

Item 7.2

Attachment 1b

Draft City Workforce Housing PBA

CSCDA for CasaLago Eastlake

SS 3-11-22

RECORDING REQUESTED BY
CSCDA Community Improvement Authority

WHEN RECORDED RETURN TO:
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Orlando Zaragoza

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

PUBLIC BENEFIT AGREEMENT

By and Between

CSCDA COMMUNITY IMPROVEMENT AUTHORITY

and

CITY OF CHULA VISTA

Dated as of _____ 1, 2022

Relating to

**CSCDA COMMUNITY IMPROVEMENT AUTHORITY
ESSENTIAL HOUSING REVENUE BONDS
(CASALAGO EASTLAKE)**

PUBLIC BENEFIT AGREEMENT

This PUBLIC BENEFIT AGREEMENT ("Agreement") is dated as of ____ 1, 2022 by and between the CSCDA COMMUNITY IMPROVEMENT AUTHORITY 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, Owner proposes to issue Bonds (as hereinafter defined) to finance Owner's acquisition of that certain multifamily rental housing project (the "Project") located at 2816 Cielo Circulo, Chula Vista, California, (also referred to as "CasaLago Eastlake" or "CasaLago") located on the real property site described in Exhibit A hereto; 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 ("Regulatory Agreement" is attached as Exhibit "B" 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 the attendant 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 affordability 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) CSCDA Community Improvement Authority Essential Housing Senior Lien Revenue Bonds, Series 2021A-1 (CasaLago Eastlake) (Social Bonds), (ii) CSCDA Community Improvement Authority Essential Housing Senior Lien Revenue Bonds, Series 2021A-2 (CasaLago Eastlake) (Social Bonds), (iii) CSCDA Community Improvement Authority Subordinate Essential Housing Mezzanine Lien Revenue Bonds, Series 2021B (CasaLago Eastlake) (Social Bonds), and (iv) CSCDA Community Improvement Authority Essential Housing Subordinate Lien Revenue Bonds, Series 2021C (CasaLago Eastlake), 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” – Opportunity Housing Group, Inc., 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 prorations 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.

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 11.5 Middle-Income Unit Restrictions. Host shall be made a third-party beneficiary of the Regulatory Agreement insofar as necessary to enforce any tenant income restriction or rent limitation of the Regulatory Agreement, subject to the terms thereof.

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 "C", 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 “D.” 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,

(b) Inspect the Affordable Units to verify that they are being maintained in accordance with Section 19, above.

Section 32. Owner Required to Pay Occupancy Monitoring Fees. Owner, or Bond Trustee on its behalf, shall pay to Host on each anniversary of the date hereof, commencing with the first anniversary and terminating upon Conveyance, an annual monitoring fee of \$ \$27,755 with annual increases of three percent (3.00%). The annual monitoring fee shall be paid to Host annually within thirty (30) days after Host provides a written invoice for the same. Amounts of the monitoring fee not paid within thirty (30) days after deliver 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. In addition, failure to timely pay such fees shall constitute a material default under this Agreement.

ARTICLE 4 MISCELLANEOUS PROVISIONS

Section 33. Miscellaneous Provisions.

(a.) **Notices.** All notices provided for in this Agreement shall be in writing and shall be given to Owner or Host at the address set forth below or at such other address as they individually may specify thereafter by written notice in accordance herewith:

If to Owner: CSCDA Community Improvement Authority
1100 K Street, Suite 101
Sacramento, California 95814
Attention: Chair

With a copy to: Opportunity Housing Group, Inc.
550 Hartz Ave. Suite 200
Danville, California 94526
Attn: Lauren Seaver/Bradley Griggs
Email: lseaver@blakegriggs.com
Email: bgriggs@blakegriggs.com

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

With Copy to: City of Chula Vista
276 4th 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, subject to Section 14(a) hereof, commencing within 120 days of execution of this Agreement, continuing every year anniversary thereafter, and terminating upon Conveyance, an annual host charge of \$200,000 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. **Reserved**.

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.

**CSCDA COMMUNITY IMPROVEMENT
AUTHORITY**

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
REGULATORY AGREEMENT

EXHIBIT C
TIC FORM

EXHIBIT D

LEASE INFORMATION WAIVER