



## REPORT TO THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

**DATE ISSUED:** December 24, 2019

**REPORT NO:** HAR20-010

**ATTENTION:** Chair and Members of the Housing Authority of the City of San Diego  
For the Agenda of January 14, 2020

**SUBJECT:** Preliminary Bond Authorization and Loan Recommendation for Hilltop & Euclid Family Housing

**COUNCIL DISTRICT:** 4

### **REQUESTED ACTIONS**

Approve a proposed residual receipts loan in an amount not to exceed \$8,550,000, to Hilltop Family Housing L.P. a California limited partnership, and take initial steps to issue Housing Authority of the City of San Diego tax-exempt Multifamily Housing Revenue Bonds up to \$29,000,000, to facilitate the acquisition and new construction of Hilltop & Euclid Family Housing, a 113-unit affordable rental housing development with studio through four-bedroom units, to be located at 922-944 Euclid Avenue San Diego, CA 92114, which will include 113 units that will remain affordable for 55 years.

### **STAFF RECOMMENDATIONS**

That the Housing Authority of the City of San Diego (Housing Authority) take the following actions as described in this report:

- 1) Approve a San Diego Housing Commission (Housing Commission) residual receipts loan of up to \$8,550,000 to the borrower Hilltop Family Housing L.P., a California limited partnership formed by Affirmed Housing (Affirmed), to finance the proposed acquisition and new construction of Hilltop & Euclid Family Housing, (Hilltop Family Housing) a 113-unit affordable rental housing development, to be located at 922-944 Euclid Avenue San Diego, CA 92114, which will remain affordable for 55 years.
- 2) The Housing Commission's proposed loan will be contingent upon the developer receiving all necessary third-party funding commitments as described in this report. Such third-party funding commitments will be subject to the Housing Commission General Counsel's approval.
- 3) That the Housing Authority approve an application to the California Debt Limit Allocation Committee (CDLAC) for an allocation of authority to issue tax-exempt Multifamily Housing Revenue Bonds in an amount up to \$29,000,000. Issuance of the bonds will require Housing Authority approval at a later date. And approve a bond financing team of Jones Hall as Bond Counsel, and CSG as Bond Financial Advisor.
- 4) Approve the following initial steps to issue Housing Authority tax-exempt Multifamily Housing Revenue Bonds which are allocated by the State of California, for acquisition and new

construction of Hilltop Family Housing, including issuance of a bond inducement resolution (Declarations of Official Intent) for up to \$29,000,000 in tax-exempt Multifamily Housing Revenue Bonds with 4 percent tax credits.

- a. To adjust financing terms/conditions, as necessary, for consistency with requirements of other funding sources or to accommodate market changes that may occur, provided that the proposed \$8,550,000 maximum loan amount may not increase.
  - b. To substitute approved funding sources with any other available funds as deemed appropriate, contingent upon budget availability, and further authorize the President & CEO, or designee, to take such actions as are necessary, convenient, and/or appropriate to implement this approval and delegation of authority by the Housing Commission upon advice of the General Counsel.
- 5) That the Housing Authority authorize the Housing Commission's President and Chief Executive Officer (President & CEO), or his designee to execute any and all documents necessary to effectuate the transaction and implement the project in a form approved by the General Counsel, and to take such actions as are necessary, convenient, and/or appropriate to implement the approvals upon advice of the General Counsel.

### **SUMMARY**

A Development Summary is at Attachment 1.

Hilltop & Euclid is a new construction mixed-use development containing 113 apartment homes for single-member through large-family low-income households, as well as 8,485 square feet of commercial space. Pursuant to the terms of a DDA with Civic San Diego, Affirmed Housing will redevelop the eastern half of the vacant nine-acre site, and a market-rate developer (Infill Development Company) will construct 20 market-rate single-family dwelling units and 27 market-rate two-and three-story townhomes on the western half of the site. The terms, conditions, and financing of the affordable and market-rate components are entirely separate from one another. This board report only discusses the affordable mixed-use component under development by Affirmed Housing.

