



AGREEMENT BETWEEN

COUNTY OF SAN MATEO

DEPARTMENT OF HOUSING

AND

NORTHPOINT HOUSING, INC.

TO ASSIST WITH

THE DEVELOPMENT OF TRESTLE GLEN AT EL CAMINO

TRANSIT VILLAGE

FOR A PERIOD OF 55 YEARS

Contact Person: Marina Yu
Telephone number: (650) 802-5039

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
NORTHPOINT HOUSING, INC.**

THIS AGREEMENT, entered into this ____ day of _____, 20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Northpoint Housing, Inc., hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, the Section 108 Program ("Section 108 Program") is a loan guarantee provision of the Community Development Block Grant ("CDBG") Program that augments a local jurisdiction's CDBG funding for housing and community development activities by allowing the jurisdiction to leverage its annual CDBG allocation via borrowing from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, on May 2, 2006, by Resolution No. 067943, the County Board of Supervisors amended the FY 05-06 Action Plan to include Section 108 funding for the development of the Colma Transit Village Apartments, now known as Trestle Glen at El Camino Transit Village ("Project"); authorized submission of an application for Section 108 Loan Guarantee funds to assist the Project; and authorized the Director of the Department of Housing to execute documents in connection with the Section 108 loan program; and

WHEREAS, the Project, located next to the Colma BART Station, consists of 123 affordable units and an on-site child care facility; and

WHEREAS, while BRIDGE Housing Corporation ("BRIDGE") is the sponsor of the Project, BRIDGE has set up an ownership structure to take advantage of low income housing tax credits, which provide equity financing for the Project. This structure, typical for tax credit projects, includes Northpoint Housing, Inc. ("Contractor"), a BRIDGE-owned nonprofit corporation associated with the general partner of Trestle Glen Associates. Trestle Glen Associates is the limited partnership established to develop and own the Project. The Contractor currently owns the property upon which the Project is to be built ("Property"); and

WHEREAS, the County submitted an application to HUD for a \$7.145 million Section 108 loan in June 2006 to assist in land acquisition and relocation; and

WHEREAS, upon HUD review of the County's application for Section 108 funding, HUD has determined that for the Project to maintain financial feasibility, the County should borrow \$10.745 million ("the Section 108 loan"), with \$3.6 million to be paid back upon sale of a portion of land associated with BRIDGE's land purchase, and thereby reduce the principal balance of the Section 108 loan down to the original request of \$7.145 million; and

WHEREAS, on November 8, 2006, the County's Planning Commission approved El Camino Transit Village by certifying the mitigated Negative Declaration and approving a subdivision of the parcel into two parcels of 1.7 and 1.0 acres, an air rights subdivision for the townhome condo development, design review approval for both the 123 affordable and the 32 townhome units, a conditional use permit for the on-site child care facility, and a grading permit; and

WHEREAS, the Town of Colma's appeal of the Planning Commission's approval of the Project was heard by the San Mateo County Board of Supervisors on January 23, 2007 and the Board denied the appeal and approved the Project's Minor Subdivision, air rights Major Subdivision, Density Bonuses, Grading Permit, Use Permit, Design Review, and certification of the mitigated Negative Declaration; and

WHEREAS, Contractor intends to sell off the 1.0 acre parcel of the Property for the townhome development and because the market-rate housing activity does not meet the Section 108 eligibility criteria,

proceeds from this sale must revert to the County as program income which shall be used to reduce the Section 108 loan principal; and

WHEREAS, the land sale for the market-rate housing development is anticipated to occur in late Spring 2007;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of entering into an agreement for \$10.745 million to assist in development of Trestle Glen at El Camino Transit Village;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A – Program/Project Description

Exhibit B – Payments and Rates

Exhibit C – Equal Benefits Compliance Declaration Form

Exhibit D – Additional Program Requirements

Exhibit E – 504 Compliance

Notwithstanding any other provisions of this Agreement, in the event of a conflict between the terms of this Agreement and those of an Exhibit, the terms of the Exhibit shall control.

