

**Item 7.2**

**Attachment 1a**

**Draft City Workforce Housing PBA  
CMFA for The Residences at Escaya**

SS-3-8-22 V1

SS 3-11-22 V2

RECORDING REQUESTED BY  
CMFA Special Finance Agency

WHEN RECORDED RETURN TO:  
Jones Hall, APLC

475 Sansome Street, Suite 1700

San Francisco, CA 94111

Attention: Ron Lee

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THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE  
CALIFORNIA GOVERNMENT CODE

**PUBLIC BENEFIT AGREEMENT**

By and Between

**CMFA SPECIAL FINANCE AGENCY**

**and**

**CITY OF CHULA VISTA**

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Dated as of [DATE], 2022

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Relating to

**CMFA SPECIAL FINANCE AGENCY  
ESSENTIAL HOUSING REVENUE BONDS  
(THE RESIDENCES AT ESCAYA)**

## **PUBLIC BENEFIT AGREEMENT**

This PUBLIC BENEFIT AGREEMENT (“Agreement”) is dated as of [DATE] by and between the CMFA SPECIAL FINANCE AGENCY (“CMFA”) a joint exercise of powers agency organized and existing under the laws of the State of California (including its successors and assigns, “Owner”) and the CITY OF CHULA VISTA (“Host”).

### **BACKGROUND**

**WHEREAS**, Village of Escaya Apartments, LLC, a Delaware limited liability company (“Existing Property Owner”), heretofore owned that certain parcel of real property consisting of a multifamily rental housing project marketed as The Residences at Escaya (“the Project”) located at 1925 Avenida Escaya, Chula Vista, California 91913, described in Exhibit “A” attached hereto; and

**WHEREAS**, the Project is required to restrict thirty (30) rental units as affordable units pursuant the City’s Inclusionary Housing Policy (“Existing Inclusionary Housing Requirements”), which are subject to a Declaration of Covenants, Conditions and Restrictions and other attendant documents (“Inclusionary Housing Documents”), which are hereby fully incorporated by reference into this Agreement and attached as Exhibit “B” and to which Owner will accept an assignment, which includes an extension of the term for said affordable housing requirements; and

**WHEREAS**, Owner proposes to issue Bonds (as hereinafter defined) to finance Owner’s acquisition of the Project from Existing Property Owner, concurrently with the delivery of this Agreement; and

**WHEREAS**, the Owner has executed a Regulatory Agreement and Declaration of Restrictive Covenants between Owner and Wilmington Trust, National Association (“Bond Trustee”), dated concurrently and recorded in the official records of San Diego County, California, which imposes requirements upon the Project with respect to maximum income levels of tenants, maximum rents payable by tenants, maintenance of the Project in accordance with industry standards, and certain other matters (attached as Exhibit “C” and hereby fully incorporated by reference into this Agreement); and

**WHEREAS**, in order for the Bonds, as defined below, to be issued Owner requires and is requesting that Host enter into Joint Powers Agreement (“JPA”) with Owner; and

**WHEREAS**, as part of the JPA and Bond issuance, related property taxes on the Property will be suspended, including property taxes due to the Host; and

**WHEREAS**, Owner and Bond Trustee will benefit by the Host’s approval of the JPA because it will, *inter alia*, permit a Bond issuance to fund the acquisition of the Property and result in the suspension of property tax on the Property during the term of this Agreement and Owner and Bond Trustee agree that Host approval of the JPA is good, valuable, and sufficient consideration; and

**WHEREAS**, as part of the JPA and Bond issuance, rents for units will have affordability restrictions on the rental units, minus a manager’s unit, under the terms set forth in this Agreement and related Regulatory Agreement; and

**WHEREAS**, as part of the JPA and Bond Issuance, the Host will have the right to cause the sale of the Property, under the terms set forth herein and receive the sales proceeds as stated herein, including an amount sufficient to recoup all suspended property taxes; and

**WHEREAS**, Owner and Trustee agree that the Host has an interest in the Property to ensure, *inter alia*, that the middle-income housing requirements are met and maintained; that the Project is financially well run; that the Project is not so encumbered by debt or other obligations that it cannot operate the Project or pay the Bonds or other Project Debt in a timely fashion; pay, in a timely fashion, all other debts that are due; have sufficient equity, at the time the Host’s right to sale is exercised or Owner’s Request for Conveyance is approved by Host, to pay the Host as required under this Agreement; and that the Property is well maintained and operated.

## **AGREEMENT**

In consideration of the mutual covenants herein contained, and such other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and Host mutually agree as follows:

### ARTICLE 1 RIGHT TO CAUSE SALE

**Section 1. Right to Cause Sale.** Host shall have the right (“*Sale Right*”), in its sole discretion, to cause Owner to sell the Property (as herein defined) upon payment by the purchaser thereof (the “Purchaser”) of the applicable Sale Price (as herein provided) during the Sale Right Term as provided for in Section 4 or following the Sale Right Term as provided for in Section 5 hereof, in each case, in compliance with and observance of all of the terms and conditions of this Agreement.

**Section 2. Definitions.** Capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 2; capitalized terms used in this Agreement and not defined in this Section 2 or elsewhere herein shall have the meanings assigned to them in the Indenture (herein defined).

(a) “*Bonds*” – collectively, the (i) CMFA Special Finance Agency Essential Housing Senior Lien Revenue Bonds, Series 2022A-1 (The Residences at Escaya), (ii) CMFA Special Finance Agency Essential Housing Senior Lien Revenue Bonds, Series 2022A-2 (The Residences at Escaya), (iii) CMFA Special Finance Agency Subordinate Essential Housing Mezzanine Lien Revenue Bonds, Series 2022B (The Residences at Escaya), and (iv) CMFA Special Finance Agency Essential Housing Subordinate Lien Revenue Bonds, Series 2022C (The Residences at Escaya), with such other series and sub-series designations as may be set forth in the Indenture, originally issued to finance Owner’s acquisition of the Project and related transaction costs.

(b) “*Bond Trustee*” – Wilmington Trust, National Association, or any successor trustee under the Indenture.

- (c) “Closing” – shall have the meaning set forth in Section 8 hereof.
- (d) “Conveyance” – that transaction or series of transactions by which Owner shall transfer, sell and convey any and all right, title or interest in and to the Property pursuant to this Agreement.
- (e) “Extraordinary Costs and Expenses” – shall have the meaning set forth in the Indenture.
- (f) “Host Charge” shall have the meaning set forth in [Section 33(O)] hereof.
- (g) “Indenture” – the Trust Indenture between Owner, as issuer, and Bond Trustee, as trustee, pursuant to which the Bonds were issued.
- (h) “Minimum Sale Price” –the lowest price at which the Property may be sold, as described in Section 4(d) hereof.
- (i) “Monitoring Fee” the annual monitoring fee payable by Owner to Host pursuant to [Section 32 ] hereof.
- (j) “Outstanding” – with respect to Bonds, as of any given date, all Bonds which have been authenticated and delivered by the Bond Trustee under the Indenture, except: (i) Bonds cancelled at or prior to such date or delivered to or acquired by the Bond Trustee at or prior to such date for cancellation; (ii) Bonds deemed to be paid in accordance with Article [VIII] of the Indenture; and (iii) Bonds in lieu of which other Bonds have been authenticated under the Indenture.
- (k) “Owner Indemnified Person” – Owner and each of its officers, governing members, directors, officials, employees, attorneys, agents, and members.
- (l) “Project” - the multi-unit multifamily rental housing development to be located in the City of Chula Vista on the real property site described in Exhibit A hereto, consisting of those facilities, including real property, structures, buildings, fixtures or equipment situated thereon, as it may at any time exist, the acquisition of which facilities is to be financed, in whole or in part, from the proceeds of the sale of the Bonds, and any real property, structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of the facilities described in the Deed of Trust securing the Bonds.
- (m) “Project Administration Agreement” - the Project Administration Agreement between Owner and Project Administrator for the Project, dated as of \_\_\_\_\_, 2022.
- (n) “Project Administrator” – HomeFed Corporation, a California corporation, and its successors and assigns.
- (o) “Project Debt” – any debt secured by the Project and incurred to finance or refinance Owner’s acquisition of the Project and related transaction costs, including any portion

of the Bonds and any bonds, notes or other indebtedness incurred by Owner to improve the Project or to refund the Bonds in whole or in part, approved by Host under the terms hereof, if required.

(p) “Property” –all of Owner’s right, title and interest (which includes fee simple title to the real property) in and to all property and assets used in or otherwise related to the operation of the Project, including, without limitation, all real property and interests in real property, all tangible and intangible personal property including furniture, fixtures, equipment, supplies, intellectual property, licenses, permits, approvals, and contractual rights of any kind or nature together with the right to own and carry on the business and operations of the Project.

(q) “Property Manager” shall have the meaning set forth in Section [33(O)] hereof.

(r) “Regulatory Agreement” – the Regulatory Agreement and Declaration of Restrictive Covenants by and between Owner and Bond Trustee, relating to operation of the Project.

(s) “Sale Price” – the purchase price of the Property to be paid by the Purchaser upon sale of the Property by Owner pursuant to Host’s Sale Right in compliance with Section 4 or Owner’s Request for Conveyance in compliance with Section 5 hereof.

(t) “Sale Right” –the right of Host to cause Owner to sell the Property pursuant to Section 1 hereof.

(u) “Sale Right Term” –the time period during which Host may exercise its Sale Right hereunder pursuant to the terms of Section 4 hereof, commencing upon the fifteenth anniversary of the issuance of the Bonds and terminating on the date upon which all Project Debt is retired, at which point Host’s Sale Right under the terms of Section 5 hereof shall arise.

