.

16. Violation of Regulatory Agreement by Borrower. In the event of a breach or violation of the provisions of this Regulatory Agreement, the City may give written notice to the Borrower thereof by certified mail or any express delivery service with a delivery receipt addressed to the Borrower at its principal place of business listed above. If the breach or violation is not cured to the satisfaction of the City within the time period specified in the notice, which shall not be less than 30 days, the City may declare a default and may seek legal remedies.
17. **Interpretation of Affordability.** It is the intention of the parties to this Regulatory Agreement that affordability be interpreted in view of the express goals of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992. It is the purpose of this Regulatory Agreement to limit and restrict use and resale of the Property in order to maintain the Property’s affordability for the entire Period of Affordability.

18. **Recordkeeping and Reports.** The management agent designated by Borrower, and as approved by the City, will be responsible for recordkeeping and reports, including those required to comply with Fair Housing and Equal Opportunity requirements. The management agent will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to the directives of the Borrower in order to assist the City in meeting federal and state recordkeeping and reporting requirements. All records, books, and accounts will be subject to examination at reasonable hours by any authorized representative of the City.

19. **Maintenance and Management.**

   a. Borrower is specifically responsible for all maintenance, repair, and management functions for the Project, including without limitation, selection of tenants, certification and re-certification of household income and size, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes, HUD housing quality standards pursuant to 24 CFR 882.109.

   b. Borrower may contract with a management agent for the performance of the services or duties required in paragraph a. above. However, doing so does not relieve the Borrower of responsibility for proper performance of said duties. Any such contract shall contain a provision allowing the Borrower to terminate the contract without penalty with no more than thirty (30) days notice. Upon determination by the City and notice to the Borrower thereof that the City has determined that the contracted management agent has failed to operate the Project in accordance with this Agreement, the Borrower shall exercise such right of termination forthwith and shall immediately make arrangements, subject to City approval, for continuing performance of the requirements of this Agreement.

   c. If the Borrower operates the Project directly without contracting with a management agent and the City determines that the Project is not being operated in accordance with this Agreement, the City may provide notice to the Borrower thereof, and may require the Borrower to contract with a management agent to operate the Project, or to make such other arrangements as the City deems necessary to ensure performance of the requirements of this Agreement.

20. **Inspections.**

   a. Borrower shall allow City access to the Project to conduct inspections on an annual basis, or more frequently, with thirty (30) days written notice to Borrower.
b. **Borrower shall provide tenants with a minimum of twenty-four (24) hours written notice prior to seeking access to a tenant unit for inspection purposes. In said notice, Borrower shall clearly inform tenant of the purposes of the inspection.**

21. **Hazard and Liability Insurances.**

a. The Borrower shall at all times keep the development insured against loss by fire, flood (as required pursuant to 24 CFR 92.358), and other such hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as set forth in Exhibit B attached and made part hereof. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the City. Property insurance policies shall name the City as additionally insured in a manner approved by the City.

b. Insurance proceeds and condemnation awards for any loss to or taking of the Project, or any portion thereof, shall be applied or utilized by Borrower as provided in the Deed of Trust, executed by Borrower and referred to in the Recitals hereof.

22. **Governing Law.** This Regulatory Agreement shall be construed in accordance with and be governed by the laws of the State of California.

23. **Successors and Assigns.** This Regulatory Agreement and all the covenants, promises, and agreements contained in it shall be binding on and inure to the benefit of the respective legal and personal representatives, devisees, heirs, successors, and assigns of the Borrower and the City.

24. **Severability.** If any provision of this Regulatory Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless, in the sole discretion of the City, the invalidity, or unenforceability of the provision negates the program purpose and/or threatens the security of the City.

25. **Venue.** If either party to this Regulatory Agreement initiates any legal or equitable action to enforce the terms of this Regulatory Agreement, to declare the rights of the parties under this Regulatory Agreement, or which relates to this Regulatory Agreement in any manner, the City and the Borrower agree that the proper venue for any such action is the Superior Court of the State of California of and for the County of Solano.