The project will also include several infrastructure improvements, including: the extension of Hilltop Drive from its current terminus at the drainage crossing east to the existing signalized intersection at Euclid Avenue; the construction of a raised center median along the project's frontage on Euclid Avenue; and the restoration and enhancement of a naturally occurring arroyo, creating a natural habitat amenity and focal point for the community.

The apartments are spread over two, four-story buildings and one, three-story building. A separate single level building contains a community room and other common area features, including an adjacent swimming pool and recreational lawn. Studio E Architects designed the building facades to create visual interest through articulation and offsetting planes. A mix of colors and materials break up the visual bulk along Euclid Avenue and Hilltop Drive. The complex includes various recreational amenities, including a basketball court, gardening space, community room, and outdoor gathering areas.

The project will provide 98 standard non-accessible parking spaces, three accessible parking spaces, one van-accessible space, and 12 motorcycle spaces for residential use; 21 spaces for commercial use. 57 secured bicycle parking spaces are located in the ground level of one of the residential buildings. The project will also provide five non-accessible Electric Vehicle Charging Stations parking spaces for the multifamily units and one accessible EVCS multifamily residential space.

All of the 113 apartments (except for two manager’s units) are income and rent restricted. Rents will be the lesser of TCAC or CA Redevelopment Law maximums ranging between 30% - 60% AMI. The apartment unit types include studio to four-bedroom units

**Table 1 –Development Details**

Address	922-944 Euclid Avenue, San Diego
Council District	4
Community Plan Area	Encanto Neighborhoods Community Planning Group (ENCPG)
Developers	Affirmed Housing Group, Inc.
Development Type	New construction
Construction Type	Mid-rise: two four-story and one three-story building
Parking Type	98 Standard non-accessible parking spaces: 3 accessible parking spaces; 21 spaces for commercial use: 57 secured bicycle parking spaces 5 non-accessible EVCS for the multifamily units 1 accessible EVCS for the multifamily space
Housing Type (Affordable)	113 units of which 111 are affordable
Lot Size	4.801 acre, 209,132 square feet.
Units (407-units total)	113 (111-units affordable, plus two managers’ units).
Density	27.7 dwelling units per acre (113 units ÷ 4.08 acres).
Unit Mix	113 units: 14 Studio, 23 One-bedrooms, 35 two-bedrooms, 21 three-bedrooms, 18 four-bedrooms, and 2 managers’ units.
Gross Building Area	145,047 square feet
Net Rentable Area	124,772 square feet
Commercial/Retail Space	8,485 square feet.
Project Based Housing Vouchers	No Project-Based Vouchers

The Development

The developments’ site is a 9.38-acre vacant project site is located at 922-1040 Euclid Avenue and 5012 Hilltop Drive, on the northeastern corner of Hilltop Drive and Euclid Avenue. In the Encanto Neighborhoods Community Planning Group (Attachment 2 - Site Maps). Pursuant to the terms of a Disposition and Development Agreement (DDA) with Civic San Diego, (Attachment 6) Affirmed Housing will redevelop the eastern half of the vacant nine-acre site, approximately 4.801 Acres, and a market-rate developer (Infill Development Company) will construct 20 market-rate single-family dwelling units and 27 market-rate two-and three-story townhomes on the western half of the site.

The development proposes to provide 111 affordable rental (and two managers’ units) including studios, one-bedrooms, two-bedrooms, three-bedrooms, and four-bedroom units. The apartments will range from 456 square feet for living units to 1,441 square feet for four-bedroom units. Site amenities will include: an

approximately 8,485 square foot community building, basketball court, gardening space, community room, and outdoor gathering areas. However, neither the Housing Commission's loan funds nor the Multifamily Housing Revenue bond proceeds can be used for commercial space financing nor for furnishings.

#### Developer's Request

Affirmed submitted an application in response to the Housing Commission's November 25, 2018 New Construction Notice of Funding Availability (NOFA). On December 18th, 2019, the Housing Commission staff's Procurement Division provided an award letter for an up to \$8,550,000 residual receipts loan for the project. The developer proposes to apply for and obtain: a CDLAC allocation of authority to issue tax-exempt private equity bonds, a California Tax Credit Allocation Committee (CTCAC) approval for four percent tax credits, and third party financing as described in this report.