(v) “Transaction Costs” – to the extent not otherwise described herein, any costs or expenses of any kind or nature associated with or incurred by Owner and/or Bond Trustee in connection with the consummation of the Conveyance, regardless of whether such costs and expenses are customarily borne by the seller or purchaser in any such transaction, including but not limited to taxes, recording fees and other impositions, Owner’s and Bond Trustee’s legal and other professional fees, fees for verification agents, bidding agents, escrow agents, custodians or trustees, assumption fees, prepayment fees, the cost of the appraisal, brokers’ fees and expenses, surveys, inspections, title commitments, title insurance premiums and other title-related fees, and all amounts required for indemnification of Owner, Bond Trustee and Project Administrator.

(w) “Middle-Income Affordable Unit(s)” or “Middle-Income Units” – means all rental units within the Property, except those that are on-site manager units. All Middle-Income Affordable Units shall be subject to Article 3 that provides for, *inter alia*, rent restrictions as provided in Section 22 hereof and shall only be occupied by income-eligible tenants as and to the extent provided in the Regulatory Agreement.

**Section 3. Effectiveness; Term and Termination.** The Sale Right shall become and remain effective during the Sale Right Term. Owner agrees that it will not enter into any agreement to sell or otherwise transfer or convey any ownership interest in all or any part of the Property during the Sale Right Term other than as may be allowed or required by the Indenture in the event

of default under the terms of the Indenture, without (i) the prior written approval or the specific written request of the Host, and (ii) delivery of an Opinion of Bond Counsel to the Owner substantially to the effect that such sale will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

**Section 4. Manner of Exercise of Sale Right.**

(a) Host's Notice. To exercise the Sale Right, Host shall provide a notice (an "Exercise Notice") to Owner (with a copy to the Project Administrator) at any time during the Sale Right Term.

(b) Sale of Property to or as Directed by Host. Unless Host notifies Owner in writing that it is withdrawing its Exercise Notice within fifteen (15) business days of delivering the Exercise Notice under Section 4(a) hereof, Owner shall be obligated to use its best efforts to sell good and marketable title to the Property within one hundred and twenty days (120) days following receipt of the Exercise Notice or as soon as possible thereafter, at a price acceptable to Host that is at or above the Minimum Sale Price (defined below) and otherwise on the terms set forth in this Agreement. The time frame to sell the Property may be extended by Host upon written notice to Owner. The purchase and sale agreement shall be in commercially standard form acceptable to Host in its reasonable discretion. Notwithstanding the foregoing, during the Sale Right Term, Host may instead direct Owner to sell the Property to any party designated by Host, or to Host itself, at a price designated by Host at or above the Minimum Sale Price, and Owner shall follow such directions. Owner shall incur no monetary liability to any party as a result of or otherwise in connection with the sale or failure to sell the Property as provided in this section. Owner shall direct the Bond Trustee to cooperate in the foregoing as and to the extent necessary or appropriate, and to the extent it is within the Owner's legal authority so to direct.

(c) Owner's Best Efforts to Sell. Owner shall exercise its best efforts in selling and conveying good and marketable title to the Property. The obligation of Owner to sell and convey the Property shall be on a best-efforts basis. Owner shall endeavor to sell the Property at a commercially reasonable price, subject to subsection (d) of this Section, by such means as it shall determine to be suitable for such purpose, and Owner shall incur no liability to any party as a result of or otherwise in connection with the sale or failure to sell. Subject to subsection (d), nothing herein shall require or prevent Owner selling the Property subject to the restrictions set forth in the Regulatory Agreement or similar types of restrictions established by Owner with the approval of Host. Owner shall direct the Bond Trustee in the foregoing as and to the extent necessary or appropriate.

(d) Sale Price. The Sale Price for any sale of the Property under this Section 4 or Section 5 shall be at least equal to the sum of the amounts set forth below (net of any adjustments or prorrations of the type described in Section 8(b)) (the "Minimum Sale Price"):

- i. An amount sufficient to either prepay, redeem in whole or fully defease for redemption on the earliest call date all Project Debt; plus

- ii. Any fees or other amounts not identified in clause (i) that may be necessary to affect the complete discharge of the Indenture and the complete release from and discharge of any lien, mortgage, or other monetary encumbrance on the Property; plus
- iii. All amounts required to pay the Host for all property taxes that were suspended during the term of this Agreement, including all amounts which would have been collected for all the affected taxing entities, minus any amounts paid to Host via the Host Fee, which amounts would be provided solely to Host as part of the sale; plus
- iv. Any unpaid Host Fee or Monitoring Fee, including accrued and unpaid interest thereon, if any; plus
- v. Any amounts due to Owner (including Owner Indemnified Persons, as provided in the Indenture), the Bond Trustee, the Property Manager, the Project Administrator, or any predecessor or successor, or any other Person under any indenture, loan agreement, bond, note, or other instrument relating to any Project Debt (including, without limitation, indemnification amounts, Owner's Extraordinary Costs and Expenses, recurrent and extraordinary fees and expenses, and reimbursable costs and expenses of any kind or nature); plus
- vi. Transaction Costs; minus

Any funds held by or for Owner under the Indenture applied to the retirement of Project Debt. Owner shall retain all moneys in the Extraordinary Expense Fund and may, in addition retain such portion of moneys in the Rebate Fund and in any other funds it deems reasonable as a reserve against future expected costs and expenses of the type described in subparagraph [(v.)]. Prior to the closing of any Conveyance of the Property, Owner shall provide to Host for Host's review and approval an estimate of each component of the proposed Minimum Sales Price, including a detailed list of any and all fees and costs. Prior to the closing of a Conveyance, Owner shall provide, or cause to be provided, a detailed accounting of the actual amounts for such components. The cost of preparing such estimates and accounting shall be Transaction Costs reimbursable to Owner.

At the election of Host, in its sole discretion, the Minimum Sale Price may be reduced by some or all of the amounts otherwise owed to Host under [subparagraph (iii) and (iv)], above.

**Section 5. Mandatory Conveyance after Retirement of Project Debt.** Upon the retirement of all Project Debt, Owner shall use its best efforts to effect a Conveyance to a third party within one hundred and twenty days (120) or as soon as possible thereafter, subject to Section 4(d) hereof; provided, however, that Host, by notice to Owner within sixty (60) days after notice from Owner that no Project Debt remains outstanding, may direct Owner to transfer the Property to Host or any person designated by Host for a price determined by Host at or above the Minimum Sale Price and Owner shall do so. Host may extend the aforementioned time frames by providing written notice to Owner. Nothing herein shall require or prevent Owner selling the Property



subject to the restrictions set forth in the Regulatory Agreement or similar types of restrictions established by Owner with the approval of Host.

**Section 6. Surplus Cash; Surplus Conveyance Proceeds.**

Upon any Conveyance of the Property, Owner shall apply the proceeds of such Conveyance (i) to redeem the Bonds then Outstanding, (ii) to prepay, redeem in whole or fully defease any other Project Debt, and (iii) to pay any fees or other amounts listed in Section 4(d)(ii) – ([v]). Any proceeds remaining following the foregoing payments (such remaining amounts hereinafter referred to as “Surplus Conveyance Proceeds”) shall be transferred to Host and Host may use such Surplus Conveyance Proceeds as it determines appropriate in its sole discretion. Owner shall provide Host a full accounting of the distribution of such proceeds.

**Section 7. Terms of Conveyance.**

(a) The Conveyance shall be in the nature of a grant deed to Purchaser in which Owner shall deliver one or more deeds, bills of sale, or other instruments of transfer without recourse or warranty of any kind or nature (except as provided at Section 7(b) and 7(d)); provided that Owner shall provide an ALTA owner’s policy of title insurance, the cost of which shall be a Transaction Cost and at no cost to Owner. If Purchaser is either Host or Host’s designee, Owner and the Purchaser shall enter into a purchase and sale agreement consistent with the terms of this Agreement and in commercially reasonable form as approved by Owner and Host.

(b) The Property will be conveyed to Purchaser in AS IS CONDITION, WITH ALL FAULTS, and without representations or warranties of any kind or nature as to the condition of the Property; provided that Host may require disclosure by Owner, Property Manager and Project Administrator of the physical conditions of the Property actually known by the persons employed by those entities with principal responsibilities that encompass the physical operation and maintenance of the condition of the Property. In addition, Owner, Property Manager and Project administrator shall provide to Host or its designee the financial statements for the operation of the Property for the immediately prior five (5) years, and all financial records pertaining to amounts then due and owing at the close of escrow and thereafter. Host is not required to accept the property in an “AS CONDITION WITH ALL, WITH ALL FAULTS.” Host may require a Due Diligence period as set forth in Section 7(d) and may require that Owner cure issues identified in the Host’s Due Diligence.

(c) There shall be no partial transfer and, upon consummation of the Conveyance, Owner shall be fully divested of any and all right, title or interest in and to the Property.

(d) Notwithstanding Section 7(b), Host shall have right to conduct Due Diligence on the Conveyance of the Property to the Host prior to any Conveyance as follows:

1. Host’s obligation to purchase the Property is expressly conditioned on Host’s approval of the condition of title of the Property in accordance with the following:

(i) Owner shall provide the following: (1) a preliminary title report, together with

a legible copy of all Exceptions shown in the preliminary title report, including each document referred to in the preliminary title report and (2) an Environmental Assessment Report (“ESA”). The parties agree that the findings stated in the ESA Report will serve as the baseline for the environmental condition of the Property as of the Closing Date.