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit “B,” Contractor shall perform the services (hereinafter referred to as the “services” or the “work”) necessary to implement the Program/Project as described in Exhibit A. For the purposes of this contract “Program” or “Project” may be used interchangeably.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein. County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County’s total fiscal obligation under this Agreement exceed Ten Million Seven Hundred Forty-Five Thousand Dollars, (\$10,745,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from the date of execution through Fifty-Five (55) Years, after the receipt of a certificate of occupancy for the Project, or unless otherwise modified in Exhibit A.

County may terminate this Agreement for cause after giving Contractor notice of any breach or default and 30 days to cure said breach or default.

County reserves the right to waive any and all breaches of this Agreement, and any such waiver shall not be deemed a waiver of all previous or subsequent breaches. In the event County chooses to waive a particular breach of this Agreement, it may condition same on payment by Contractor of actual damages occasioned by such breach of Agreement and shall make every effort to resolve the same quickly and amicably.

5. Availability of Funds

Funds provided in this Agreement shall be through the CDBG Section 108 Loan Guarantee Program from HUD and are contingent upon execution of a funding agreement with HUD. If the County enters into an agreement with HUD regarding the Section 108 loan funds contemplated herein, then the County shall comply

with all obligations of its agreement with HUD with respect to the Section 108 loan in order to ensure that the funds to be provided herein are available to Contractor in accordance with the terms of this Agreement. The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding. Provided, however, any portion related to the Section 108 loan funds may be terminated by County, only if the County has not breached its obligations pursuant to its contract with HUD and the cause of the unavailability of such funds is beyond the control of the County. Nothing herein obligates the County to provide or use its own funds in the event Section 108 loan funds, or funds from other anticipated sources, are not available.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any services or work provided by Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement and the funding commitments hereunder.

Notwithstanding anything in this Section 8, the County recognizes that Contractor intends to syndicate the Project using Low Income Housing Tax Credits and, provided all of the individuals and entities involved are fully identified and disclosed to the County prior to said assignment, County will not unreasonably withhold consent to an assignment of this Agreement and the Project to a limited partnership whose general partner is a nonprofit affiliate of Contractor or limited liability company whose sole member is a nonprofit affiliate of Contractor and the further assignment of the limited partnership interests in the limited partnership to an investor limited partner. Following any such assignment to a limited partnership, County agrees that the owner of the limited partnership interests in the limited partnership shall have the same right and opportunity as the limited partnership to receive notices of, and to cure, any defaults or breaches under this Agreement; provided the County must first receive timely notice of the identity and notice address for such owner.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to

include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and it will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance**

The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by itself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and in the aggregate and shall be not less than the amount specified below, which amount may change during the term of this agreement, at the discretion of the San Mateo County Risk Manager, in which case County shall notify Contractor, who shall modify the insurance coverage accordingly, within sixty days after County notification. The County will not in any event require the Contractor to have insurance limits that are not commercially or financially feasible.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with Laws; Payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Exhibit E, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination

- A. Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. Where applicable, the Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

- A Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
- B Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.
- C Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

<p>In the case of County, to:</p> <p>County of San Mateo Director, Department of Housing 262 Harbor Blvd. Bldg. A Belmont, CA 94002</p>	<p>In the case of Contractor, to:</p> <p>Northpoint Housing, Inc. 345 Spear Street Suite 700 San Francisco, CA 94105 Attn: Lydia Tan, Executive Vice-President</p>
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SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands to this Section 108 Program loan agreement.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

NORTHPOINT HOUSING, INC.
a California nonprofit public benefit corporation

Name

Title

Date: _____

Exhibit “A”
Program/Project Description

In consideration of the payments set forth in Exhibit “B”, Contractor shall provide the following services:

A. Eligible Activities

Funding provided under this Agreement shall be used for CDBG Section 108 eligible costs incurred on behalf of the development of Trestle Glen at El Camino Transit Village (“Trestle Glen”), located at 7880 El Camino Real, on unincorporated County land near the Town of Colma (“Property”). The Project consists of 123 affordable units. The number of units in the Project shall not be reduced without the prior written consent of the County. Any such reduction without such prior consent shall constitute a breach of this Agreement.

