APPENDIX 18

RECORDING REQUESTED BY AND
AFTER RECORDATION, MAIL TO:

Los Angeles County Children and Families First
- Proposition 10 Commission
Address
City, State Zip
Attn.: [ ]

This Agreement is recorded at the request and for the benefit of the Los Angeles County Children and Families First - Proposition 10 Commission and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

COVENANTS, CONDITIONS, AND RESTRICTIONS
(PROJECT NO. YYXXX)

THIS AGREEMENT CONTAINING COVENANTS, CONDITIONS, AND RESTRICTIONS (“Agreement”) is executed as of the _____ day of __________, 20___ by and between the LOS ANGELES COUNTY CHILDREN AND FAMILIES FIRST - PROPOSITION 10 COMMISSION, a public entity, (“First 5 LA”), and [OWNER – BORROWER NAME], [type of entity – e.g., “a California limited partnership”] (“Owner”), with reference to the following:

A. First 5 LA and Owner are parties to a Loan Agreement (as amended, modified, supplemented, and replaced from time to time, collectively, the “Loan Agreement”) dated as of the _____ day of __________, 20___, on the terms and conditions of which Owner shall borrow from First 5 LA, and First 5 LA shall lend to Owner, the original principal amount of [LOAN AMOUNT IN CAPITAL LETTERS] DOLLARS ($x,xxx,xxx.xx) (as amended, modified, supplemented, and replaced from time to time, collectively, the “Loan”) for the purpose of providing financing for the housing development described in the Loan Agreement (the “Project”). The Project will be developed on a site legally described on Exhibit A to this Agreement (the “Site”).

B. Unless otherwise expressly provided, all defined terms used in this Agreement shall have the defined meanings provided for in the Loan Agreement.

NOW THEREFORE, in consideration of the representations, covenants, and obligations of Owner contained in this Agreement, Owner, on behalf of itself and its successors and assigns, hereby covenants and agrees as follows:
(1) **Term.** This Agreement will be in effect for **thirty (30)** years from the date of the Agreement (“Term”).

(2) **Use of the Property.**

  a. **Limitations on Tenants.** Notwithstanding anything to the contrary in this Agreement, Owner hereby covenants on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Owner, that, throughout the Term, Owner and such successors and assigns shall use the Site solely for the purpose of developing and operating the Project as a residential development. [If non-residential uses on the Site or within the development is not a part of the First 5 LA funding, include the following sentence template based on the actual project] First 5 LA acknowledges that the Site [will include / includes] commercial space [and/or] supportive services uses which fall outside of the consideration of the Loan.

  Owner agrees to comply with the CC&Rs and with any income, rent, and occupancy restrictions imposed by Senior, Junior, and Other Financing and by the California Tax Credit Allocation Committee (“CTCAC”), if applicable. If there is a conflict between the requirements of the Senior, Junior, and Other Financing, CTCAC and / or First 5 LA, the most restrictive requirement will prevail.

<table>
<thead>
<tr>
<th>Household Income</th>
<th>0-BR</th>
<th>1-BR</th>
<th>2-BR</th>
<th>3-BR</th>
<th>4-BR</th>
<th>TOTAL</th>
<th>Total</th>
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</thead>
</table>

[i]f separate Limitations for Residential and Non-Residential Tenants, use numbering and heading. If not, remove numbering and heading

  (i) **Limitations on Tenants [or] Limitations on Residential Tenants.** Owner, successors and assigns shall develop and operate the [include if applicable] residential portion of the Site with the number of total units and, with respect to the designated units to be assisted as consideration for the Loan (“**Assisted Units**”), the tenant income levels specified in this Agreement. The covenants described in this Agreement shall remain in effect through the Term, notwithstanding the earlier repayment of the Loan by Owner.

  Assisted Units shall be dispersed throughout the Project, and shall be no less attractive or desirable on average (whether because of convenient access, views, amenities, or other reasons) than the other Project units, if any, that are not Assisted Units. Subject to the reasonable approval of First 5 LA’s Chief Executive Officer (or his or her designee), the location of the Assisted Units within the Project may be changed from time to time by Owner.

  All Assisted Units shall be rented only at an Affordable Housing Cost, as hereinafter defined, to:

  (i) households in which at least one family member is under the age of five (5) years old; and

  (ii) households with income levels as defined in the following table

  [Project name] – CC&Rs
<table>
<thead>
<tr>
<th>Level (% of Area Median Income)</th>
<th>units</th>
<th>units</th>
<th>units</th>
<th>units</th>
<th>UNITS</th>
<th>Assisted Units</th>
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</thead>
<tbody>
<tr>
<td>X Percent Income (X%)</td>
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<tr>
<td>XX Percent Income (XX%)</td>
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<td>XXX Percent Income (XXX%)</td>
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<tr>
<td>Very Low Income (50% as defined below)</td>
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<td></td>
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<tr>
<td>Market Rate Units</td>
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<tr>
<td>Manager’s Unit</td>
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<tr>
<td>TOTAL</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Households meeting the applicable criteria are occasionally referred to as “Eligible Households” and persons within any group occasionally referred to as “Eligible Person” or “Eligible Persons”).