26. **Costs of Enforcement.** The Borrower agrees to pay any and all of the City’s costs with respect to enforcement of this Regulatory Agreement, including the City’s reasonable attorneys’ fees, costs and expenses.

27. **Counterparts/Originals.** This Regulatory Agreement may be executed in counterparts, which together shall constitute one (1) entire Regulatory Agreement.

[Signatures appear on next page.]
By signing below, Borrower accepts and agrees to the terms and covenants contained in this Regulatory Agreement.

CITY OF FAIRFIELD

By ____________________________
Sean P. Quinn
City Manager

APPROVED AS TO FORM:

By: ____________________________
City Attorney

ANF FAMILY PARTNERS II, L.P.

By its General Partner:
South PACE GP, LLC, a California limited liability company

By its Manager/Member
National Community Renaissance of Northern California

By: ____________________________
Richard J. Whittingham, CFO
STATE OF CALIFORNIA )
) ss.
COUNTY OF _____________ )

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

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

WITNESS my hand and official seal.

Signature __________________________

(seal)

STATE OF CALIFORNIA )
) ss.
COUNTY OF _____________ )

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

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

WITNESS my hand and official seal.

Signature __________________________

(seal)
EXHIBIT A

Legal Description of Property

1189 Tabor, Fairfield, California:

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

Beginning at the northeast corner of Lot 5 in Block B, as shown on that certain map entitled: "Windsor Heights, Unit No. 1", filed on December 7, 1961 in Book 19 of Maps, Page 99, Solano County Records, said point also being in the East line of Lot 37 of Locke Paddock, Addition to Fairfield, filed for record March 18, 1912 in Book 4 of Maps, Page 9; thence North 0° 09' 50" West along the East line of said Lot 37 and Lot 36 of said Locke Paddock Addition to Fairfield, a distance of 360 feet, more or less to a point in the Southerly line of Tabor Avenue as designated on said Map of Windsor Heights Unit No. 1; thence North 89° 23' 23" West a distance of 259.919 feet; thence Westerly along a curve to the left with a radius of 30 feet through a central angle of 90° 45' 37" a distance of 47.522 feet to a point in the East line of Bristol Lane as shown on the Map of Windsor Heights Unit No. 1, hereinbefore referred to; thence along said East line South 0° 09' 00" East, 269.520 feet and southerly along a curve to the right with a radius of 180 feet through a central angle of 19° 27' 04" a distance of 61.107 feet to the Northwest corner of Lot 15 in Block B of Windsor Heights No. 1 hereinbefore referred to; thence South 89° 23' 23" East, 300.681 feet to the point of beginning.

APN: 0033-012-260
EXHIBIT “B”

INDEMNIFICATION AND INSURANCE REQUIREMENTS

BORROWER shall procure and maintain insurance on all of its operations on the Property, from the time of acquisition, with insurance companies admitted in California and a minimum Bests' rating of A:VI, on forms acceptable to the CITY, for the following minimum insurance coverages.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

   a) Commercial General Liability (CGL) coverage (Insurance Services Office (ISO) occurrence Form CG 00 01) with minimum limits of $1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, property damage, and unmodified contractual liability coverage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location (ISO form CG 25 03 is acceptable) or the general aggregate limit shall be twice the required occurrence limit.

   b) Automobile Liability coverage (ISO Form CA 00 01 with Code 1 – any auto) with minimum limits of $1,000,000 per accident for bodily injury and property damage.

   c) Workers’ Compensation insurance as required by the State of California and Employers’ Liability insurance, each in the amount of $1,000,000 per accident for bodily injury or disease. Policy shall be endorsed to contain a waiver of subrogation as respects the CITY.

   d) Property insurance covering loss or damage to the Property including all improvements thereon, in the amount of the full replacement value thereof, as the same may exist from time to time, but in no event less than the replacement value of all improvements at the Property, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and shall, during construction, include a course of construction endorsement issued prior to the commencement of the Rehabilitation. City shall be named as a mortgagee loss payee on such policy.