Eligible costs include property acquisition, relocation, site clearance and demolition, capital costs associated with the on-site child care facility and any other eligible costs that may be approved by the County Department of Housing (“DOH”). Should funding under this Agreement be used for capital costs associated with the on-site child care, Contractor shall ensure that at least 51% of the users of the child care facilities are from low- or very low-income families in accordance with HUD requirements. Relocation of site occupants will be achieved in accordance with applicable federal relocation requirements.

B. Performance Period

The performance period is defined as the segment of time for Contractor to perform the services or work for which funding is provided under this Agreement. The performance period shall consist of the Project’s predevelopment and the construction phases. The performance period shall end six years after execution of this Agreement. Should Contractor require additional time for performance, such request must be made in writing to County, or Contractor shall be in breach of this Agreement.

During the performance period, Contractor shall provide at the minimum quarterly performance reports. County shall notify Contractor if more frequent progress reports are warranted. These reports shall delineate progress of the Project, including any challenges that may have affected the Project schedule. Exhibit B describes the quarterly performance reporting in greater detail.

C. Compliance Period

The compliance period is defined as the time frame beginning after the completion of the performance period and ending when payment is made in full on the Promissory Note described herein, which payments are due and payable no later than 55 years after receipt of a certificate of occupancy for the Project. The date triggering the beginning of the compliance period shall be the date of issuance of the Project’s Certificate of Occupancy or the date of completion indicated in the Certificate of Occupancy, whichever is sooner, and which Contractor shall provide DOH, along with a housing completion report on forms provided by the DOH. Thereafter on an annual basis, or more often if required by the County, Contractor shall provide the County with information necessary to monitor the Project relating to program compliance matters. Annual information required shall include: evidence of continuing fire and liability insurance; annual certified financial audit; tenant incomes and rents; certificate of continuing use, and any other compliance information as may be required by the County.

Project financing is anticipated to include proceeds from low-income tax credits. As such, the Project rents and occupancy will be restricted by this funding source to low income occupancy with affordable rents. Financing provided under this Agreement is not intended to make the rents and occupancy more restrictive than those required by this or other affordable housing finance sources. Compliance with these other requirements shall constitute compliance with County requirements. Exhibit C describes in greater detail the quarterly performance reporting in greater detail.

Notwithstanding Section 13(a) of this Agreement pertaining to retention of records, Contractor shall maintain all required records for a period of three (3) years after the end of the Compliance Period and all other pending matters are closed.

D. Security

Prior to any disbursement of funds, Contractor shall execute and deliver a Promissory Note ("Note") in an amount equal to Ten Million Seven Hundred Forty-Five Thousand Dollars (\$10,745,000) and a Deed of Trust in favor of the County to secure the performance of all terms and conditions of the Note and this Agreement. The Note will be non-recourse. The Deed of Trust shall be recorded in senior mortgage lien position in the Office of the Recorder of the County of San Mateo. The Deed of Trust may subsequently be subordinated to Contractor's construction and permanent financing. County agrees to execute subordination agreements reasonably requested by Contractor's construction and permanent lenders. Upon sale of the portion of the Property intended for town home development and the repayment by Contractor of \$3.6 million of the loan amount, the County shall execute a partial reconveyance of the Deed of Trust releasing the portion of the Property intended for town home development from the Deed of Trust.

No interest shall accrue on the Note until Project Completion, evidenced by the issuance of the Certificate of Occupancy. Interest at the rate of three percent (3%) simple shall be charged annually, commencing on the first day of the first month following the issuance of the Certificate of Completion.

Payment in full on the Note, including any accrued interest, shall be due and payable no later than Fifty-Five (55) Years after receipt of a Certificate of Occupancy for the Project. The Note and Deed of Trust shall be executed prior to any disbursement of funds under this Agreement.

E. Repayment

Annual payments on the Notes shall be made from a percentage of project's residual receipts from Project operations, which begin when the Project receives a Certificate of Occupancy. Residual Receipts shall mean, with respect to the Project's fiscal year, the amount by which Gross Revenue exceeds Annual Operating Expenses, as defined below. "Gross Revenue" is defined as all rental and incidental income from the Project, but excluding tenant security deposits, and any interest earned on said deposits.