#### The Property

The property is owned City of San Diego. A DDA (attachment 6) was entered into between CivicSD and the Hilltop Family Housing, L.P., (the developer) on November 5<sup>th</sup> 2019 in which the City will receive \$1 for the property in return for the construction of a 113-unit affordable housing development.

#### Appraisal

On November 14, 2018, the land was appraised by Novogradac & Company at \$5,500,000.

#### Prevailing Wages

The proposed used of CivicSD funds will **not** require payment of state prevailing wages.

#### Relocation

The developers report that there will be no relocation as the site is vacant

#### Accessibility

The CTCAC requires wheelchair accessibility in ten percent of the units, with an additional four percent of the units accessible to residents with visual and/or hearing impairment. The project will be 100 percent accessible for visitors. The same units can satisfy both of these accessibility requirements. In addition, these accessible units will satisfy the federal HOME Investment Partnerships Program (HOME) and Project-Based Housing Voucher accessibility requirement of wheelchair accessibility in five percent of the units, plus an additional two percent of the units accessible to residents with visual and/or hearing impairment. The development will include Universal Design features.

#### Project Sustainability

The development will be designed to achieve a Build It Green® GreenPoint Gold certification. It will also comply with the CTCAC minimum energy efficiency construction standards for new construction. Sustainable features will include: Energy Star-rated efficient appliances, use of Low Volatile Organic Compound (VOC) paints and stains for interior surfaces, high-efficiency heating and cooling, energy-efficient windows, and light-emitting diode (LED) lighting. Water conservation will be promoted via drought-tolerant landscaping, and low flow water fixtures in the kitchens and bathrooms.

#### Development Team

The proposed borrower will be Hilltop Family Housing L.P., a single-asset California limited partnership. The limited partnership will include Affirmed Housing Group, Inc., as the Administrative General Partner, a TBD non-profit Managing General Partner, and a to-be-selected tax credit Investor Limited Partner (Attachment 3 - Organization Chart).



Since its inception in 1992, Affirmed has successfully developed 42 communities with over 3000 affordable rental and for sale apartments and homes. The Affirmed pipeline of projects currently includes over 500 apartments, each at various stages of development. Affirmed has secured over \$200 million of tax credit, conventional, and other financing for affordable housing projects. Recent developments include new construction in San Diego as well as acquisition and substantial rehabilitation in San Diego, Los Angeles, Riverside, and Ventura counties. Projects in San Diego include the 229- unit 1050 B Apartments, the 106-unit Tesoro Grove Apartments, the 94-unit Hollywood Palms Apartments, the 50-unit Creekside Trails Apartments, and the 69-unit Auburn Park Apartments.

Affirmed has developed multiple affordable rental housing developments in the City using Housing Commission loan funds. Affirmed is in full compliance on its previous Housing Commission funded loans. Based upon the developers’ past experience and performance, Housing Commission staff has determined that the developer has the capacity to successfully complete the proposed Hilltop & Euclid project.

Supportive Services

The development’s tenant supportive services will be provided by Compass for Affordable Housing. Founded in 2009 and broadened to Compass for Affordable Housing in 2018, Compass is an inclusive organization providing support to those of low income residing in affordable housing. Utilizing technology, Compass shares educational information with a wide-spread, diverse group of individuals who may lack access to pertinent information that can aid in their ability to achieve success. Compass is the connection between these individuals and pertinent social information. Compass provides a direction; to share, to raise awareness and empower.

**Table 2 Development Team Summary**

<b>ROLE</b>	<b>FIRM/CONTACT</b>
Developers	Affirmed Housing
Owner/Borrower	Hilltop Family Housing L.P.,
Managing General Partner	To be selected non-profit
Administrative General Partner	Affirmed Housing Group, Inc.,
Tax Credit Investor Limited Partner	To be selected
Architect	Studio E
General Contractor	HA Builders
Property Management	Solari Enterprises
Supportive Services Provider	Compass for Affordable Housing
Construction and Permanent Lender	Bank of America

Property Management

This development will be managed by Solari. Solari Enterprises, Inc. is a full-service property management organization specializing in multi-family affordable housing. Solari has provided property management services for affordable housing developments for more than 25 years and operates in multiple California cities.