“Very Low Income Households” shall mean persons and families whose gross annual household incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, which qualifying limits are otherwise set forth in Section 6932 of Title 25 of the California Code of Regulations and are equivalent to fifty percent (50%) of Area Median Income, adjusted for family size and other adjustment factors by the United States Department of Housing and Urban Development (“HUD”).

[include the applicable income levels – add additional paragraphs as needed]

“X Percent Income Households” shall mean Very Low Income Households whose gross annual incomes do not exceed x percent (X%) of Area Median Income.

“XX Percent Income Households” shall mean Very Low Income Households whose gross annual incomes do not exceed xx percent (XX%) of Area Median Income.

“XXX Percent Income Households” shall mean Very Low Income Households whose gross annual incomes do not exceed xxx percent (XXX%) of Area Median Income.
“Affordable Housing Cost” shall mean, as to each Eligible Household, a rental rate which results in monthly payments which, including a reasonable utility allowance, do not exceed:

[include the applicable housing costs levels – add additional paragraphs as needed]

(x) for a Very Low Income Household, the product of thirty percent (30%) times fifty percent (50%) of Area Median Income adjusted for family size appropriate to the Assisted Unit.

(y) for a(n) X Percent Income Household, the product of thirty percent (30%) times x percent (X%) of Area Median Income adjusted for family size appropriate to the Assisted Unit.

(z) for a(n) XX Percent Income Household, the product of thirty percent (30%) times xx percent (XX%) of Area Median Income adjusted for family size appropriate to the Assisted Unit.

(aa) for a(n) XXX Percent Income Household, the product of thirty percent (30%) times xxx percent (XXX%) of Area Median Income adjusted for family size appropriate to the Assisted Unit.

Except to the extent “grandfathered” or otherwise exempted by state law, the foregoing definition of “Affordable Housing Cost” shall be deemed amended to correspond with future amendments of the definition of “affordable rent” in California Health and Safety Code Section 50053.

“Area Median Income” shall mean the median income for the Los Angeles /Long Beach Metropolitan Statistical Area, as adjusted for family size and defined and periodically adjusted by HUD, or any successor entity designated under state law as responsible for establishing such “Area Median Income.”

Owner shall specifically provide in each Assisted Unit lease and shall strictly enforce the requirement that each Assisted Unit be occupied at all times by the eligible household who has leased that Assisted Unit, and that any other occupant of the unit be another qualified member of the lessee’s household. First 5 LA shall be identified as a third party beneficiary of that covenant and shall have the right to directly enforce that restriction in the event Owner fails to do so. Prior to execution of any Assisted Unit lease with respect to the Project, Owner shall submit to First 5 LA and obtain its written approval of a standard form occupancy lease and Owner shall thereafter use the approved form for all leases of Assisted Units in the Project, with only such further modifications thereto as are first submitted to and approved in writing by First 5 L.A.

[Include the following if the Project includes an Operating Subsidy]
Notwithstanding any other provision of this Agreement to the contrary, in the event of a decrease or termination of the HUD Section 8 rental subsidy for the Project (“Operating Subsidy” and shown in the Cash Flow included in Exhibit “K” to the Loan Agreement), except if such reduction arises from a default by Owner or other failure to comply with agreements, laws and regulations applicable to Owner, First 5 LA agrees that the maximum household income and the rents charged for the Assisted Units may be increased by an amount necessary to replace the reduction in the Operating Subsidy (based on each occupied unit), however in no event may (a) Eligible Persons and Eligible Households be adjusted to include persons and families whose gross annual household incomes exceed fifty percent (50%) of Area Median Income and (b) the maximum annual rent shall not be increased above thirty percent (30%) of fifty percent (50%) of Area Median Income.

b. Tenant Selection Process; Reports and Records Concerning Tenancies. Owner shall maintain such records and satisfy such reporting requirements as may be reasonably imposed by First 5 LA to monitor compliance with the tenanting requirements described in Paragraph (2)a above, including without limitation the requirement that Owner deliver reports to First 5 LA commencing at the close of the initial occupancy of the Project, and continuing annually thereafter, setting forth the name of each tenant, the unit occupied and the income of the tenant and the amount of rent payable by each tenant. Owner shall also be required to have each prospective tenant complete a rental application prior to occupancy and to obtain evidence from each such tenant as may be reasonably required by First 5 LA to certify such tenant's qualification for occupancy of the Project. Owner's obligation to provide such reports shall remain in force and effect for the same duration as the use covenants set forth in this Paragraph (2).

c. Owner shall provide, in accordance with the Supportive Services Agreement [or] Plan attached as an exhibit to the Loan Agreement, certain supportive services for residents of the Project, throughout the Term of this Agreement.