Payment will be first applied to outstanding interest and then to principal until the Notes are paid in full. In the event this payment is less than accumulated interest owed plus current interest, any unpaid interest shall carry over to the following year. Interest shall not compound on this interest carry-over. The entire outstanding principal balance plus any unpaid accrued interest shall be due and payable upon Note Maturity.

Annual payments on the Notes shall begin no later than the ninth (9th) year of Project operations and shall be equal to the lesser of: (a) a percentage of Residual Receipts, determined by multiplying 75% times the amount resulting from the principal amount of the Loan divided by the total principal amount of all loan funds received by the Contractor from the County from any and all sources. Though not a County funding source, HEART (Housing Endowment and Regional Trust) funds shall be included in as one of the funding sources to be included in the denominator of the calculation; or (b) equal annual payments amortized to pay the loan in full by the Note Maturity and the first payment shall be due 120 days after the end of the Project's ninth fiscal year. A copy of the annual independent financial audit shall also be delivered to the County not later than 120 days after the end of each of the Project's fiscal years. Should Contractor terminate the Project during the Performance Period after acquiring the Property County shall seek repayment of any and all funds advanced, through remedies pursuant to the Deeds of Trust.

"Annual Operating Expenses" means costs reasonably and actually incurred for operations and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally acceptable accounting principles. A copy of the audit shall be delivered with payment as specified above. Costs associated with the Project Operations and maintenance include the

following: property and other taxes and assessments imposed on the Project; premiums for property damage and liability insurance; utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting, and decorating, cleaning, common systems repairs, general repairs, janitorial supplies, and others; any license or certificates of occupancy fees required for operation of the Project general administrative expenses including but not limited to advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the County (which such approval shall not be unreasonably withheld); asset management fees; annual cash deposited into a reserve for capital replacements of Project improvements in an amount required by Contractor's senior lenders; cash deposited into an operating reserve for the Project and such other reserves as may be required by the Contractor's Partnership Agreement or the Contractor's senior lenders; payments of any deferred developer fees; annual partnership management fee; tenant services fees; any advances by partners required under the Partnership Agreement of Contractor and any fees to partners required under the Partnership Agreement of the contractor; and debt service payments of loans in senior position to this Loan. Annual operating expenses shall not include the following: depreciation, amortization, depletion, or other non-cash expenses, or any amount expended from a reserve account.

Any changes in the formula for calculating Residual Receipts shall be agreed to in writing between the Director of DOH or his/her designee, and Contractor. In any case, the terms of repayment of the Note may be modified by the Director or his/her designee as deemed necessary to ensure the continuing affordability of the Project. Should there be a discrepancy in the language between the Note and this Agreement, the Note shall prevail.

F. Prepayment

Prepayments may be made at any time without penalty.

G. Due on Sale, Refinance or Transfer of Title

In the event of a sale or transfer of the Project or any interest therein by Contractor without consent of the County, the entire principal balance of the loan, including any accumulated interest, shall be immediately due and payable, provided, however, the assignment or transfer of the Project to a partnership for purposes of syndicating the low income tax credits and in which the Contractor or a nonprofit affiliate of the Contractor or a limited liability company whose members are nonprofit affiliates of the Contractor, is the general partner, and the transfer of the limited partnership interest in such partnership to an investor limited partner, shall not be considered for purposes of this provision a sale or transfer of the Project. Provided further, the subdivision of the Property to create two parcels described below and the conveyance of a portion of the Property to a developer for the development of market rate housing will not be considered a sale or transfer of the Project or the Property.

It is anticipated Contractor will split the Property into two distinct parcels: (i) a 1.7-acre parcel for the development of Trestle Glen; and (ii) a 1.0-acre parcel to be sold to a for-profit developer for the construction of 32 market-rate townhouse condominiums ("Market Rate Parcel").

Contractor acquired the Property on November 17, 2006 with other funds in anticipation of receiving Section 108 loan funds to replace these other funds. Should the Section 108 loan funds be used to replace the other funds prior to the sale of the Market-Rate Parcel, upon sale of the Market Rate Parcel Contractor shall be obligated to divert all the net sales proceeds from the Market Rate Parcel to the County toward repayment on the Section 108 loan as required by the Section 108 Loan Guarantee Program. In no event shall the amount repaid as a consequence of the sale of the Market Rate Parcel be less than the amount needed to reduce the principal balance of the Note to not more than \$7.145 million, and in no event shall such repayment be made later than the date on which the Section 108 loan funds convert from interim financing to permanent financing.