**FINANCING STRUCTURE**

The project has an estimated total development cost of \$54,659,865 (\$483,715/unit). Financing will include a combination of sources as described in Table 3. The developer’s current pro forma is included as (Attachment 4) and is summarized below.

**Table 3 – Hilltop Family Housing L.P., Estimated Permanent Sources and Uses**

Financing Sources	Amounts	Financing Uses	Amounts	Per Unit
Permanent loan (bonds financed)	\$8,220,000	Property acquisition:	\$8,400,000	\$74,336
CivicSD Land Donation	\$8,200,000	Construction costs	\$30,366,513	\$268,730
CivicSD Predevelopment Loan	\$2,826,626	Hard Cost Contingency	\$2,732,986	\$24,186
CivicSD Loan	\$3,023,374	Architectural, Survey, & Engineering	\$2,218,724	\$19,635
Housing Commission Proposed loan	\$8,550,000	Development Impact Fees & Permits	\$2,804,660	\$24,820
Deferred developer's fee	\$1,009,420	Construction Interest & Fees	\$1,775,000	\$15,708
Federal Tax Credit Equity	\$17,438,555	Financing costs	\$1,011,141	\$8,948
State Tax Credit Equity	\$5,391,890	Legal	\$350,000	\$3,097
		Other soft costs	\$876,500	\$7,757
		Soft Cost Contingency	\$524,341	\$4,640
		Developer's fee	3600000	\$31,858
<b>Total Development Cost</b>	<b>\$54,659,865</b>	<b>Total Development Cost (TDC)</b>	<b>\$54,659,865</b>	<b>\$483,715</b>

The Housing Commission's proposed \$8,550,000 residual receipts loan will be funded with \$2,300,000 of HOME Investment Partnerships program (HOME) funds, awarded to the City of San Diego and administered by the Housing Commission, and \$6,250,000 of the City of San Diego's Affordable Housing Fund (Inclusionary Housing Fee and Housing Impact Fee, also known as Linkage Fee), which are administered by the Housing Commission. The total amount of funding sources shall not exceed \$8,550,000. A final determination of Housing Commission funding sources will be made by the Housing Commission's President & CEO, or designee, contingent upon budget availability. The proposed loan terms are summarized at Attachment 5.

The developer proposes financing with a combination of tax-exempt bonds, four percent tax credits, proposed loan funds from Civic San Diego, deferred developer fee funds, and a proposed Housing Commission residual receipts loan. The Housing Commission requires affordable housing developers to pursue all viable sources of funding to reduce the financing gap and amount of Housing Commission subsidy required. If other funding is secured, proceeds will first be used to make an adjustment to reduce the Housing Commission's loan.

Developers' Fee

\$3,600,000 – gross developer fee  
- 1,009,420 – deferred developer fee  
\$2,590,580 – net cash developer fee

On April 25, 2017, the Housing Authority approved the "Request for Approval of Updated Developer Fees" (HAR 17-011). That report approved certain developer fee guidelines for multifamily loans and bonds issuances. That report at its Attachment 1 states: "Developer fee for 4% tax credits: in project costs 15% of eligible basis...." For this development the developers are proposing a \$3,600,000 total developer fee which complies with HAR 17-011. The net cash developer fee shall be \$2,590,580 provided, however, that in the event financing terms or construction costs change and result in a financing gap, the developer may defer additional developer fee. The fee proposed is consistent with the Request

for Approval of Updated Developer Fees (HAR17-011) approved by the Housing Authority on April 25, 2017.

Development Cost Key Performance Indicators

Housing Commission staff has identified development cost performance indicators which were used to evaluate the proposed development and make a funding recommendation. The key performance indicators listed in Table 4 are commonly used by real estate industry professionals and affordable housing developers.