(3) Management of Project. Subject to the terms and conditions contained hereinbelow, Owner shall at all times during the operation of the Project pursuant to this Agreement retain an entity to perform the management and/or supervisory functions (“Manager”) with respect to the operation of the Project, including day-to-day administration, maintenance and repair. Owner shall, before execution or any subsequent amendment or replacement thereof, submit and obtain First 5 LA’s written approval of a management contract (“Management Contract”) entered into between Owner and an entity (“Management Entity”) acceptable to First 5 L.A. Subject to any regulatory or licensing requirements of any other applicable governmental agency, the Management Contract may be for a term of up to fifteen (15) years and may be renewed for successive terms in accordance with its terms, but may not be amended or modified without the written consent of First 5 L.A. The Management Contract shall also provide that the Management Entity shall be subject to termination for failure to meet project maintenance and operational standards set forth herein or in other agreements between
Owner and First 5 LA  Owner shall promptly terminate any Management Entity which commits or allows such failure, unless the failure is cured within a reasonable period in no event exceeding sixty (60) days from the giving of notice by First 5 LA or Owner to the Management Entity of such failure. Owner's obligation to retain a Management Entity shall remain in force and effect for the same duration as the use covenants set forth in Paragraph (2) of this Agreement. The Management Agreement shall also provide that (i) its books and records with regard to the Project shall be maintained in an office in Los Angeles County; (ii) such books and records shall be subject to review and copying by First 5 LA and its representatives at any time during business hours and on business days upon the request of First 5 LA given at least 48 hours in advance, and (iii) after the occurrence of an Event of Default or a default beyond any applicable cure period under any of the other Loan Documents, First 5 LA may give notice to the Management Entity and the Management Entity shall comply with the directions of First 5 LA in the place of Borrower with regard to the Management Agreement.

(4) Operations and Maintenance. Owner hereby covenants on behalf of itself, and its successors and assigns, which covenant shall run with the land and bind every successor and assign in interest of Owner, that Owner and such successors and assigns shall use the Site solely for the purpose of operating the Project and ancillary improvements thereon, in accordance with and of the quality prescribed by this Agreement, the Loan Agreement and the Leasehold Deed of Trust (as defined in the Loan Agreement).

Owner covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Owner, that during development of the Site pursuant to this Agreement and thereafter, neither the Site nor the Project, nor any portion thereof, shall be improved, used or occupied in violation of any Applicable Governmental Restrictions (as defined below) or the restrictions contained in this Agreement. Furthermore, Owner and its successors and assigns shall not maintain, commit, or permit the maintenance or commission on the Site or in the Project, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site or the Project, or any portion thereof.

As used herein, "Applicable Governmental Restrictions" shall mean and include any and all laws, statutes, ordinances, codes, rules, regulations, directives, writs, injunctions, orders, decrees, rulings, conditions of approval, or authorizations, now in force or which may hereafter be in force, of any governmental entity, agency or political subdivision as they pertain to the performance of this Agreement or development or operation of the Project, including specifically but without limitation all code and other requirements of the jurisdiction in which the Project is located; the California Environmental Quality Act; the laws specified in the Loan Agreement; fair housing laws; prevailing wage laws (e.g., Cal. Labor Code 1720 et seq., and the federal Davis Bacon Act (46 U.S.C. 276a)), and any other applicable federal, state and local laws. Owner shall indemnify, defend and hold First 5 LA harmless for any suit, cost, attorneys’ fees, claim, administrative proceeding, damage, award, fine, penalty or liability arising out of Owner’s failure to comply with any Applicable Governmental Restrictions, including, without limitation, the nonpayment of any prevailing wages required to be paid, failure to maintain wage records, failure to post prevailing wage schedules, or other acts or omissions, regardless of whether they are the responsibility of the contractor or the party awarding the contract.
Owner shall, at its expense, (i) maintain all improvements and landscaping on the Site in good working order, condition, and repair (and, as to landscaping, in a healthy and thriving condition) in accordance with the plans for the Project approved by First 5 LA in accordance with the Loan Agreement and all Applicable Governmental Restrictions, and (ii) manage the Project and Project finances reasonably prudently and in compliance with Applicable Governmental Restrictions so as to maintain a safe and attractive living environment for Project residents while maximizing Residual Receipts to the extent reasonably possible consistent with applicable rent and tenant requirements (including all recorded rent restrictions affecting the Project) and without compromising the safety and attractiveness of the living environment of the Project.