The County will notify Contractor or its assignee of such impending conversion from interim financing to permanent financing at least thirty (30) days in advance of such conversion.

Should the Market-Rate Parcel be sold prior to the Section 108 funds becoming available, the net proceeds of the sale of the Market Rate Parcel shall not be required to be paid to the County, but shall be used entirely to support Project development costs. On a quarterly basis, Contractor shall provide a report to the County detailing the use of the sale proceeds as part of the Contractor Quarterly Performance Report described in Exhibit B. In no event shall the principal balance of the Note be more than \$7.145 million at the time HUD converts the Section 108 funding obligation from interim financing to permanent financing.

H. Treatment of Other County Funds Used to Purchase Land

In anticipation of receipt of funds provided in this Agreement, Contractor acquired the Property with other funds on November 17, 2006, including other County HUD funds previously approved for the Project. Upon receipt of Section 108 funds provided in this Agreement, Contractor shall use these funds to replace County HOME and CDBG funds used temporarily to expedite the acquisition, and in the event Contractor repays to County any portion of the HOME and CDBG funds, the County agrees that such repayments shall be placed in an escrow account in the name of the County on behalf of the Project and shall be disbursed to Contractor for HOME-eligible non-land acquisition costs.

I. Acceleration of Note

In the event Contractor breaches any of the terms and conditions of this Agreement after thirty (30) days written notice, the Contractor will be in default of the terms and conditions of this Agreement as well as the Notes, and the County may demand immediate and full payment of the principal amount of this Note and any accrued interest, and/ or may initiate foreclosure proceedings under the Deed of Trust.

Default may result from:

- (a) Failure of Contractor to make any payment hereunder as when and due;
- (b) Failure of Contractor to perform or observe any terms or provisions of this Agreement
- (c) Use of funds under this Agreement for purposes not approved by the County; or
- (d) Occurrence of any other event (whether termed default, event of default or otherwise) which under the terms of this Agreement shall entitle the County to exercise rights or remedies hereunder.

J. Title Policy

For property acquisition, Contractor shall open an escrow with a mutually acceptable title company and regardless of whether County deposits funds provided in this Agreement into the escrow, County, as a lender, shall provide enabling instructions which shall include instructions to record the Deed of Trust.

At the close of escrow, Contractor shall obtain a CLTA policy of title insurance in an amount not less than the face value of the Note, clear of any title defects which would prevent the operation of the proposed Project. Contractor shall be responsible for paying all recording fees, escrow fees, the premium for the title insurance policy, all fees and cost for any new financing, and shall pay any applicable transfer taxes, which fees and costs may be paid from loan proceeds.

K. Fire and Extended Coverage

Contractor at its costs shall maintain on the Project a policy of standard fire and extended coverage during the life of the Note and Deed of Trust securing this Agreement, or any subsequently executed document which replaces the Note and Deed of Trust, with vandalism and malicious mischief endorsements, to the extent of at least the full replacement value of the improvements which are part of the premises. The insurance policy shall be issued in the names of Contractor and the County as their interests appear. The insurance policy shall contain a lender's loss payable endorsement, providing that any proceeds shall be payable to the County as its interests appear and shall be subject to the interest of senior lenders.

Subject to the requirements of senior lenders in the event that Contractor shall undertake to restore the damaged improvements or to reconstruct the destroyed improvements within a period of sixty (60) days of receipt of insurance proceeds, such insurance proceeds received by the County shall be released to Contractor as payments are required for said purposes, and upon completion of such restoration or reconstruction, any balance thereof remaining shall be paid to Contractor forthwith.