(ii) Host’s Approval of Preliminary Title Report. Host will have forty-five (45) days after receipt to review the preliminary title report and to deliver written notice of any objection to the Exceptions and other matters disclosed therein (Title Objection”) to Owner.

(iii) Permitted Exceptions. The following Exceptions may be approved by Host, including but not limited to: (i) any lien for local real estate Taxes and assessments not yet due or payable, including (without limitation) special Taxes under Gov. Code §§53311-53368.3 or installment assessments under Streets & Highways Code §§85008887; (ii) the standard preprinted exceptions and exclusions of the Title Company; (iii) any matters approved or deemed approved by Host pursuant to this Section 7; and (iv) any matters which would be disclosed by an accurate rate survey or physical inspection of the Property (collectively, “Permitted Exceptions”).

(iv) Title Objections. With respect to any Title Objection, Owner will have thirty (30) days after receipt of Host’s Title Objection to give notice to Host in writing, stating either (i) the manner in which Owner will remove or cure such Title Objection or (ii) that Owner will not remove or cure such Title Objection. If Owner fails to deliver such notice within the time specified herein, Owner shall be deemed to have elected not to remove or cure such Title Objection.

(v) Owner Elects Not to Cure. If Owner elects not to cure or remove a Title Objection (or is deemed to have so elected), or Owner’s cure is not acceptable to Host, then Host will have thirty (30) days thereafter to provide Owner with written notice that Host (i) accepts the matters disclosed in the preliminary title report, waive such Title Objection, and accept the Exception shown in the preliminary title report as a Permitted Exception or (ii) is terminating the Conveyance to the Host.

(vi) Additional Encumbrances. If any encumbrance or other Exception to title arises or is discovered after the delivery of the preliminary title report, the party discovering such additional encumbrance must promptly give written notice to the other. No later than five (5) days after delivery of the notice of such additional encumbrance, Host will deliver written notice to Owner specifying whether the additional encumbrance is a Title Objection or a Permitted Exception. If Host objects to the additional encumbrance, the parties will proceed in the same manner as set forth above for Title Objections in Sections (d)(1)(iv)-(v).

2. Host’s obligation to purchase the Property is expressly conditioned on its approval, in its sole discretion, of the condition of the Property and all other matters concerning the Property,

including without limitation economic, financial, and accounting matters relating to or affecting the Property, its operations (including operating expenses), or its value, title (Section (d)(1)), and the physical and environmental condition of the Property. Host will have one hundred eighty (180) days after written notice that Owner is making a Conveyance of the property under the terms of this Agreement to Host (“Due Diligence Period”) to conduct such investigations as Host may choose (“Due Diligence”) to determine whether this contingency is met. Host and Host’s representatives will be given reasonable access to the Property during regular business hours for the purpose of performing such Due Diligence.

3. On or before expiration of the Due Diligence Period, Host will deliver written notice to Owner that it elects to proceed with the Conveyance of the Property to Host by Owner. Host may extend the Due Diligence Period by providing notice to Owner.

**Section 8. Closing.**

(a) The closing of the Conveyance (“Closing”) shall take place, in the case of a Conveyance pursuant to Section 4 hereof, not later than the one hundred and twentieth (120) calendar day following Owner’s receipt of the Exercise Notice, or as soon as possible thereafter, or a date designated by Host via written notice and in the case of a mandatory Conveyance pursuant to Section 5 hereof, not later than the one hundred and twentieth day (120) calendar day or as soon as possible thereafter or to a date designated by Host following the later of (i) the retirement of all Project Debt, or (ii) Owner's receipt of Host’s notice of its election to cause a Conveyance to Host or Host’s designee.

(b) Prorations. All general and special real property taxes and assessments, and rents shall be prorated as of the Closing, with Purchaser responsible for all such items to the extent arising or due at any time following the Closing and Owner responsible for all such items to the extent arising or due prior to the Closing. General real property taxes shall be prorated at the time of Closing based on the net general real property taxes for the year of Closing.

**Section 9. Recording.** This Agreement, and any amendment thereto, shall be recorded with the recorder’s office of the County; provided, that upon termination of the term of this Agreement, Host shall cooperate with Owner to remove any such recorded Agreement or amendment thereto from title to the Property upon Owner’s reasonable request therefor and, in any event, by no later than thirty (30) days after the expiration of the original term of this Agreement.

**Section 10. Conflicts with Regulatory Agreement.** In the event of any conflict between the terms of the Regulatory Agreement and this Agreement, the specific terms and requirements set forth in the Regulatory Agreement shall prevail, except for the Inclusionary Housing Units which are subject to the Inclusionary Housing Documents.

**Section 11. Maintenance of Membership.** To the extent required in order to preserve the Property’s exemption from property tax or to preserve the tax-exempt status of interest on the Bonds, Host agrees to remain a member of Owner’s joint powers authority so long as any Bonds remain Outstanding.

**Section 12. Assignment.** Neither party to this Agreement may assign its interests, obligations, rights and/or responsibilities under this Agreement without the prior written consent of the other party.

**Section 13. Tenant Displacement.** Owner shall provide a minimum 120 days' notice of any pending Conveyance (right to sale or mandatory conveyance) to all tenants (or such shorter amount of notice as may be permitted by Owner's obligations to affect a Conveyance hereunder). If a tenant is required to move from the Property, Owner shall provide such tenant household the greater of (a) the cash equivalent of three months' rent as relocation assistance, or (b) the relocation assistance required by then applicable state law or local law, provided that the costs thereof are Transaction Costs and payable solely from the sale proceeds of the Property.

**Section 13.5 Limitation on Liability.** The Bonds will not be a debt, liability or obligation of Host but, rather, solely indebtedness of the Owner, limited to the Trust Estate pledged and available therefor under the Indenture. Under no circumstances shall Host be obligated to (i) provide any financing to acquire or construct the Project or any refinancing of the Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, construction, rehabilitation or operation of the Project; or (iii) make any contribution or advance any funds whatsoever to the Owner.

## ARTICLE 2 PROTECTION OF PROJECT/PROPERTY

**Section 14. No Delay in Bond Payments.** Owner shall ensure that all required Bond payments are timely made and not delayed as and to the extent required by the Indenture. Owner shall not refinance or restructure the Bonds so that the amount due (including but not limited to principal and interest) on the Bonds are increased or the payment period is extended without the prior written approval of Host.

**Section 15. Debt Service Coverage Ratio.** Owner shall maintain a minimum debt service coverage ratio as and to the extent required by the Indenture.

**Section 16. No Equity Loans/Sale.** Owner shall not encumber the Property with any type of debt instrument using the Property as collateral of any type without the prior written consent of Host. Owner may not sell all or any part of the Property without prior written consent of Host. Owner shall provide the Host any and all information requested by the Host when requesting consent as set forth in this Section 16.

**Section 17. Reserved.**

**Section 18. Foreclosure on the Property.** The Host acknowledges that this Agreement is subordinate in lien priority to the Deed of Trust securing the Bonds, and that foreclosure of such Deed of Trust will wipe out this Agreement by operation of law.

**Section 19. Maintenance/Physical Condition of Property.** Owner shall continually maintain the Property (including all residential units) as and to the extent required by the Indenture and the Regulatory Agreement. Host shall have the right to inspect the Project from time to time, including reasonable access into individual units from time to time, on reasonable notice

and during normal business hours, with approval of the occupying tenants, in order to verify compliance with the foregoing maintenance covenant. Further, each Workforce Affordable Unit shall be requalified annually, as to the foregoing maintenance covenant, as part of the annual tenant requalification process described in Section 26 below. Any deficiencies in the physical condition of the Property or a Workforce Affordable Unit shall be corrected by Owner at Owner's expense within thirty (30) days of the identification of such deficiency by Host and delivery of written notice of the same to Owner (unless such deficiency is not capable of being cured within such thirty (30) day period, then such amount of time as Host determines is needed, not to exceed one hundred twenty (120) days, provided Owner commences cure within such thirty (30) day period and continues to diligently pursue cure). Owner shall establish and fund the Operating Reserve Fund (as defined in the Indenture) in an amount as required by the Indenture to ensure adequate funds are available to pay for capital repairs as required to maintain the Property as required by this Section.

**Section 20. Reserved.**

**Section 21. Enforcement; Remedies.**

(a) **Standing; Equitable Remedies; Remedies Cumulative.** Owner expressly agrees and declares that Host or any successor public agency shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce all the provisions this Agreement and/or to recover damages, including compensatory damages, for any act or omission constituting a default or failure to perform any of the terms of the Agreement hereunder and which act or omission remains uncured following sixty (60) days' written notice to Owner by Host (or up to one hundred eighty (180) days after notice, if actions to correct the material default have been timely initiated and are, in the reasonable opinion of Host, being diligently pursued), notwithstanding the fact that such damages or the detriment arising from such a default or failure to perform the terms of this Agreement that remains uncured as aforesaid may have actually been suffered by some other person or by the public at large. Further, Owner expressly agrees that injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder to assure compliance with this Agreement. The remedies set forth in this Section are cumulative to any other remedies that may be had and not mutually exclusive, except to the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction.

(b) **Excess Rents.** If the default in question involves the collection of rents in excess of the rents permitted hereunder, the amount of such compensatory damages shall be the product of multiplying: (a) the number of months that the default in question has continued until the time of trial by (b) the result of subtracting the rents properly chargeable hereunder for the Affordable Units in question from the amount actually charged for those Affordable Units. Owner and Host agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to Host as a result of such a default and that the foregoing formula is a fair and reasonable method of approximating such damages. The Host shall be entitled to seek and to recover damages in separate actions for successive and separate breaches which may occur. Further, interest shall accrue on the amount of such damages from the date of the breach in question at the rate of ten percent (10%) per annum or the maximum rate than allowed by law, whichever is less.