(5) Performance of Maintenance.

a. Owner shall maintain in accordance with First 5 LA Standards, as hereinafter defined, the private improvements, public improvements and landscaping to the curblines on and abutting the Site. Said improvements shall include, but not be limited to, buildings, sidewalks and other paved areas, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and in the public right-of-way to the nearest curblines abutting the Site.

b. To accomplish the maintenance, Owner shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

c. First 5 LA Standards: The following standards (“First 5 LA Standards”) shall be complied with by Owner and its maintenance staff, contractors or subcontractors

(i) Ordinary Maintenance Standards - Owner shall maintain the dwelling units and Site in good repair, order and condition at all times in order to assure that the housing on the Site is kept in a decent, safe, and sanitary condition, and that the buildings, grounds, and equipment are to be maintained in a manner that will preserve their condition.

(ii) Annual Inspection Standards - Owner shall annually inspect the Site. The completed annual inspection will be documented and reported to First 5 LA on an annual basis, and at the end of each year Owner shall submit to First 5 LA a declaration certifying that the annual inspection was performed at the Site. Owner shall retain records of the inspection and make them available for review by First 5 LA at the request of First 5 L.A.

(iii) Extraordinary Maintenance. Owner shall perform any extraordinary repairs or replacements necessary in order to maintain the Site, including extraordinary replacement of equipment, betterment, and additions.
Extraordinary repairs or replacement consists of major repairs and rehabilitation involving substantial expenditures which usually are needed only at relatively long intervals of time, or are caused by such occurrences as earthquake, fire, obsolescence and, in some instances, neglect. Such items as replacement of roofs, replacement of corroded gas and heating lines, and rehabilitation of landscaping (ground-cover) would be considered in this category.

(iv) First 5 LA may enter and inspect the premises at any time after notifying Owner seventy-two (72) hours prior to the planned inspection, and said notice shall be delivered to Owner at the address indicated in paragraph 17(e) below.

(6) Failure to Maintain Improvements. In the event Owner does not maintain the Site improvements to the curbline(s) in the manner set forth herein and in accordance with First 5 LA Standards, First 5 LA shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after (i) written notice to Owner stating that the condition of said improvements does not meet with First 5 LA Standards and specifying the deficiencies and the actions required to be taken by Owner to cure the deficiencies (“Deficiency Notice”); and (ii) the lapse of the applicable “Cure Period,” as hereinafter defined. Upon receipt of the Deficiency Notice, Owner shall have thirty (30) days within which to correct, remedy or cure the deficiency, unless such deficiency is not capable of being cured within such thirty (30) day period, then such amount of time as is needed to cure such deficiency provided owner is diligently pursuing cure; provided however, if the Deficiency Notice states the problem is urgent relating to public health and safety, then Owner shall have forty-eight (48) hours to rectify the problem (collectively the “Cure Periods”).

In the event Owner fails to correct, remedy, or cure such maintenance deficiency after the Deficiency Notice and after the applicable Cure Period has lapsed, then First 5 LA shall have the right to maintain such improvements. Owner agrees to pay First 5 LA, upon demand, charges and costs incurred by First 5 LA in connection with such maintenance. Until so paid, First 5 LA shall have a lien on the Site for the amount of such maintenance charges and costs, which lien shall be perfected by the recordation of a “Notice of Claim of Lien” against the Site. Upon recordation of a Notice of a Claim of Lien against the Site, such lien shall constitute a lien on the [fee [or] leasehold] estate in and to the Site prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which by law would be superior thereto; (ii) the lien or charges of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority for any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien. Any such lien shall be subject and subordinate to any lease or sublease of the interest of Owner in the Site or any portion thereof and to any easement affecting the Site or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice. Any lien in favor of First 5 LA created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien describing such lien as aforesaid, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgage or beneficiary thereunder expressly
subordinates his interest, or record, to such lien. No lien in favor of First 5 LA created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Upon foreclosure of any mortgage or deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure-purchaser shall take title to the Site free of any lien imposed herein by First 5 LA that has accrued up to the time of the foreclosure sale, and upon taking title to the Site, such foreclosure-purchaser shall only be obligated to pay costs associated with this Agreement accruing after the foreclosure-purchaser acquires title to the Site. If the Site is ever legally divided with the written approval of First 5 LA and fee [or] leasehold title to various portions of the Site is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in the Agreement and the charges levied by First 5 LA to reimburse First 5 LA for the cost of undertaking such maintenance obligations of Owner and its successors and the lien for such charges shall be apportioned among the owners of the various portions of the Site under different ownerships proportionate to the square footage of the land contained in the respective portions of the Site owned by them. Upon apportionment, no separate owner of a portion of the Site shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Site, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Site owned by the owner who is liable for the apportioned lien and against no other portion of the Site. Owner acknowledges and agrees First 5 LA may also pursue any and all other remedies available in law or equity. Owner shall be liable for any and all reasonable attorneys’ fees, and other legal costs or fees incurred in collecting said maintenance costs.

(7) Reserved.

(8) Owner’s Obligation to Refrain From Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation, ancestry or source of income in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof. The nondiscrimination and nonsegregation covenants set forth herein shall remain in effect in perpetuity.