In the event that Contractor shall fail to undertake the restoration or reconstruction of such improvements within sixty (60) days after receipt of insurance proceeds following any such damage or destruction, there shall be paid and released to the County from such insurance proceeds a sum equal to the cost of clearing the premises in the event Contractor does not at its own expense clear the premises within said period. The balance shall be held to compensate the parties to this Agreement as if the premises were sold. Subject to the requirements of senior lenders, Contractor shall also sell the vacant land on the open market and the proceeds of said land sale shall be distributed among the parties to this Agreement.

L. Notification to County of Lease-Up and Tenant Marketing

Contractor shall provide the County with a copy of Contractor's tenant marketing plan for the Project plus notices advertising availability of units. The County shall, in turn, advertise any Project openings or vacancies through its on-going housing informational communication to outside agencies.

M. Mandatory Acknowledgment of County as Funder

All projects/programs receiving any type of funding assistance and or substantial technical assistance through the San Mateo County Department of Housing will be required to indicate such in any advertising, marketing, public presentations, press releases, written materials or project descriptions. Such acknowledgement should also identify the U.S. Department of Housing & Urban Development (HUD).

All Capital projects shall display signage as described below:

- Temporary Construction Signage must be appropriately displayed during the major portion of the construction phase. Such signage must be provided by the Contractor and must be pre-approved by the Department of Housing in design and content.

Permanent Historical Signage must be attached to all completed projects and must be displayed in a visible, highly trafficked area of the project, e.g., front lobby, main entry or walkway, etc. Location of display must be approved by the Department of Housing. **Permanent historical signage in the form of an 8' x 10" bronze plaque shall be provided by the Department of Housing and may be reimbursed from loan proceeds as a project cost.** As an alternative, County may agree to other signage which acknowledges the Department of Housing and HUD, but such signage must be approved in advance.

Exhibit B
Method and Rate of Payment to Contractor

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following terms:

Payment by County shall be made upon requests for disbursements being submitted by Contractor to County. Requests for disbursements shall include copies of invoices. The request must include a brief narrative description of the progress of the project and the items being covered in the disbursement.

Upon written request to the Director of Housing, payments may be made directly to authorized third parties; Contractor must submit original invoices with the request. The County will not be responsible for any charges levied by such third party due to failure to make payments or to meet time requirements set forth in their agreement with Contractor.

Contractor shall certify in writing that the specific services for which payment is being requested have been satisfactorily completed, that the payments are proper and that all funds to be expended are on behalf of and exclusively for the project. The County reserves the right to verify such completion prior to payment to Contractor.

In the event of a questionable payment request, the County shall state in writing the specific nature of its objections to Contractor's work. The County shall also specify what actions or changes are necessary to make the work acceptable. Contractor shall respond to County within 15 days of receipt of such objections. The parties to this Agreement shall meet to discuss such objections at the request of either party. The County will not be obligated to make a payment of any billing until any and all objections to the adequacy of the services rendered or the amount of the billing have been resolved.

None of the funds shall be used for salary, fringe benefits or other compensation of employees of Contractor or its affiliates.

Contractor shall submit a Quarterly Report within 30 days of the end of each quarter which shall detail the status of the project. The report should be in the form of a narrative description of all activities performed in relation to the project including all pre-development activities. The report should include a project time-line and indicate the status of the project in relationship to this time-line. Contractor must document any changes from the time-line submitted with the original application. This report requirement is in addition to any information submitted with requests for reimbursement; this requirement shall extend until completion of the project even if all of the funds provided under this Agreement have been expended.

Upon completion of the project Contractor shall provide (1) for the housing component, a Tenant Profile and Project Completion Report; and (2) for the child care facility, a Public Facilities Beneficiary Summary which shall summarize the number of clients served by their ethnicity and income.

No requests for reimbursement or third party payment will be processed until all reports required hereunder, including any applicable prevailing wage documents required under the Davis-Bacon Act, have been received by the Department of Housing.

In the event of termination prior to completion of the Project any funds not expended shall be paid down against the principal of the loan. Any remaining principal, plus accrued interest, if any, shall be immediately due and payable in accordance with the provision of the Promissory Note.