## ARTICLE 3 MIDDLE-INCOME AFFORDABILITY REQUIREMENTS

**Section 22. Middle-Income Affordable Unit Restrictions.** The Project shall be rent restricted as set forth in **Section XXX** of the Regulatory Agreement, which includes, but is not limited to, the maximum amounts of rents that may be set and the percentages of units to be rented as Low-Income Units, Median Income Units and Moderate-Income Units. Owner shall report to Host annually or upon request any information requested by Host to ensure compliance with this Section 22, including, but not limited to the rents set per unit, the percentages of units to be rented as Low-Income Units, Median Income Units and Moderate-Income Units, and unit distribution within the Project. Owner shall not amend the Regulatory Agreement to increase the maximum income levels or maximum rents of the Affordable Units, or to revise the percentages of units to be rented as Low-Income Units, Median Income Units and Moderate-Income Units, without the prior written approval of Host. Owner shall comply with such provisions of the Regulatory Agreement.

**Section 23. Occupancy by Eligible Tenants.** During the term of this Agreement all Workforce Units shall be occupied only by Eligible Tenants as set forth in **Section XXX** of the Regulatory Agreement. For Affordable Units subject to the Inclusionary Housing Requirements, they shall be subject to the Inclusionary Housing documents.

**Section 24. Rent Adjustment.** Rents may be increased (up to 4% annually) or decreased (to the applicable rent category) as set forth in **Section XXX** of the Regulatory Agreement.

**Section 25. Workforce Marketing Plan Compliance; Selection of Residents.**

(a) **Marketing Plan.** Owner shall, at a minimum, utilize the Host's standardized management and affirmative fair marketing plan for rental of all of the Workforce Units. The affirmative fair marketing plan, at a minimum, requires publicizing the availability of the Workforce Affordable Units within the City, such as notices in any Host-sponsored newsletter, advertising in local newspapers and notice in City offices, particularly in areas of the community and in media forms to reach the targeted groups. In addition, within \_\_\_\_\_ days after closing, Owner shall update the Project's website to reflect the terms and conditions of this Agreement and any Regulatory Agreement that governs the occupancy requirements of the Project (affordability levels, etc.). Owner shall ensure that all previous market rate advertising is updated to reflect that the Project is now a work force housing project. This includes updating third party websites such as rent café, apartments.com, apartment finder, etc.). As provided above at Section 23, all tenants of a Workforce Affordable Unit shall meet the requirements to be an Eligible Tenant. The management marketing plan shall be in conformance with the terms and standards set forth in this Agreement. No preference may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household.

(b) **Affirmative Marketing.** The Project will maintain a waiting list and follow the affirmative marketing procedures in compliance with HCD's Affirmatively Furthering Fair Housing.

(c) **No Discrimination.** Owner shall not discriminate in renting units against voucher holders including those receiving rental assistance from any local, federal, state, or non-profit

agency nor shall there be any form of discrimination or denial of use based on a Tenant's affordable housing rental status or income in their use of Project services, facilities, entrances, or amenities.

(d) **Screening.** Nothing herein shall restrict Owner from screening tenants through the application of criteria which is lawful and customary in apartment management in San Diego County and otherwise consistent with federal, state, and local regulations and restrictions related to the financing for the Project. In reviewing and considering applications from prospective tenants, the Owner shall provide a preference to households which include one or more persons who live, work, or have been hired to work in the City, have graduated from a City high school, are employed by a public school district in the City, and/or are employed as a first responder.

**Section 26. Determination; Annual Requalification.** Owner shall obtain from each person to whom Owner leases a Workforce Affordable Unit a "Tenant Income Certification" ("TIC") in the form of Exhibit "D", attached hereto (or such other reasonable form as Host may from time to time adopt). Owner shall be entitled to rely on the TIC and supporting documents thereto in determining whether a household is an "Eligible Tenant" as may be established in Owner's application review guidelines. Owner shall retain the TIC and supporting documents for a period of not less than three (3) years after the applicant ceases to occupy a Workforce Affordable Unit. A Workforce Affordable Unit occupied by an Eligible Tenant, shall be treated as an Eligible Tenant until a recertification of such tenant's income demonstrates that such tenant no longer qualifies as an "Eligible Tenant."

Owner is required to recertify existing Eligible Tenants for continuing eligibility within ninety (90) days of the annual renewal of each tenant lease. Owner shall require all existing Eligible Tenants to complete a Recertification TIC and review such TIC to determine eligibility for occupancy of a Workforce Affordable Unit.

**Section 27. Certification; Annual Recertification.** Within ninety (90) days of execution of this PBA by all required Parties and annually each year during of the term of this Benefit Agreement, Owner shall certify to the Host under penalty of perjury, utilizing such forms and providing such backup documentation as requested by the Host.

**Section 28. Increased Income of Tenants.** **Section X** of the Regulatory Agreement shall govern, where, upon recertification of the income of an Eligible Tenant of a Workforce Affordable Unit, the Owner determines that such Tenant's income exceeds the applicable income restrictions.

**Section 29. Additional Limitations on Tenants.** The following restrictions shall also be applicable to the Affordable Unit:

(a) **Relationship with Owner, Bond Trustee, Property Manager and Project Administrator.** The Workforce Affordable Unit shall not be occupied by or leased to Owner, Bond Trustee, Property Manager or the Project Administrator, or any individuals who are partners or shareholders in Owner, Property Manager, Project Administrator or Bond Trustee or in any entity having an interest in Owner, Bond Trustee, Property Manager or Project Administrator or in the Property, officer, employee, agent, or consultant of the Owner, Bond Trustee, Property Manager or Project Administrator or any relative thereof (by blood or marriage).

(b) Owners of Real Property. The Workforce Affordable Unit shall not be occupied by or leased to any person or any household comprised of one or more persons who own real property.

(c) Liquid Asset Limitation. The Workforce Affordable Unit shall not be occupied by or leased to any person or household holding, directly or indirectly, liquid assets whose aggregate value exceeds, at the time of determination of eligibility, sixty-five percent (65%) of the then-current annual Area Median Income. As used herein, the term “liquid assets” refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term “liquid assets” shall not include retirement funds which are not readily accessible, or which cannot be accessed by the buyer without the buyer incurring a penalty.

**Section 30. Additional Lease Provisions/Annual Income Verification.** Owner agrees that it will require each Eligible Tenant to execute an Authorization for Release of Information, in the form attached hereto as Exhibit “E.” Owner agrees that it will include the following provision in all of its leases:

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

**Section 31. Monitoring.** It is contemplated that, during the term of this Agreement, the Host will perform the following monitoring functions. Notwithstanding the following description of the Host’s functions, Owner shall have no claim or right of action against the Host based on any alleged failure to perform such function. In addition, the Owner shall cooperate with and utilize such forms, software, websites, and third-party vendors as may be required by the Host. Host will endeavor to complete the following:

(a) Prepare and make available to Owner any general information that the Host possesses regarding income limitations and restrictions which are applicable to the Workforce Affordable Units;

(a) Review the documentation submitted by Owner in connection with the annual certification process for Eligible Tenants described in Section 26, above; and,





If to Host: City of Chula Vista  
276 4<sup>th</sup> Avenue, Building A  
Chula Vista, California 91910  
Attention: Housing Manager

With Copy to: City of Chula Vista  
276 4<sup>th</sup> Avenue, Building A  
Chula Vista, California 91910  
Attention: City Attorney

Such notices shall be deemed effective upon actual delivery or upon the date that any such delivery was attempted and acceptance thereof was refused, or if mailed, certified return receipt requested, postage prepaid, properly addressed, three (3) days after posting. These addresses may be changed by any party by written notice to all other parties.

B. **Consents and Approvals.** All consents and approvals and waivers required or asserted hereunder shall be in writing, signed by the party from whom such consent, approval, waiver, or notice is requested.

C. **Indemnity.** Owner agrees to indemnify, defend, and hold harmless the City of Chula Vista (“Host”) and any and all of its respective elected officials, members, officers, agents, servants, employees or volunteers (the “Indemnitees”) from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from the Bond issuance or sale, rental or operation of the Property and/or any of the units, including, without limitation, Owner’s obligation to pay relocation assistance as provided in Section 13, or from the default by Owner in the performance of its obligations under this Agreement; provided, however, that Owner shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the sole negligence or willful misconduct of the Indemnitees. Owner’s indemnity obligations hereunder shall survive the termination of this Agreement.

D. **Covenants to Run With the Land.** Owner agrees that all of its obligations hereunder shall constitute covenants, which shall run with the land and shall be binding upon the Property and upon every person having any interest therein at any time and from time to time during the term of this Agreement. Further, Owner agrees that, if a court of competent jurisdiction determines that the obligations set forth herein do not qualify as covenants running with the land, they shall be enforced as equitable servitudes.

E. Reserved.

F. **Pronouns.** Where appropriate to the context, words of one gender include all genders, and the singular includes the plural and vice versa.

G. **Amendments.** This Agreement may not be modified except in a written instrument signed by Host and Owner.

H. **Complete Agreement; Benefits.** This Agreement together with all schedules and

exhibits attached hereto and made part thereof supersedes all previous agreements, understandings and representations made by or between the parties hereto. This Agreement shall inure solely and exclusively to the benefit of the Owner and Host, and no other party shall have any right, remedy or claim under or by reason of this Agreement. There are no third-party beneficiaries of this Agreement.

I. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. All claims of whatever character arising out of this Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between Owner and any other party hereto, if and to the extent that such claim potentially could or actually does involve Owner, shall be filed and maintained in the Superior Court of California, County of San Diego, California. By executing and delivering this Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such court; (ii) waives any defense of forum non-conveniens; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by Owner of any prior notice or procedural requirements applicable to actions or claims against or involving governmental units and/or political subdivisions of the State of California that may exist at the time of and in connection with such matter.

J. **Legal Construction**. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalid provision shall be deemed severable, and shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain fully enforceable.

K. **Term**. This Agreement shall terminate upon the Conveyance of the Property as set forth in either Sections 4 or 5, in the event of a foreclosure, or upon the earlier conveyance of the property pursuant to a remedy for default under the Indenture.

L. **Captions**. The captions used in this Agreement are solely for convenience and shall not be deemed to constitute a part of the substance of the Agreement for purpose of its construction.

M. **Property Management**. The Owner shall comply with the terms of the Indenture and the Regulatory Agreement concerning property management.

N. **Property Maintenance Report**. The Owner shall comply with the terms of the Indenture and the Regulatory Agreement concerning property maintenance reporting and shall provide Host with copies of any such reports upon request.

O. **Host Charge**. Owner, or Bond Trustee on its behalf, shall pay to Host, commencing within 120 days of execution of this Agreement, continuing every year anniversary thereafter, and terminating upon Conveyance, an annual host charge of \$\_\_\_\_\_ with annual increases of two percent (2.00%). Amounts of the Host Fee not paid within thirty (30) days after delivery of written invoice for the same shall bear interest at the per annum rate of 8.00%, compounded annually, from the date of the invoice until paid. Should a host charge be determined to be improper in any manner or if Owner does not timely pay the Host Charge, Host, among its remedies, may

require Owner to provide additional Workforce Housing units at greater affordability levels, as directed by Host.

P. **Bond Issuance Fee.** Owner shall, upon sale of the Bonds, pay to Host 25% of the Bond Issuance fee for deposit in the general fund of the Host. Owner will donate or cause to be donated an additional 25% of the Bond Issuance fee to one or more non-profit organizations in the City of Host's choosing.

Q. **Additional Documents.** The parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement or to accomplish its intent.

R. **Counterparts.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original.

S. **Cost Reimbursement.**

(1) At the closing for the sale of the Bonds, Owner agrees to reimburse Host for all of its documented costs incurred in connection with Host's actual, third party costs incurred for the review and analysis of this Agreement and preparations for Owner's financing and acquisition of the Property

(2) In addition, Owner agrees to reimburse Host for all costs and fees, including reasonable attorney's fees, arising from an audit of Host by any state or federal agency due to Host's participation in the Project for reasons other than the gross negligence, fraud, willful misconduct, malfeasance or material violation of any law of the Host.

T. **Conflicts.** For sake of clarity, Jones Hall, A Professional Law Corporation ("Bond Counsel") represents the Owner in the matters covered by this Agreement and does not represent or owe any attorney-client or similar duty to Host with respect to any such matters.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set forth above.

**CMFA SPECIAL FINANCE AGENCY**

By:

\_\_\_\_\_  
Authorized Signatory

**CITY OF CHULA VISTA**

By:

\_\_\_\_\_  
Maria Kachadoorian  
City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

*Signature Page to Public Benefit Agreement*

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

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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 REAL PROPERTY**

The Land referred to herein is situated in the State of California, County of San Diego, Host of Chula Vista, and described as follows:

**EXHIBIT B**

**INCLUSIONARY HOUSING DOCUMENTS**



**EXHIBIT C**  
**REGULATORY AGREEMENT**

**RECORDING REQUESTED  
AND WHEN RECORDED MAIL TO:**

Jones Hall, A Professional Law Corporation  
475 Sansome Street, Suite 1700  
San Francisco, California 94111  
Attention: Josh D. Anzel, Esq.

***THIS SPACE IS FOR RECORDERS USE ONLY***

**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**(Title of Document)**

*Per Government Code 27388.1 (a)(1) "A fee of \$75 dollars shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel or real property. The fee shall not exceed two hundred twenty-five dollars (\$225)"*

Reason for Exemption:

- Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer subject to the imposition of documentary transfer tax (DTT).
- Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier.
- Exempt from fee per GC 27388.1 (a) (1); fee cap of \$225.00 reached.
- Exempt from the fee per GC 27388.1 (a) (1); not related to real property.

**Failure to include an exemption reason will result in the imposition of the \$75.00 Building Homes and Job Act Fee.**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:  
Jones Hall, A Professional Law Corporation  
475 Sansome Street, Suite 1700  
San Francisco, California 94111  
Attention: Josh D. Anzel, Esq.

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**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**By and Between**

**CMFA SPECIAL FINANCE AGENCY**

**and**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Trustee**

Dated as of \_\_\_\_\_ 1, ~~2021~~2022

**Relating to**

**CMFA Special Finance Agency  
Essential Housing Revenue Bonds, ~~Series 2021A-1~~  
(The Residences at Escaya)**

~~**CMFA Special Finance Agency  
Essential Housing Revenue Bonds, Series 2021A-2  
(The Residences at Escaya)**~~

**and**

~~**CMFA Special Finance Agency  
Subordinate Essential Housing Revenue Bonds, Series 2021B  
(The Residences at Escaya)**~~

## TABLE OF CONTENTS

Clause	Page
Section 1. Definitions and Interpretation .....	1
Section 2. Representations, Covenants and Warranties of the Owner.....	4
Section 3. Residential Rental Project.....	4
Section 4. Tenants; Income Requirements.....	5
Section 5. Affordable Rental Requirements; Limitations on Rent Increases; Rent Reductions .....	7
Section 6. Tax-Exempt Status of Bonds .....	8
Section 7. Requirements of the Owner .....	8
Section 8. Modification of Covenants .....	9
Section 9. Indemnification.....	9
Section 10. Consideration.....	9
Section 11. Reliance .....	9
Section 12. Transfer of the Project .....	9
Section 13. Term .....	10
Section 14. Covenants to Run With the Land.....	11
Section 15. Burden and Benefit .....	11
Section 16. Uniformity; Common Plan .....	11
Section 17. Default; Enforcement.....	12
Section 18. Recording and Filing.....	12
Section 19. Governing Law; Venue.....	13
Section 20. Amendments; Waivers .....	13
Section 21. Notices .....	13
Section 22. Severability .....	14
Section 23. Multiple Counterparts .....	14
Section 24. Limitation on Liability.....	14
Section 25. Annual Reporting Covenant .....	14
Section 1. Definitions and Interpretation .....	1
Section 2. Representations, Covenants and Warranties of the Owner.....	4
Section 3. Residential Rental Project.....	4
Section 4. Tenants; Income Requirements.....	5
Section 5. Affordable Rental Requirements; Limitations on Rent Increases; Rent Reductions .....	7
Section 6. Tax Exempt Status of Bonds .....	8
Section 7. Requirements of the Owner .....	8
Section 8. Modification of Covenants .....	8
Section 9. Indemnification.....	9
Section 10. Consideration .....	9
Section 11. Reliance.....	9
Section 12. Transfer of the Project .....	9
Section 13. Term.....	10
Section 14. Covenants to Run With the Land.....	11
Section 15. Burden and Benefit .....	11
Section 16. Uniformity; Common Plan .....	11

Section 17.	Default; Enforcement	11
Section 18.	[Reserved]	12
Section 19.	Recording and Filing	12
Section 20.	Reserved	12
Section 21.	Governing Law; Venue	12
Section 22.	Amendments; Waivers	13
Section 23.	Notices	13
Section 24.	Severability	14
Section 25.	Multiple Counterparts	14
Section 26.	Limitation on Liability	14
Section 27.	Annual Reporting Covenant	14

EXHIBIT A	DESCRIPTION OF REAL PROPERTY
EXHIBIT B	FORM OF INCOME CERTIFICATION
EXHIBIT C	FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (as supplemented and amended from time to time, this “Regulatory Agreement”) is made and entered into as of \_\_\_\_\_ 1, 2021~~2022~~, by and between the CMFA SPECIAL FINANCE AGENCY, a joint exercise of powers authority duly organized and existing under the laws of the State of California, as issuer of the Bonds (as further defined herein) and as owner of the Project identified herein (together with any successor to its rights, duties and obligations hereunder, the “Owner”), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as trustee (together with its successors in trust and assigns, the “Trustee”).

WITNESSETH:

WHEREAS, pursuant to Chapter 5 of Division 7 of Title 1 of the California Government Code (the “Act”), the Owner proposes to issue its Essential Housing Revenue Bonds, Series 2021~~2022~~A-1 (The Residences at Escaya) (the “Series 2021~~2022~~A-1 Bonds”), Essential Housing Revenue Bonds, Series 2021~~2022~~A-2 (The Residences at Escaya) (together with the Series 2021~~2022~~A-1 Bonds, the “Series A Bonds”), and Subordinate Essential Housing Revenue Bonds, Series 2021~~2022~~B (The Residences at Escaya) (together with the Series A Bonds, the “Bonds”) pursuant to a Trust Indenture, dated as of \_\_\_\_\_ 1, 2021~~2022~~ (as supplemented and amended from time to time, the “Indenture”), between the Owner and the Trustee;

WHEREAS, a portion of the proceeds of the Bonds will be used to provide, in part, financing for the acquisition of the 272-unit multifamily rental housing project known as The Residences at Escaya, located on the real property site described in Exhibit A hereto (as further described herein, the “Project”);

WHEREAS, to satisfy the public purposes for which the Bonds are authorized to be issued under the Act, and in furtherance of certain specific public purposes of the Owner, previously approved by the Owner’s Resolution No. 21-\_\_\_\_\_, which include supporting, preserving and providing low income, median income and moderate income multifamily rental housing in areas in which demand for such housing is not currently being adequately met, certain limits on the occupancy of units in the Project need to be established and certain other requirements need to be met;

NOW, THEREFORE, in consideration of the issuance of the Bonds by the Owner and the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Trustee hereby agree as follows:

Section 1. Definitions and Interpretation. Unless the context otherwise requires, the capitalized terms used herein shall have the respective meanings assigned to them in the recitals hereto, in this Section 1, or in the Master Glossary of Terms, dated as of \_\_\_\_\_ 1, 2021~~2022~~.