Owner shall refrain from restricting the rental, sale or lease of the Site or any portion thereof on the basis of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation, ancestry or source of income. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, and his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation, ancestry or source of
income in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

b. In leases: “The lessee herein covenants by and for himself or herself, and his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation, ancestry or source of income in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.”

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, national origin, sex, religion, marital or familial status, handicap (disability), sexual orientation, ancestry or source of income in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the parties to this contract or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees of the premises.”

Nothing in this paragraph shall be construed or understood to limit, restrict or in any way waive the income requirements described in this Agreement.

(9) Covenants Run With the Land; Duration of Covenants. The covenants and agreements established in this Agreement, as amended from time to time, shall be covenants running with the land and shall, without regard to technical classification and designation, be binding on Owner and any successor-in-interest to Owner's interest in the Site, or any part thereof, for the benefit of and in favor of First 5 LA and its successors and assigns. The covenants of this Agreement shall remain in effect through the Term, notwithstanding the repayment of the Loan by Owner prior to the Maturity Date. The covenants contained in Paragraph 8 of this Agreement shall remain in effect in perpetuity.

The Improvements to the curbline(s) and the maintenance thereof touch and concern the Site and inure to the benefit of any and all present or successive owners of the Site. Therefore, whenever the word “owner” is used herein, it shall include the owner as of date of execution of this Agreement, and any and all successor owners or assigns of the Site, and the provisions hereof are expressly binding upon all such successive owners and assigns and the
parties agree all such provisions shall run with the land. First 5 LA shall cause a fully executed copy of this Agreement to be recorded in the Office of the Los Angeles County Recorder. Notwithstanding the foregoing, in the event Owner or its successors or assigns shall convey its interest in all or any portion of the Site, the conveying owner shall be free from and after the date of recording such conveyance of all liabilities, respecting the performance of the restrictions, covenants or conditions contained in this Agreement thereafter to be performed with respect to the Site, or any part thereof, it being intended that the restrictions, covenants and conditions shall be binding upon the record owners of the Site only during such time as that person is the owner of the Site, provided that the conveying owner shall remain liable for any actions prior to the date of the conveyance.

(10) **Enforcement.** In amplification and not in restriction of the provisions set forth hereinafore, it is intended and agreed that First 5 LA and its successors and assigns shall be deemed the beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants running with the land have been provided. Each covenant of Owner, shall, without regard to technical classification and designation, inure to the benefit of the successors, transferees and assigns of First 5 LA for the entire period during which such covenants shall be in force and effect, and shall be binding upon the successors, transferees and assigns of Owner, whether by merger, consolidation, sale, transfer, liquidation, by operation of law, or otherwise. Each covenant in favor of First 5 LA is for the benefit of the real property owned by First 5 LA in the area surrounding the Site. The covenants herein running with the land shall also be equitable servitudes upon the Site and each part thereof and shall bind each and every person having any interest in the Site or part thereof, whether such interest is fee, easement, leasehold, beneficial or otherwise, and each successor or assign of such person having any such interest in the Site or part thereof. First 5 LA shall have the right if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach to which it may be entitled. Except for First 5 LA, the covenants and restrictions contained in this Agreement shall not benefit or be enforceable by any owner of any other real property or any person or entity having any interest in any such other real property.

(11) **Compliance with Law.** Owner shall comply with all Applicable Governmental Restrictions relating to the uses of or condition of the Site private improvements and public improvements to the curbline(s). Local laws for the purposes of this paragraph shall include only those ordinances which are nondiscriminatory in nature and applicable to the public welfare, health, safety and aesthetics. If any new local laws relating to the uses of or condition of the improvements create a condition or situation that constitutes a lawful nonconforming use as defined by local ordinance with respect to the Site or any portion thereof, then so long as the lawful nonconforming use status remains in effect (i.e., until such lawful status is properly terminated by amortization as provided for in the new local law or otherwise), Owner shall be entitled to enjoy the benefits of such lawful nonconforming use pursuant to the lawful nonconforming uses ordinance.
(12) **Indemnification and Insurance.** First 5 LA, the Community Development Commission of the County of Los Angeles and The County of Los Angeles, and each of their elected and appointed officers, officials, representatives, employees, and agents are hereinafter collectively referred to as “Public Agencies”.

a. **Indemnification.** Owner agrees to indemnify, defend (with counsel approved by First 5 LA), and hold harmless the Public Agencies from and against any and all liability, demands, damages, claims, causes of action, fees (including reasonable attorneys’ fees and costs and expert witness fees), and expenses, including, but not limited to, claims for bodily injury, property damage, and death (hereinafter collectively referred to as “Liabilities”), that arise out of, pertain to, or relate to this Agreement, the services and/or materials provided pursuant to this Agreement, the Property, or Project. Owner shall not be required to indemnify, defend, and hold harmless the Public Agencies from any Liabilities that arise from the sole negligence or willful misconduct of the Public Agencies, Public Agencies’ agents, servants, or independent contractors who are directly responsible to the Public Agencies. Such indemnification language shall also be incorporated in Owner’s contracts with entities that Owner has contracted with for purposes of this agreement in favor of the Public Agencies, except for Design Professionals, however Public Agencies may waive this requirement in the event that such contracts were entered into prior to the execution of this Agreement.

b. **Insurance.** Without limiting Owner’s indemnifications of the Public Agencies provided in this Agreement, Owner and/or the entities with which Owner contracts, shall procure and maintain at their own expense the insurance described in this section for the duration of this Agreement, unless otherwise set forth herein.