**Table 4 – Hilltop Family Housing L.P. Key Performance Indicators**

Development Cost Per Unit	\$48,677,811 ÷ 113 units =	\$430,777
Housing Commission Subsidy Per Unit	\$8,550,000 ÷ 113 units =	\$75,664
Acquisition Cost Per Unit	\$5,700,000 ÷ 113 units =	\$50,442
Gross Building Square Foot Hard Cost	\$54,659,865 ÷ 145,047 sq. ft. =	\$377
Net Rentable Square Foot Hard Cost	\$54,659,865 ÷ 124,772 sq. ft. =	\$438

Project Comparison Chart

There are multiple factors and variables that influence the cost of developing multi-family affordable housing including but not limited to project location, site conditions, environmental factors, land use approval process, community involvement, construction type, design requirements/constraints, economies of scale, City fees, developer experience and capacity, and the mission and goals of the organization developing the project. Similar construction-type developments (completed or approved) over recent years are listed in Table 5. These developments are similar in terms of new construction, target population, and construction type and are provided as a comparison to the subject Project I development.

**Table 5 – Hilltop Family Housing L.P., Comparable Development Projects**

Project Name	Year	Units	Prevailing Wages	Total Development Cost	Cost Per Unit	HC Subsidy Per Unit	Gross Hard Cost Sq. Ft.
<b>Subject- Hilltop Family Housing L.P.</b>	<b>2020</b>	<b>113</b>	<b>No</b>	<b>\$54,659,865</b>	<b>430,777</b>	<b>\$75,664</b>	<b>\$377</b>
Civita	2017	203	No	\$99,859,721	\$491,919	0	\$332
Town & Country	2018	145	Yes	\$48,166,994	\$332,186	\$91,358	\$90
Ten Fifty B	2010	229	Yes	\$88,682,000	\$387,258	0	\$447

Proposed Housing Bonds

The Housing Commission utilizes the Housing Authority’s tax-exempt borrowing status to pass on lower interest rate financing (and make four percent low-income housing tax credits available) to developers of affordable rental housing. The Housing Authority’s ability to issue bonds is limited under the U.S. Internal Revenue Code. To issue bonds for a development, the Housing Authority must first submit an application to the CDLAC for a bond allocation. Prior to submitting applications to CDLAC, developments are brought before the Housing Commission, Housing Authority, and City Council. Housing Authority bond inducement resolutions must be obtained prior to CDLAC application submittal, and a City Council Tax Equity and Fiscal Responsibility Act (TEFRA) resolutions must be secured no later than 30 days after application submittal. These actions do not obligate the Housing Authority to issue bonds.

The developer plans to submit a bond application to CDLAC on January 17, 2020, and apply for a bond allocation at CDLAC’s March 18th, 2020 meeting; however, if necessary, staff will submit additional

applications to CDLAC to secure a bond allocation for the development. However, the loan closing must occur within 18 months of the Housing Commission’s approval.

The developer will be seeking a CDLAC bond allocation of approximately \$29,000,000. The developer proposes to issue the bonds through a tax-exempt private placement bond issuance. The bonds will meet all requirements of the Housing Commission’s Multifamily Housing Revenue Bond Program policy and will fully comply with the City’s ordinance on bond disclosure. The up to \$29,000,000 bond allocation that will be sought from CDLAC is approximately 4.37 percent higher than the estimated \$27,732,493 amount for which the development is being underwritten. This increased amount represents a bond contingency to account for possible increases in the bond amount due to increases in construction costs, and/or changes in the assumed interest rate, and/or the loss of other planned funding sources. The bond amount that is ultimately issued will be based upon development costs, revenues, and interest rates prevailing at the time of bond issuance.

The developer proposes that the bonds will be used for acquisition, construction, and permanent financing. Housing Commission staff will return later to both the Housing Commission and Housing Authority for approval of the final bond amount. A general description of the Multifamily Housing Revenue Bond Program and the actions that must be taken by the Housing Authority and by the City Council to initiate and finalize proposed financings are described in Attachment 6.

Staff recommends assigning Jones Hall as Bond Counsel and CSG as Financial Advisor to work on the development. The proposed financing team members have been selected in accordance with the existing policy for the issuance of bonds. Financial Advisors and Bond Counsels are selected in accordance with the Housing Commission’s Bond Policy.

**AFFORDABLE HOUSING IMPACT**

Under the proposed bond financing, the development will serve low income individuals and families with incomes from 30 percent to 60 percent of San Diego Area Median Income. Approvals will be contingent upon National Environmental Policy Act clearance, and a subsidy layering review.