“Administrator” means any administrator or program monitor appointed by the Owner to administer this Regulatory Agreement, and any successor administrator appointed by the Owner.

“Area” means the Metropolitan Statistical Area or County, as applicable, in which the Project is located, as defined by HUD.

“Bonds” has the meaning given to it in the recitals hereto.

“Certificate of Continuing Program Compliance” means the Certificate to be filed by the Owner with the Administrator, pursuant to Section 4(e) hereof, which shall be substantially in the form attached as Exhibit C hereto or in such other comparable form as may be provided by the Owner.

“City” means the City of Chula Vista, California.

“Closing Date” means \_\_\_\_\_, ~~2021~~2022, the date the Bonds are issued and delivered to the initial purchaser thereof.

“Compliance Period” means the period beginning on the Closing Date and ending on the first date on which there are no Bonds Outstanding.

“County” means the County of San Diego, California.

“Deed of Trust” means the Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of the Closing Date, by the Owner granting a lien on its fee simple interest in the Property, subject to Permitted Encumbrances, to the Trustee for the benefit of the holders from time to time of the Bonds, as the same may be modified, amended or supplemented from time to time, or any deed of trust (or similar security instrument) containing a power of sale clause reflecting a valid, perfected first priority lien on the fee interest in the Project delivered by the Owner to secure the Owner’s obligations to a third-party lender.

“Gross Income” means the gross income of a person (together with the gross income of all persons who reside with such person in one residential unit) as calculated in the manner prescribed by Section 8 of the Housing Act.

“Housing Act” means the United States Housing Act of 1937, as amended, or its successor.

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

“Income Certification” means a Tenant Income Certification and a Tenant Income Certification Questionnaire in the form attached as Exhibit B hereto or in such other comparable form as may be provided by the Owner.

“Low Income Tenant” means a tenant occupying a Low Income Unit.

“Low Income Unit” means any available unit if the aggregate Gross Income of all tenants therein does not exceed eighty percent (80%) of median gross income for the Area, with adjustments for family size. The determination of an available unit’s status as a Low Income Unit shall be made by the Owner upon commencement of each lease term with respect to such unit, and annually thereafter, on the basis of an Income Certification executed by each tenant.

“Management Agreement” means that certain Property Management Agreement, dated as of the date hereof, by and among the Owner and the Manager.

“Manager” means \_\_\_\_\_, and any other Person who is an assignee of the initial Management Agreement.

“Median Income Tenant” means a tenant occupying a Median Income Unit.

“Median Income Unit” means any available unit if the aggregate Gross Income of all tenants therein does not exceed one hundred percent (100%) of median gross income for the Area, with adjustments for family size. The determination of an available unit’s status as a Median Income Unit shall be made by the Owner upon commencement of each lease term with respect to such unit, and annually thereafter, on the basis of an Income Certification executed by each tenant.

“Moderate Income Tenant” means (i) a tenant occupying a Moderate Income Unit or (ii) an Over Income Tenant if such tenant occupied an available unit on the effective date of this Regulatory Agreement.

“Moderate Income Unit” means any available unit if the aggregate Gross Income of all tenants therein does not exceed one hundred and twenty percent (120%) of median gross income for the Area, with adjustments for family size. The determination of an available unit’s status as a Moderate Income Unit shall be made by the Owner upon commencement of each lease term with respect to such unit, and annually thereafter, on the basis of an Income Certification executed by each tenant.

“Over Income Tenant” means a tenant occupying an Over Income Unit.

“Over Income Unit” means any occupied unit in which the aggregate gross income of all tenants therein exceeds one hundred twenty percent (120%) of median gross income for the Area, with adjustments for family size.

“Project” means the 272-unit multifamily rental housing development to be located in the City on the real property site described in Exhibit A hereto, consisting of those facilities, including real property, structures, buildings, fixtures or equipment situated thereon, as it may at any time exist, the acquisition of which facilities is to be financed, in whole or in part, from the proceeds of the sale of the Bonds, and any real property, structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of the facilities described in the Deed of Trust.

“Regulations” means the Income Tax Regulations of the Department of the Treasury applicable under the Code from time to time.

“Regulatory Agreement” means this Regulatory Agreement and Declaration of Restrictive Covenants, as it may be supplemented and amended from time to time.

“Rental Payments” means the rental payments paid by the occupant of a unit, excluding any supplemental rental assistance to the occupant from the State, the federal government, or any other public agency.

“Tax-Exempt” means with respect to interest on any obligations of a state or local government, including the Bonds, that such interest is excluded from gross income for State of California personal income and federal income tax purposes; provided, however, that such interest may be includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

“TCAC” means the California Tax Credit Allocation Committee.



“Transfer” means the conveyance, assignment, sale or other disposition of all or any portion of the Project; and shall also include, without limitation to the foregoing, the following: (1) an installment sales agreement wherein Owner agrees to sell the Project or any part thereof for a price to be paid in installments; and (2) an agreement by the Owner leasing all or a substantial part of the Project to one or more persons or entities pursuant to a single or related transactions.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

The parties to this Regulatory Agreement acknowledge that each party and their respective counsel have participated in the drafting and revision of this Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Regulatory Agreement or any supplement or exhibit hereto.

Section 2. Representations, Covenants and Warranties of the Owner.

(a) The Owner hereby incorporates herein, as if set forth in full herein, each of the representations, covenants and warranties of the Owner contained in the Tax Certificate and the Indenture relating to the Project.

(b) The Owner hereby represents and warrants that the Project is located entirely within the City.

(c) The Owner acknowledges, represents and warrants that it understands the nature and structure of the transactions contemplated by this Regulatory Agreement; that it is familiar with the provisions of all of the documents and instruments relating to the Bonds to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions.

Section 3. Residential Rental Project. For the term of this Regulatory Agreement, the Owner hereby represents, covenants, warrants and agrees as follows:

(a) The Project will be owned and operated for the purpose of providing multifamily residential rental property. The Owner will own, and cause the Project to be managed and operated, as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, in accordance with such requirements as may be imposed thereby on the Project from time to time. The Owner shall cause the Project to be maintained as a Class A property but no less than the standard required by the Uniform Physical Conditions Standards promulgated by the Department of Housing and Urban Development (24 CFR §5.705) and in a good, habitable and safe (so as to not threaten the health or safety of the Project’s tenants or their invited guests) condition and repair

(reasonable wear and tear excepted) and shall create and fund a Capital Expense Fund and shall cause Capital Repairs to be made on an annual basis during the Compliance Period. Capital Repairs shall include, without limitation, the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area and exterior repainting.

(b) Except as otherwise approved by the Owner, all of the dwelling units in the Project (except for the units set aside for resident managers or other administrative uses) will be similarly constructed units, and each dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(c) None of the dwelling units in the Project will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park; provided that the use of certain units for tenant guests on an intermittent basis shall not be considered transient use for purposes of this Regulatory Agreement. Owner shall not rent dwelling units for a term of 30 days or less, and shall use commercially reasonable efforts to inform residents that short-term rentals of 30 days or less are prohibited.

(d) No part of the Project will at any time during the Compliance Period be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or use, and the Owner will not take any steps in connection with a conversion of the Project to condominium ownership during the Compliance Period.

(e) All of the available units in the Project will be available for rental during the period beginning on the date hereof and ending on the termination of the Compliance Period on a continuous basis.

Section 4. Tenants; Income Requirements. The Owner shall comply, or shall cause the Manager to comply, with the following requirements:

(a) During the Compliance Period, except for units occupied by residential managers, for which no income or rent restrictions shall apply, the Owner shall use its best efforts to ensure that the following income restrictions are met at all times:

(i) no less than thirty-three and 33/100 percent (33.33%) of the completed residential units in the Project shall be Low Income Units;

(ii) no less than thirty-three and 33/100 percent (33.33%) of the completed residential units in the Project shall be Median Income Units; and

(iii) the balance of the completed residential units in the Project shall be Moderate Income Units;

provided, that any unit remaining vacant for at least 30 consecutive days may be offered and leased as a Low Income Unit, Median Income Unit or Moderate Income Unit without regard for the requirements set forth in sub-paragraphs (i), (ii) and (iii) above. For the avoidance of doubt, any vacant unit shall only be offered as a Low Income Unit, Median Income Unit or Moderate Income Unit.

(b) No tenant shall be denied continued occupancy of a unit in the Project because, after admission, the aggregate Gross Income of all tenants in the unit occupied by such tenant increases to exceed the qualifying limit for the respective Low Income Unit, Median Income Unit or Moderate Income Unit initially occupied by such tenant. However, if after a tenant's initial occupancy of a Low Income Unit, Median Income Unit or Moderate Income Unit, as applicable, the aggregate Gross Income of tenants in such unit, as of the most recent determination thereof, exceeds that which is defined for such unit occupied by the same number of tenants, the next available unit of comparable or smaller size shall, subject to the discretion of the Owner and Manager as described in the next succeeding paragraph, be rented (or held vacant and available for immediate occupancy by) in a manner that would maintain the unit mix required by Section 4(a) hereof. For the avoidance of doubt, this Section 4(b) shall apply to existing tenants occupying the Project on the Closing Date.