Such insurance shall be secured from carriers admitted in California, authorized to do business in California, and in good standing with the California Secretary of State and the California Department of Insurance. Such carriers must be approved by the California Department of Insurance, or must be included on the California Department of Insurance List of Eligible Surplus Line Insurers (hereinafter “LESLI” list). Such carriers must have a minimum rating of or equivalent to A:VIII in A.M. Best’s Insurance Guide.

Owner shall, concurrent with the execution of this Agreement, deliver to the Public Agencies certificates of insurance with original policy form endorsement(s) evidencing the Commercial General Liability and Business Automobile Liability insurance as required by this Agreement. If original endorsements are not immediately available, such endorsements may be delivered subsequent to the execution of this Agreement, but no later than thirty (30) days following execution of this Agreement.

Owner shall deliver satisfactory evidence of Property insurance and Workers’ Compensation insurance, at such time that such exposures are at risk, but in no event later than the Close of Escrow.

Owner shall deliver satisfactory evidence of Professional Liability insurance once the Design Professionals are hired for the project, or Owner begins to provide professional services, whichever comes first. (For purpose of these insurance requirements and the indemnity...
provisions in Section 12a, “Design Professional(s)” shall include, but not be limited to, the following: architects, structural engineers, civil engineers, geotechnical engineers and environmental consultants.) In the event that the Design Professional has been contracted or has substantially or fully completed their work prior to the execution of this Agreement, Public Agencies may waive this requirement.

The aforementioned certificate(s) or evidence of insurance shall be signed by a person authorized by the insurers to bind coverage on its behalf. Owner shall provide Public Agencies with certificates of insurance and applicable endorsements each year during the term of this Agreement to evidence its annual compliance with the insurance requirements set forth herein. Endorsements shall be issued by the insurance company on the applicable policy form as required by this Agreement. The Public Agencies reserve the right to require complete certified copies of all policies at any time.

Said insurance shall be in a form acceptable to the Public Agencies and may provide for such deductible(s) or self-insured retention(s) as may be acceptable to the Public Agencies. In the event such insurance does provide for deductible(s) or self-insured retention(s), Owner agrees that it and/or the entities with which it contracts, will defend, indemnify and hold harmless the Public Agencies in the same manner as they would have been defended, indemnified and held harmless if no such deductible(s) or self-insured retention(s) under any applicable policy had been in effect.

Each policy shall be endorsed to stipulate that the Public Agencies be given at least thirty (30) days written notice in advance of any cancellation for any policy of insurance required herein, excepting ten (10) days written notice for non-payment of premium. Owner shall give the Public Agencies notice of any insurance claim or loss which may be covered by insurance as soon as practicable.

Owner represents and warrants that the insurance coverage required herein will be required of Owner’s contracted third parties, including but not limited to, general contractors, subcontractors, architects, engineers and other Design Professionals. Contractual obligations entered into or fully performed prior to the execution of this Agreement may not be subject to these requirements.

All Certificates of Insurance and Additional Insured Endorsements shall carry the following identifier:

[Project Name and Address]
XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXX

The aforementioned insurance policies shall be primary with respect to the Public Agencies, except when the Owner executed a contract subject to this clause before this Agreement is executed.
The aforementioned insurance policies shall contain a waiver of subrogation, where reasonably available in the marketplace, for the benefit of the Public Agencies.

Failure on the part of Owner and/or any entities with which Owner contracts, to procure or maintain the insurance coverage required herein may constitute a material breach of this Agreement, as determined by Public Agencies, pursuant to which the Public Agencies may immediately terminate this Agreement and exercise all other rights and remedies set forth herein, at its sole and absolute discretion, and without waiving such default or limiting the rights or remedies of the Public Agencies, procure or renew such insurance and pay any and all premiums in connection therewith and all monies so paid by the Public Agencies shall be immediately repaid by the Owner to the Public Agencies, upon demand, including interest thereon at the Default Rate. In the event of such a breach, the Public Agencies shall have the right, at its sole election, to participate in and control any insurance claim adjustment or dispute with the insurance carrier to the extent permitted by the insurance policy form. Owner’s failure to assert or delay in asserting any claim shall not diminish or impair the Public Agencies’ rights against the Owner or the insurance carrier to the extent permitted by the insurance policy form.