Exhibit C

Contractor's Declaration Form

I. CONTRACTOR INFORMATION

Contractor Name:		Phone:	
Contact Person:		Fax:	
Address:			

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- Contractor complies with the County's Equal Benefits Ordinance by:
 - offering equal benefits to employees with spouses and employees with domestic partners.
 - offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- Contractor does not comply with the County's Equal Benefits Ordinance.
- Contractor is exempt from this requirement because:
 - Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for less than \$5,000.
 - Contractor is a party to a collective bargaining agreement that began on ____ (date) and expires on (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- Contractor complies with the County's Employee Jury Service Ordinance.
- Contractor does not comply with the County's Employee Jury Service Ordinance.
- Contractor is exempt from this requirement because:
 - the contract is for less than \$100,000
 - Contractor is a party to a collective bargaining agreement that began on ____ (date) and expires on (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature

Name

Date

Title

Exhibit D
Additional Program Requirements

1. BREACH OF AGREEMENT

This Agreement is governed by applicable federal statutes and regulations, as referred to elsewhere herein. Any material deviation by Contractor for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of County or upon the direction of HUD.

2. AGREEMENT TERMINATION

In the event Contractor is unable to fulfill its responsibilities under this Agreement for any reason whatsoever, including circumstances beyond its control, County may terminate this Agreement in whole or in part in the same manner as for breach hereof.

3. CONFLICT OF INTEREST

No members, officers, or employees or agents of County, no member of the County's Board of Supervisors, and no other public official who exercises any function or responsibility with respect to this Program during his/her tenure, or for one year thereafter, shall have any financial interest, direct or indirect, in this Agreement or a related subcontract, or the proceeds thereof.

During his/her tenure, and for one year thereafter, no member, officer, board member or employee or agent of Contractor who exercises any function or responsibility with respect to Contractor's performance hereunder, shall have any personal financial interest, direct or indirect, in any real property or improvements receiving a direct benefit from the Program,.

Contractor shall not contract with any third party or subcontractor that will cause a violation of the preceding paragraph. Contractor shall incorporate the above provision into all contracts awarded in connection with this Agreement.

4. LOBBYING PROHIBITED

Federal funds shall not be used by Contractor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government. Federal funds shall not be used by Contractor to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal contract.

5. INFLUENCING PROHIBITED

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract,

grant, loan, or cooperative agreement, Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and

C. The language of paragraphs 5A and 5B shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

6. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Contractor, to the extent applicable to this Agreement, shall comply with the following Federal laws and regulations as set forth in 24 CFR §§570.600-612:

A. Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, including community development funds, on the grounds of race, color, or national origin.

B. Public Law 90-284, Fair Housing Act (42 U.S.C. §§3601- 20), which provides that it is the policy of the United States to provide, within constitutional limitations, fair housing throughout the United States and prohibits any person from discriminating in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin handicap or familial status. The Fair Housing Act, as amended in 1988, also establishes requirements for the design and construction of new rental or for sale multifamily housing to ensure a minimum level of accessibility for persons with disabilities. Multifamily dwelling units in buildings containing 4 or more units served by one or more elevators, or ground floor dwellings units with 4 or more units, constructed for first occupancy after March 13, 1991, must be designed and constructed in a manner that the public and common use portions of such dwellings are readily accessible to and usable by disabled persons. All premises within such dwellings must incorporate features of adaptive design regarding accessibility routes into and through the dwelling and design features within the units. (Regarding accessibility design issues, State accessibility requirements will prevail if they are stricter than federal requirements.)

C. Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services, programs or benefits supported by Federal funds.

D. Rehabilitation Act of 1973, Section 504, which prohibits discrimination against otherwise qualified handicapped persons in the provision of programs, facilities and employment supported by Federal funds.

In the case of multifamily rental housing, projects of five or more units must be designed and constructed to be readily accessible to and usable by persons with disabilities. For new construction involving five or more units, and substantial rehabilitation projects of 15 or more units (with substantial rehabilitation defined as rehabilitation costs representing 75 percent or more of the replacement costs of the completed facility), the following requirements must be followed - a minimum of 5 percent of the dwelling units must be accessible to individuals with mobility impairments and an additional 2 percent accessible to individuals with sensory impairments. At the minimum, one unit shall be made accessible to mobility-impaired individuals and one unit accessible to sensory impaired individuals. When less than substantial rehabilitation is undertaken in multifamily rental housing projects of any size, these alterations must, to the maximum extent feasible, make the dwelling units accessible to and usable by individuals with disabilities, until a minimum of 5 percent of the dwelling units (but not less than one unit) are accessible to persons with mobility impairments; for this category of less than substantial rehabilitation, the additional 2 percent of the units for persons with sensory impairments does not apply. Also for this category of rehabilitation, if undertaking accessibility alterations imposes undue financial and administrative burdens on the operation of the multifamily housing project, the alterations are not required.