2) INSURANCE PROVISIONS

   a) 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 shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the BORROWER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Upon notice of any actual or alleged claim or loss arising out of CONTRACTOR’S work hereunder, BORROWER shall immediately satisfy in full the self insured retention provisions of the policy in order to
trigger coverage for the CITY and additional insureds.

b) The general and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

i) The CITY, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the BORROWER; products and completed operations of the OWNER; premises owned, occupied or used by the BORROWER; or automobiles owned, leased, hired or borrowed by the BORROWER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.

ii) For any claims related to this project and Additional Insured Endorsements provided to the CITY, the BORROWER’s insurance coverage shall be endorsed to provide primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the BORROWER’s insurance and shall not contribute with it.

iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

iv) The BORROWER’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the CITY.

vi) The policy coverage and limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the BORROWER’s coverage or policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. BORROWER shall furnish the CITY with original endorsements effecting coverage required by this Exhibit B. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Additional Insured endorsements are to be on forms provided by the CITY or on coverage forms at least as broad as ISO forms CG 20 10 10 01 and CG 20 37 10 01 or earlier editions (CG 20 10 11 85 is an acceptable substitute for both) endorsed to provide primary and non contributory coverage subject to CITY approval. All endorsements required above, together with the
Endorsement or CGL Declarations page listing all policy forms and endorsements, shall be attached to the Certificates of Insurance and are to be received and approved by the CITY before work commences. At the request of the CITY, BORROWER shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

e) **SUB-CONTRACTORS.** BORROWER shall require all sub-Contractors to procure and maintain insurance policies subject to the requirements of this Exhibit B. Failure of BORROWER to verify existence of sub-contractor’s insurance shall not relieve BORROWER from any claim arising from sub-contractor’s work on behalf of BORROWER.

f) The Insurance requirements contained herein are the minimum necessary and may not provide adequate coverage nor shall they in any way act to relieve BORROWER of the full obligations under this agreement. BORROWER and their advisors shall have the sole responsibility to determine coverages necessary to adequately protect CONTRACTOR. The minimum Insurance coverages and limits required above shall not in any way act to reduce or restrict the full coverages or limits of any of BORROWER’s coverages that shall be available to the CITY for any claims.

g) At the discretion of the CITY, no payment shall be made to BORROWER until BORROWER has demonstrated compliance with these insurance requirements.

3) **INDEMNITY:**

BORROWER agrees to and shall indemnify, defend, protect, and hold harmless CITY from and against any and all claims, losses, proceedings, damages, cause of action, liabilities, costs and expenses (including attorneys’ fees), arising from or in connection with, or caused by (i) any act, omission or negligence of BORROWER, or any lessee of BORROWER, or their respective contractors, licensees, invitees, agents, sublessees, servants or employees, wherever on or adjacent to the Property the same may occur; (ii) any use of the Property, or any accident, injury, death or damage to any person or property occurring in, on or about the Property, or any part thereof, or from the conduct of BORROWER’s business or from any activity, work or thing done, permitted or suffered by BORROWER or its sublessees, contractors, employees, or invitees, in or about the Property (other than to the extent arising as a result of CITY’s sole active negligence or to the extent of any willful misconduct of CITY; and (iii) any default in the performance of any obligations on BORROWER’S part to be performed under the terms of this Regulatory Agreement, or arising from any negligence of BORROWER, or any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against CITY by reason of any such claim, BORROWER upon notice from CITY shall defend the same at its expense by counsel reasonably satisfactory to CITY.

BORROWER further agrees to waive all rights of recovery and subrogation against CITY.

The procuring of policies of insurance required shall not be construed to limit,
restrict or reduce BORROWER'S liability hereunder, or to fulfill the indemnification provisions and requirements of this agreement. Notwithstanding the insurance policies, BORROWER shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect suffered or incurred by CITY arising out of this agreement or in connection with the Rehabilitation, or the use, development, or occupancy of the Property.

These indemnity and defense obligations shall survive the completion or termination of the contract and shall be for the full period of time allowed by law.