Owner and/or specified entities with which Owner contracts shall procure and maintain, at their expense, for the duration of this Agreement unless otherwise set forth herein the following insurance against claims for injuries to persons or damage to property which may arise from or in connection with performance under this Agreement:

(i) **Commercial General Liability Insurance (“CGL”):**

1. Owner shall provide CGL in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) in the annual aggregate. Such coverage shall include protection for bodily injury, property damage, personal and advertising injury. Such coverage shall be primary to any insurance carried by Public Agencies, and shall provide additional insured status in favor of the Public Agencies.

2. Owner’s General Contractor shall provide CGL in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) in the annual aggregate. Such coverage shall include protection for bodily injury, property damage, personal and advertising injury and products & completed operations. Such coverage shall be primary to any insurance carried by Public Agencies, and shall provide additional insured status in favor of Owner and the Public Agencies. Owner’s general contractor shall require the same form and limits of insurance from all tiers of subcontractors with which it contracts.

(ii) **Professional Liability Insurance:** Owner’s Design Professional shall provide evidence of “architects and engineers” professional liability insuring Design Professionals against professional errors and omissions in an amount not less than One Million Dollars ($1,000,000) each occurrence. If such insurance is provided on a “claims made” policy form, such coverage shall also contain a retroactive date which is no later than the execution date of this Agreement, which retroactive date shall be maintained for a period of not less than four (4) years after issuance of the certificate of substantial completion has been obtained by Owner with respect to the Project, and Owner has provided Public Agencies with evidence of such. In the event that Owner provides any professional services, Owner shall be required to maintain the professional
liability insurance set forth above. In the event that the contract for professional services for purposes of this Agreement has already been entered into, or the professional services have been substantially or fully performed, Public Agencies may waive this requirement.

(iii) **Property Insurance:** Based upon the specifics of the Project, the Public Agencies have the right to require Owner to obtain either “Basic Form” or “Special Form” property insurance as follows:

1. “Special Form” perils property insurance coverage shall be provided for both Builders Risk (course of construction) and completed operational property. All builders risk insurance shall provide coverage against theft, vandalism, malicious mischief, collapse, false work, temporary buildings on site, theft and vandalism to construction materials, building materials in transit and debris removal including demolition occasioned by enforcement of any applicable building codes. The amount of the property coverage shall at all times meet or exceed the full replacement value of materials supplied or installed by others and all existing structures, improvements and fixtures on the Property. There shall not be a “co-insurance” clause and Owner agrees to waive any co-insurance clause to the full extent described in the insurance policy form. If a co-insurance waiver is not commercially available at reasonable rates, Public Agencies’ may waive this requirement. Said insurance shall be maintained for the duration of this Agreement. The Public Agencies shall be named as loss payees on such policy.

2. If “Special Form” is not available from Owner’s underwriters due to market conditions or unreasonable costs, or Public Agencies determine “Basic Form” is preferred, “Basic Form” may be obtained in lieu of “Special Form.” “Basic Form” insurance coverage shall include, without limitation, insurance against the perils of fire and physical loss of damage including, without duplication of coverage, vandalism, malicious mischief and extended coverage. The amount of the property coverage shall at all times meet or exceed the actual cash value (“ACV”) of all existing structures, improvements and fixtures on the Property. Said insurance shall be maintained for the duration of this Agreement. The Public Agencies shall be named as loss payees on such policy.

(iv) **Flood Insurance:** Flood Insurance shall be maintained for any project located in a Special Flood Hazard Area. The flood insurance shall provide coverage in an amount that at all times meets or exceeds the full replacement value of materials supplied or installed by others and all existing structures, improvements and fixtures on the Property, or the maximum limit available through the National Flood Insurance Program (NFIP), whichever is greater.

(v) **Workers’ Compensation and Employer’s Liability** shall be maintained by Owner protecting all employees of Owner. This must include a waiver of subrogation in favor of Public Agencies. Owner shall require this same protection from all entities with which Owner contracts. Workers compensation insurance shall be in an amount and in such form as to meet all applicable requirements of the Labor Code of the State of California; employers liability shall be in an amount not less than One Million Dollars ($1,000,000) each accident and disease. Said entities shall maintain the insurance for the duration of his Agreement or the duration of the construction that is the subject of their contracts with Owner, whichever is greater.
(vi) **Business Automobile Liability**: Coverage shall be maintained by Owner, and any specified entities with which Borrow contracts, for claims arising out of the ownership, maintenance or use of any motor vehicle whether owned, non owned or hired, with a combined single limit of One Million Dollars ($1,000,000) each accident for bodily injury and property damage. Business Automobile Liability insurance required in this section shall be maintained for the duration of this Agreement or the duration of the construction operations that is the subject of their contracts with Owner, whichever is greater. The Public Agencies shall be included as additional insureds on such policies, if reasonably available.