Under the proposed loan the development will be subject to a Housing Commission Declaration of Covenants and Restrictions, in addition to applicable tax credit and bond regulatory agreements that will restrict affordability of 111-units for 55 years. The HOME program’s funds will have affordability and rent restrictions for 20 years. Under the proposed loan and bond financing, the development will have 111-units restricted to households with incomes from 30 percent (\$22,500/year for a studio one-person household) to 60 percent (\$69,360 year for a four-bedroom five- person household) of the 2019 San Diego Area Median Income (AMI). The remaining two units will be unrestricted managers’ units. Table 6 summarizes the affordability:

**Table 6 – Hilltop Family Housing Affordability & Monthly Estimated Rent Table**

<b>Unit Type</b>	<b>AMI</b>	<b>Number of Units</b>	<b>Maximum Gross Rents</b>
Studio	30%	14	\$420
One-Bedroom	30%	12	\$480
One- Bedroom	60%	11	\$998
Two-Bedroom	60%	36	\$1,121
Three-Bedroom	60%	20	\$1,240

Four-Bedroom	60%	18	\$1,332
Subtotal residential units		111	
Managers' units (one & two bedrooms)	--	2	--
Total Units		113	

There will be 11 total HOME restricted units. The tax credit restricted units and/or the HOME Investment Partnerships (HOME) restricted units may be counted against the same specific units. The more stringent of the funding sources' affordability/rent restrictions will take precedence during the term of their applicability.

**FISCAL CONSIDERATIONS**

The proposed funding sources and uses proposed for approval by this proposed action are included in the Housing Authority-approved Fiscal Year (FY) 2019 Housing Commission Budget. Approving this action will not change the FY 2019 total budget.

Estimated funding sources approved by this action will be as follows:

- Bond Issuance Fees - \$72,500 (\$29,000,000 X .0025)

Estimated funding uses approved by this action will be as follows:

- Rental Housing Finance Program Administration Costs - \$72,500

Approval of the bond inducement and TEFRA resolutions does not commit the Housing Authority to issue the bonds. The bonds would not constitute a debt of the City. If bonds are ultimately issued for the development, the bonds will not financially obligate the City, the Housing Authority, nor the Housing Commission because security for the repayment of the bonds will be limited to specific private revenue sources of the development. Neither the faith and credit nor the taxing power of the City or the Housing Authority would be pledged to the payments of the bonds. The developer is responsible for the payment of all costs under the financing, including the Housing Commission's .0025 bond amount issuer fee (estimated at \$72,500 with a \$29,000,000 bond issue) and the Housing Commission's ongoing bonds annual bonds administration fee (estimated as \$10,000 at permanent financing conversion), as well as the Housing Commission's Bond Counsel and Financial Advisor fees.

Development Schedule

The estimated development timeline is as follows:

<b>Milestones</b>	<b>Estimated Dates</b>
• Housing Authority consideration	• January 7, 2020
• City Council IRS-required TEFRA hearing	• January 7, 2020
• CDLAC bond application & CTCAC tax credit application	• January 17, 2020
• CDLAC allocation meeting & CTCAC allocation meeting	• March 18 <sup>th</sup> , 2020
• Housing Commission final bond authorization	• June, 2020
• Housing Authority final bond authorization	• July, 2020
• Estimated bond issuance and escrow/loan closing	• September 2020
• Estimated start of construction work	• September 2020
• Estimated completion of construction work	• June 2022

**PREVIOUS COUNCIL and/or COMMITTEE ACTION**

Site Development Permit No. 1976637 and Neighborhood Development Permit No. 2179090 was granted by the City Council of The City of San Diego to The City of San Diego and Affirmed Housing Group, Inc., for the Hilltop & Euclid Mixed-Use Development Project No. 560527 on December 3, 2018.

**COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS**

On February 26, 2018, the Encanto Neighborhoods Community Planning Group voted 5-4-1 in support of the proposed development.