Notwithstanding any provision of this Regulatory Agreement to the contrary, the Owner shall verify, or cause the Manager to verify, all tenant incomes at least annually and shall continually re-balance the mix of household incomes by leasing vacant units to Low Income Tenants, Median Income Tenants or Moderate Income Tenants as needed to meet the income set-aside requirements set forth in this Section 4(a).

(c) For the Compliance Period, the Owner shall cause the Manager to obtain, complete and maintain on file Income Certifications for each tenant, including (i) an Income Certification dated immediately prior to the initial occupancy of such tenant in the unit and a second Income Certification dated one year after the tenant's initial move-in date, and (ii) thereafter, an annual verifiable self-certification with respect to each tenant. The Owner shall, or shall cause the Manager to, provide such additional information as may be required in the future by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to Tax-Exempt obligations. Upon request of the Administrator or the Trustee, copies of Income Certifications for tenants commencing or continuing occupation of a residential unit shall be submitted to the Administrator or the Trustee, as requested.

(d) The Owner shall cause the Manager to verify that the income information provided by an applicant in an Income Certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain pay stubs for the three most recent pay periods, (2) obtain an income tax return for the most recent tax year, (3) obtain a credit report or conduct a similar type credit search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification reasonably acceptable to the Owner.

(e) The Owner shall prepare and submit or cause the Manager to prepare and submit to the Administrator not less than annually, commencing not less than one year after the Closing Date, a Certificate of Continuing Program Compliance executed by the Owner in substantially the form attached hereto as Exhibit C.

(f) For the Compliance Period, all tenant leases or rental agreements shall be subordinate to this Regulatory Agreement and the Deed of Trust. All leases shall contain clauses, among others, wherein each tenant: (i) certifies the accuracy of the statements made by such tenant in the Income Certification; (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such tenant, that such tenant will comply promptly with all requests for information with respect thereto from the Owner or the Administrator on behalf of the Owner, and that the failure to provide accurate information in the Income Certification or self-certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such tenant; (iii) acknowledges that the Owner has relied on the statements made by such tenant in the Income Certification and supporting information supplied by the tenant in determining qualification for occupancy of a Low Income Unit, Median Income Unit or Moderate Income Unit, as applicable, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease or rental agreement; and (iv) agrees that the tenant's income is subject to annual certification in accordance with Section 4(c) and that if upon any such certification the aggregate Gross Income of tenants in such unit exceeds the applicable income limit under Section 4(b), the unit occupied by such tenant may cease to qualify as a Low Income Unit, Median Income Unit or Moderate Income Unit, as applicable, and such unit's rent may be subject to increase.

(g) In reviewing and considering applications from prospective tenants, the Owner shall provide a preference to households which include one or more persons who live, work, or have been hired to work in the City, have graduated from a City high school, are employed by a public school district in the City, and/or are employed as a first responder.

Section 5. Affordable Rental Requirements; Limitations on Rent Increases; Rent Reductions. During the Compliance Period, except for units occupied by residential managers, for which no income or rent restrictions shall apply, in addition to the other requirements set forth herein, the Owner hereby agrees that it shall comply, or cause the Manager to comply, with the following:

(a) The Rental Payments for the Low Income Units paid by the tenants thereof shall not exceed 35% of the Low Income limit for the [San Diego Standard Metropolitan Area County](#), adjusted for household size, as published annually by HUD and utilized by TCAC.

(b) The Rental Payments for the Median Income Units paid by the tenants thereof shall not exceed 35% of the Median Income limit for the [for the San Diego Standard Metropolitan Area County](#), adjusted for household size, as published annually by HUD and utilized by TCAC.

(c) The Rental Payments for the Moderate Income Units paid by the tenants thereof shall not exceed 35% of the Moderate Income limit for the [County for the San Diego Standard Metropolitan Area](#), adjusted for household size, as published annually by HUD and utilized by TCAC.

(d) The Owner shall accept as tenants, on the same basis as all other prospective tenants, qualified low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act.

For purposes of this Section 5, base rents shall be adjusted for household size using the following assumptions:

Unit Size	Assumed Occupancy
-----------	-------------------

studio	1
one-bedroom	2
two-bedroom	3
three-bedroom	4
four-bedroom	5

(e) The following limitations shall apply to annual rent increases for households occupying available units in the Project:

(i) For a household qualifying as a Low Income Unit, a Median Income Unit, or a Moderate Income Unit, as applicable, but for which annual rent payable is lower than the applicable limit set forth in paragraph (a), (b) or (c) above, respectively, rent shall not be increased more than 4% annually and then only up to the applicable limit set forth in such paragraphs above. [Tenants shall be provided 90-days notice of said rent increase.](#)

(ii) For a household qualifying as a Low Income Unit, a Median Income Unit, or a Moderate Income Unit, as applicable, but for which annual rent payable exceeds the applicable limit set forth in paragraph (a), (b) or (c) above, respectively, rent shall be decreased as soon as practicable to the applicable limit set forth in such paragraphs above. [Tenants shall be provided 90-days notice of said rent decrease.](#)

Except as set forth in Section 13 hereof, the covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Owner.

Section 6. Tax-Exempt Status of Bonds. The Owner hereby represents, warrants and agrees as follows:

(a) The Owner will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt nature of the interest on the Bonds and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(b) The Owner will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Owner, in order to ensure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of this Regulatory Agreement in the real property records of the County.

Section 7. Requirements of the Owner. In addition to other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 4 through 6 hereof, the Owner hereby agrees to comply with each of the requirements set forth in this Section 7, as follows:

(a) All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained in a reasonable condition for proper audit.

(b) The Owner shall appoint the Administrator to administer this Regulatory Agreement and to monitor performance by the Owner of the terms, provisions and requirements

hereof. In the event that the Administrator resigns or is terminated, the Owner shall, following consultation with the City, appoint a successor Administrator, experienced and capable, in the judgment of the Owner, of performing the duties under the Project Administration Agreement. The Owner shall comply with any reasonable request made by the Administrator to deliver to any such Administrator any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection by the Administrator. The fees and expenses of the Administrator shall be paid by the Owner.

Section 8. Modification of Covenants. The Owner and the Trustee hereby agree as follows:

(a) To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Trustee and the Owner, retroactively impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement, and if such requirements are applicable to the Project and compliance therewith is necessary to maintain the validity of, or the Tax-Exempt status of interest on the Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) The Owner and the Trustee shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary to effectuate the intent of this Section 8.

Section 9. Indemnification. The Owner and the Trustee will be indemnified as required by and pursuant to the Project Administration Agreement.

Section 10. Consideration. The Owner has agreed to issue the Bonds and to use the proceeds thereof to, among other things, finance the acquisition of the Project. In furtherance of the significant public benefits of the Project, the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which this Project can be put on the terms and conditions set forth herein.

Section 11. Reliance. The Owner and the Trustee hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons, including but not limited to the Administrator, interested in the legality and validity of the Bonds, in the exemption from California personal income taxation of interest on the Bonds and in the Tax-Exempt status of the interest on the Bonds. In performing their duties and obligations hereunder, the Owner and the Administrator may rely upon statements and certificates of the tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the Owner may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Owner hereunder in good faith and in conformity with such opinion.

Section 12. Transfer of the Project. For the Compliance Period, except as permitted by the Indenture or the Public Benefit Agreement, the Owner shall not Transfer the Project, in whole or in part, unless the following conditions are satisfied: (A) the receipt by the Owner and the Trustee of evidence acceptable to the Owner and the Trustee that (1) the Owner shall not be in default hereunder, if in effect (which may be evidenced by a Certificate of Continuing Program Compliance), or the transferee reasonably undertakes to cure any defaults of the Owner; (2) the continued operation of the Project shall comply with the provisions of this Regulatory Agreement; (3) all rights, responsibilities and duties of the transferor under the Project Administration Agreement shall have been assigned to the transferee, or the transferee shall enter into a new project administration

agreement in the form of the current Project Administration Agreement; and (4) the person or entity that is to acquire the Project does not have pending against it, and does not have a history of significant and material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; (B) the execution by the transferee of any document reasonably requested by the Owner with respect to the assumption of the Owner's obligations under this Regulatory Agreement, including without limitation an instrument of assumption hereof and thereof, and delivery to the Owner of an opinion of such transferee's counsel to the effect that each such document and this Regulatory Agreement are valid, binding and enforceable obligations of such transferee, subject to bankruptcy and other standard limitations affecting creditor's rights; (C) receipt by the Owner of an opinion of Bond Counsel to the effect that any such Transfer will not adversely affect the Tax-Exempt status of interest on the Bonds; (D) receipt by the Owner of all fees and/or expenses then currently due and payable to the Owner.

It is hereby expressly stipulated and agreed that any Transfer of the Project in violation of this Section 12 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section shall affect any provision of any other document or instrument between the Owner and any other party which requires the Owner to satisfy certain conditions or obtain the prior written consent of such other party in order to Transfer the Project. Upon any Transfer that complies with this Regulatory Agreement, the Owner shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee of the Project.

The foregoing notwithstanding, the Project may be transferred pursuant to a foreclosure, exercise of power of sale or deed in lieu of foreclosure or comparable conversion under the Deed of Trust without the consent of the Owner or compliance with the provisions of this Section 12.