In the case of non-housing facilities involving new construction, the facilities shall be designed and constructed to be readily accessible to and usable by persons with disabilities. For facilities involving alterations, to the extent possible, the alterations should ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible, if doing so, would impose undue financial and administrative burdens on the operation of the recipient program or activity. (However, State law will prevail if State accessibility requirements are stricter than federal 504 requirements.) Recipients are still required to take other actions that would ensure that persons with disabilities receive the benefits and services of the program.

E. Davis-Bacon Act, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with Federal funds shall be paid prevailing wages of the locality as determined by the Secretary of Labor.

F. Section 3, Housing & Urban Development Act of 1968. For all programs receiving \$100,000 or more, or construction projects receiving \$200,000 or more, of HUD financial assistance, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in the area. Section 3 Residents are defined as: 1) residents of public housing; or 2) low and very-low income persons living in the area. Section 3 Businesses are defined as businesses: 1) that are at least 51% owned by Section 3 Residents; 2) whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or 3) that provide evidence of a commitment to subcontract in excess of 25 % of the dollar award of all subcontract to be awarded to a section 3 business concern. Contractors must maintain appropriate documentation of their efforts to comply with Section 3 requirements.

G. Flood Disaster Protection Act of 1973, which provides that no federal financial assistance for acquisition or construction purposes may be approved for an area having special flood hazards unless the community in which the area is located is participating in the National Flood Insurance Program.

H. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which provides for relocation assistance for any family, individual, business, non-profit organization or farm displaced as a result of acquisition of property with federal funds.

I. Executive Order 11246, amended by Executive Order 12086, Equal Employment and Contracting Opportunities, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally assisted construction contracts.

J. Housing and Urban Development Act of 1968, Section 3, which requires that, in the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible, opportunities for training and employment be given to low and moderate income persons residing within the unit of local government in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same unit of local government as the project.

K. Lead-Based Paint Poisoning Act, which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance.

L. Housing & Community Developments Act of 1974, 24 CFR Part 5 which provides that assistance shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR part 24. This provision covers all Contractors and subrecipients, as well as subcontractors of Contractor or subrecipient, whose names are included in the "List of Parties Excluded from

Federal Procurement and Nonprocurement Programs.” Inclusion in the aforementioned List during the term of this agreement would constitute grounds for contract termination as described in Sections 1 and 2 herein this Exhibit. The aforementioned List can be found on the Web at <http://epls.arnet.gov>.

7. UNIFORM ADMINISTRATIVE REQUIREMENTS

A. Contractor, if a governmental entity or public agency, shall comply with the requirements and standards of OMB Circular No. A-87, “Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments”, OMB Circular A-133, “Audits of State, Local Governments and Non-Profit Organizations”, and applicable sections of 24 CFR §85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”, as set forth in 24 CFR §570.502(a).

B. Contractor, if a non-profit organization, shall comply with the requirements and standards of OMB Circular No. A- 122, “Cost Principles for Non-Profit Organizations, OMB Circular A-133 Audits of State, Local Governments and Non-Profit Organizations”, and applicable Attachments to OMB Circular No. A-110, as set forth in 24 CFR §570.502(b).

8. The CFDA # for the entitlement programs to which this applies are as follows:

- 1) Community Development Block Grant (CDBG): 14.218)
- 2) Emergency Shelter Grant (ESG): 14.231
- 3) HOME Investment Partnership (HOME): 14.239
- 4) McKinney Supportive Housing: 14.235

Exhibit E

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person - Type or Print

Name of Contractor(s) - Type or Print

Street Address or P.O. Box

City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

Signature

Title of Authorized Official

Date

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with the facility accessibility regulations other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."