(13) **Bodily Injury and Site Damage Insurance Requirements.** Owner shall indemnify, defend, assume all responsibility for and hold First 5 LA and its officers, employees, and agents harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and court costs), which result from any of Owner's activities under this Agreement, whether such activities or performance thereof be by Owner or anyone directly or indirectly employed or contracted with or by Owner and whether such damage shall accrue or be discovered before or after termination of this Agreement.

Owner shall furnish a certificate of insurance and endorsement countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate and endorsement shall name First 5 LA, and if available, its officers, agents, and employees, as additional insureds under the policy. The certificate by the insurance carrier shall contain a statement of obligations on the part of the carrier to notify First 5 LA of any material change, cancellation or termination. Coverage provided hereunder by Owner shall be primary insurance and not contributing with any insurance maintained by First 5 LA, and the policy shall contain such an endorsement. The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of First 5 L.A.

(14) **Waiver.** Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The aggrieved party shall give written notice of the default to the party in default in accordance with Paragraph (17)e hereof. The defaulting party shall no longer be in default if the defaulting party cures such default within thirty (30) days after receiving the Default Notice; provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, the defaulting party shall be given such longer period as reasonably necessary (which in the case of a default by Owner shall be as reasonably determined by First 5 LA) and the defaulting party shall no longer be in default if it commences to cure such default within such thirty (30) day period and completes such cure with reasonable and due diligence.

The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise hereunder. The exercise of any remedy shall not preclude the exercise of other remedies First 5 LA or Owner may have at law or at equity.
(15) **Modification.** This Agreement may be modified only by subsequent mutual written agreement executed by Owner and First 5 LA or their respective successors and assigns.

(16) **Reserved.**

(17) **Miscellaneous Provisions.**

a. **Interpretation.** The provisions of this document shall be liberally construed to effectuate its purpose. Time is of the essence of this Agreement.

b. **Severability.** Invalidation of any of the covenants, conditions, restrictions, or other provisions contained in this Agreement by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, which shall remain in full force and effect.

c. **Headings.** The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections or paragraphs.

d. **Effective Date.** This Agreement shall take effect upon its recording in the Office of Los Angeles County Recorder.

e. **Notices.** Formal notices, demands, and communications between First 5 LA and Owner shall be given either by personal service, by overnight courier, or by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the principal offices of First 5 LA or Owner, as follows:

<table>
<thead>
<tr>
<th>If to First 5 LA:</th>
<th>[name]</th>
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<tbody>
<tr>
<td>Address</td>
<td></td>
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<tr>
<td>City, State Zip</td>
<td></td>
</tr>
<tr>
<td>Attn: Title</td>
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</table>

<table>
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<tr>
<th>With a copy to:</th>
<th>[name]</th>
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<tbody>
<tr>
<td>Address</td>
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<td>Attn: Title</td>
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</tr>
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</table>

<table>
<thead>
<tr>
<th>If to Owner:</th>
<th>[Owner]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td></td>
</tr>
<tr>
<td>City, State Zip</td>
<td></td>
</tr>
<tr>
<td>Attn: Title</td>
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</tr>
</tbody>
</table>

| With a copy to:       | [Co-Owner or other] |
Notices shall be effective upon receipt, if given by personal delivery; upon receipt, if faxed, provided there is written confirmation of receipt (except that if received after 5 p.m., notice shall be deemed received on the next business day); the earlier of (i) three (3) business days after deposit with United States Mail, or (ii) the date of actual receipt as evidenced by the return receipt, if delivered by certified mail; and one (1) day after deposit with the delivery service, if delivered by overnight guaranteed delivery service. Each party shall promptly notify the other party of any change(s) of address or fax to which notice shall be sent pursuant to this Agreement.

f. **Exhibits.** Each Exhibit mentioned in this Agreement is attached hereto and incorporated herein by this reference.

g. **Execution in Counterparts.** The parties may execute this document in two or more counterparts; each counterpart shall be deemed an original instrument as against any party who has executed it.

[remainder of page intentionally left blank]
IN WITNESS WHEREOF, First 5 LA and Owner have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of date first written above.

LOS ANGELES COUNTY CHILDREN AND FAMILIES FIRST- PROPOSITION 10 COMMISSION

By: __________________________
    Craig A. Steele

Date: __________________________

APPROVED AS TO FORM:

John F. Krattli, County Counsel

By: __________________________
    Deputy

OWNER:

[Owner],
[Entity Type]

(if applicable)
By: [Authorized Signor],
[Entity Type],
[Authorized Signor's Role (i.e., “managing general partner”)]

By: __________________________
    [Name]
    [Title]
On __________, 20__, before me_______________________, Notary Public, personally appeared ______________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature_______________________________
STATE OF CALIFORNIA

COUNTY OF _____________

On __________, 20___, before me_______________________, Notary Public, personally appeared ______________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature____________________________
EXHIBIT A TO CC&Rs

LEGAL DESCRIPTION OF SITE