For the Compliance Period, the Owner shall not: (1) encumber any of the Project or grant commercial leases of any part thereof (excluding any commercial or retail lease existing on the Closing Date or entered into thereafter with respect to the commercial or retail components of the Project that existed on the Closing Date, both occupied and vacant), or permit the conveyance, transfer or encumbrance of any part of the Project, except for (A) encumbrances permitted under the Deed of Trust, or (B) a Transfer in accordance with the terms of this Regulatory Agreement, in each case upon receipt by the Owner of an opinion of Bond Counsel to the effect that such action will not adversely affect the Tax-Exempt status of interest on the Bonds (provided that such opinion will not be required with respect to any encumbrance, lease or transfer relating to a commercial operation or ancillary facility that will be available for tenant use and is customary to the operation of multifamily housing developments similar to the Project); (2) demolish any part of the Project or substantially subtract from any real or personal property of the Project, except to the extent that what is demolished or removed is replaced with comparable property or such demolition or removal is otherwise permitted by the Deed of Trust; or (3) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

Section 13. Term. This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery, and shall remain in full force and effect for the period provided herein and shall terminate as to any provision not otherwise provided with a specific termination date and shall terminate in its entirety at the end of the Compliance Period.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other

casualty, seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date, which prevents the Owner from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Bonds are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes.

Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Trustee and the Owner, upon receipt by the Owner of an opinion of Bond Counsel to the effect that such termination will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes. Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 14. Covenants to Run With the Land. Notwithstanding Section 1461 of the California Civil Code, the Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Trustee and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

Section 15. Burden and Benefit. The Trustee and the Owner hereby declare their understanding and intent that the burdens of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. Nothing in this Regulatory Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than the Owner and the Trustee (acting exclusively on behalf of Bondholders) any right, remedy or claim under or by reason of this Regulatory Agreement or any covenant, reservation or restriction hereof, which shall be for the sole and exclusive benefit of the Owner and the Trustee (acting exclusively on behalf of the Bondholders). There are no third-party beneficiaries of this Regulatory Agreement.~~The Trustee and the Owner hereby further declare their understanding and intent that the benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.~~

Section 16. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use of the site on which the Project is located.



Section 17. Default; Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after notice thereof shall have been given by the Manager, the Controlling Party or the Trustee to the Owner, or for a period of 60 days from the date the Owner should, with reasonable diligence, have discovered such default, then the Trustee shall declare an "Event of Default" to have occurred hereunder; provided, however, that if the default is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as (i) the Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected, and (ii) in the opinion of Bond Counsel, the failure to cure said default within 60 days will not adversely affect the Tax-Exempt status of interest on the Bonds.

Following the declaration of an Event of Default hereunder, the Owner shall have the right, in its sole and absolute discretion, to replace the Manager and terminate the Property Management Agreement in accordance with its terms, and the Trustee, subject to the terms of the Indenture, may take any one or more of the following steps, in addition to all other remedies provided by law or equity:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things that may be unlawful or in violation of the rights of the Trustee hereunder;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project; and
- (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

The Owner hereby agrees that specific enforcement of the Owner's agreements contained herein is the only means by which the Trustee may fully obtain the benefits of this Regulatory Agreement made by the Owner herein, and the Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Owner hereunder.

The Trustee and the Owner hereby agree that cure of any Event of Default made or tendered by the Manager shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

~~Section 18. — [Reserved].~~

Section ~~18~~19. Recording and Filing. (a) The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County, and in such other places as the Owner may reasonably deem necessary. The Owner shall pay all fees and charges incurred in connection with any such recording.

(b) The Owner and the Trustee will file of record such other documents and take such other steps as are reasonably necessary, in the opinion of Bond Counsel, in order to ensure that the requirements and restrictions of this Regulatory Agreement will be binding upon all owners of the Project.

(c) The Owner hereby covenants to include or reference the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and, except in the case of a foreclosure or comparable involuntary conversion of the Deed of Trust, whereby the Trustee becomes the owner of the Project, to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement.

~~Section 20. — [Reserved].~~

Section ~~24~~19. Governing Law; Venue. This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of California applicable to contracts made and performed in the State of California. This Regulatory Agreement shall be enforceable in the State of California, and any action arising hereunder shall (unless waived by the Owner in writing) be filed and maintained in the Superior Court of California, County of San Diego.

Section ~~22~~20. Amendments; Waivers. Except as provided in Sections 8(a) hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County, California, and only upon (i) receipt by the Owner of an opinion from Bond Counsel that such amendment will not adversely affect the Tax-Exempt status of interest on the Bonds and (ii) the written consent of the Controlling Party, who shall receive a copy of any such amendment.

(a) Anything to the contrary contained herein notwithstanding, the Trustee and the Owner hereby agree to amend this Regulatory Agreement to the extent required, in the opinion of Bond Counsel, in order that interest on the Bonds remains Tax-Exempt. The parties requesting such amendment shall notify the other parties to this Regulatory Agreement of the proposed amendment, with a copy of such proposed amendment to Bond Counsel and a request that Bond Counsel render to the Owner an opinion as to the effect of such proposed amendment upon the Tax-Exempt status of interest on the Bonds. This provision shall not be subject to any provision of any other agreement requiring any party hereto to obtain the consent of any other person in order to amend this Regulatory Agreement.

(b) Any waiver of, or consent to, any condition under this Regulatory Agreement must be expressly made in writing.

Section ~~23~~21. Notices. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, overnight delivery, certified or registered mail, postage prepaid, return receipt requested, or by telecopy, in each case at the respective addresses specified in the Indenture, or at such other addresses as may be specified in writing by the parties hereto. Unless otherwise specified by the Administrator, the address of the Administrator is:

To Owner: CMFA Special Finance Agency  
2111 Palomar Airport Road, Suite 320  
Carlsbad, California 92011  
Attention: Financial Advisor  
Email: jstoecker@cmfa-ca.com

With a copy to:

HomeFed Corporation  
1903 Wright Place, Suite 220  
Carlsbad, California 92011  
Attention: Vice President, Affordable Housing

The Administrator and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notice shall be deemed given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission; provided that any telecopy or other electronic transmission received by any party after 4:00 p.m., local time of the receiving party, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day.

Section 2422. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 2523. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 2624. Limitation on Liability. Notwithstanding the foregoing or any other provision or obligation to the contrary contained in this Regulatory Agreement, the liability of the Owner under this Regulatory Agreement to any person or entity, including, but not limited to, the Trustee or the Controlling Party and their successors and assigns, is limited to moneys available therefor under and in accordance with the Indenture.

Section 2725. Annual Reporting Covenant. No later than January 31 of each calendar year (commencing January 31, 20\_\_), the Owner agrees to provide to the California Debt and Investment Advisory Commission, by any method approved by the California Debt and Investment Advisory Commission, the annual report information required by Section 8855(k)(1) of the California Government Code. This covenant shall remain in effect until the later of the date (i) the Bonds are no longer outstanding or (ii) the proceeds of the Bonds have been fully spent.

IN WITNESS WHEREOF, the Owner and the Trustee have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

CMFA SPECIAL FINANCE AGENCY

|  
By: \_\_\_\_\_  
Name: Edward J. Becker  
Title: Executive Director

WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Name:  
Title:

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

Personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

Personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**

[TO COME]



**EXHIBIT B**

**FORM OF INCOME CERTIFICATION**

Effective Date:

Move-In Date:

Household Size:

Floorplan:

Unit:

**HOUSEHOLD COMPOSITION**

<i>Household Member</i>	<i>Name</i>	<i>Relationship</i>	<i>Birthdate</i>
1		Head	
2			
3			
4			
5			
6			
7			

**INCOME COMPOSITION (ANNUAL)**

<i>Household Member</i>	<i>Employment / Wages</i>	<i>Social Security / Pension</i>	<i>Public Assistance</i>	<i>Other Income</i>
1				
2				
3				
4				
5				
6				
7				
<b>TOTALS</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>TOTAL INCOME</b>				<b>\$</b>

**EXHIBIT C**

**FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Witnesseth that on this day of \_\_\_\_\_, 20\_\_, the undersigned, on behalf of the CMFA SPECIAL FINANCE AGENCY (the "Owner"), does hereby certify with respect to the multifamily rental housing development (the "Project") that:

1. During the preceding year (i) such Project was substantially and continually in compliance with the Regulatory Agreement and (ii) \_\_\_\_% of the units in the Project were occupied by Low Income Tenants, \_\_\_\_% of the units in the Project were occupied by Median Income Tenants \_\_\_\_% of the units in the Project were occupied by Moderate Income Tenants.

*Set forth below are the unit numbers of Low Income Tenants, Median Income Tenants and Moderate Income Tenants who commenced or terminated occupancy during the preceding month.*

Commenced Occupancy	Terminated Occupancy
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.
6.	6.
7.	7.
8.	8.
9.	9.
10.	10.
11.	11.
12.	12.
13.	13.
14.	14.
15.	15.
16.	16.
17.	17.
18.	18.
19.	19.
20.	20.

*Additional units that have commenced or terminated occupancy may be found in an additional attached sheet*

2. The units occupied by Low Income Tenants, Median Income Tenants and Moderate Income Tenants are of similar size and quality to other units and are dispersed throughout the Project. Attached is a separate sheet listing the number of each unit and indicating which units are occupied by Low Income Tenants, Median Income Tenants and Moderate Income Tenants, the size, the number of bedrooms of such units and the number of Low Income Tenants, Median Income Tenants and Moderate Income Tenants who commenced occupancy of units during the preceding month.

The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

Date: \_\_\_\_\_

Owner: \_\_\_\_\_

**EXHIBIT D**  
**TIC FORM**

**EXHIBIT E**

**LEASE INFORMATION WAIVER**