**KEY STAKEHOLDERS & PROJECTED IMPACTS**

Stakeholders include Affirmed Housing as the developer, the Housing Authority as bond issuer, Civic of San Diego as a lender, and the Encanto Village neighborhood. The development is anticipated to have a positive impact on the community as it will contribute to the quality of the surrounding neighborhood and create 111 new affordable rental homes for low income persons and families.

**STATEMENT FOR PUBLIC DISCLOSURE**

Developer Disclosure Statements for Affirmed Housing is provided at Attachment 8

**ENVIRONMENTAL REVIEW**

On December 3, 2018 the City of San Diego passed Resolution Number R-312078 outlining the following Environmental determination. “The information contained in the Program Environmental Impact Report No. 386029/SCH No. 2014051075 along with the Addendum thereto, including any comments received during the public review process, has been reviewed and considered by this City Council prior to making decisions on the project. There are no substantial changes proposed to the Project and no substantial changes with respect to the circumstances under which the Project is to be undertaken that would require major revisions in the Program Environmental Impact Report No. 386029/SCH No. 2014051075 for the Project. Pursuant to State CEQA Guidelines Section 15164, only minor technical changes or additions are necessary, and therefore, the City Council adopts Addendum to Program Environmental Impact Report No. 386029/SCH No. 2014051075 with respect to the Project, a copy of which is on file in the office of the City Clerk, 202 C Street, San Diego, CA 92101. Pursuant to CEQA Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the change to the project as required by the City Council of San Diego in order to mitigate or avoid significant effects on the environment.

**National Environmental Policy Act**

Federal funds will constitute a portion of the funding for the project. A final reservation of federal funds shall occur only upon satisfactory completion of the environmental review and receipt by the City of San Diego of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58 of the National Environmental Policy Act (NEPA). The parties agree that the provision of any federal funds to the project is conditioned on the City of San Diego’s determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review under NEPA.

Respectfully submitted,

*Colin Miller*

Colin Miller  
Vice President Multifamily Housing Finance  
Real Estate Division

Approved by,

*Jeff Davis*

Jeff Davis  
Executive Vice President & Chief of Staff  
San Diego Housing Commission

- Attachments:
1. Development Summary
  2. Site Map
  3. Organization Chart
  4. Developers' Project Pro Forma
  5. Proposed Loan Terms
  6. Civic Disposition and Development Agreement
  7. Multifamily Housing Revenue Bond Program
  8. Developer's Disclosure Statement -Affirmed

Hard copies are available for review during business hours at the security information desk in the main lobby and the fifth floor reception desk of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials in the "Governance & Legislative Affairs" section of San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

## Attachment 1

### Table 1 – Development Details

Address	922-944 Euclid Avenue, San Diego
Council District	4
Community Plan Area	Encanto Neighborhoods Community Planning Group (ENCPG)
Developers	Affirmed Housing Group, Inc.
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Construction Type	Mid-rise: two four-story and one three-story building
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Housing Type (Affordable)	113 units of which 111 are affordable
Lot Size	4.801 acre, 209,132 square feet.
Units (407-units total)	113 (111-units affordable, plus two managers' units).
Density	27.7 dwelling units per acre (113 units ÷ 4.08 acres).
Unit Mix	113 units: 14 Studio, 23 One-bedrooms, 35 two-bedrooms, 21 three-bedrooms, 18 four-bedrooms, and 2 managers' units.
Gross Building Area	145,047 square feet

### Table 2 Development Team Summary

<b>ROLE</b>	<b>FIRM/CONTACT</b>
Developers	Affirmed Housing
Owner/Borrower	Hilltop Family Housing L.P.,
Managing General Partner	To be selected non-profit
Administrative General Partner	Affirmed Housing Group, Inc.,
Tax Credit Investor Limited Partner	To be selected
Architect	Studio E
General Contractor	HA Builders
Property Management	Solari Enterprises
Supportive Services Provider	Compass for Affordable Housing
Construction and Permanent Lender	Bank of America



**Table 3 – Hilltop Family Housing L.P., Estimated Permanent Sources and Uses**

Financing Sources	Amounts	Financing Uses	Amounts	Per Unit
Permanent loan (bonds financed)	\$8,220,000	Property acquisition:	\$8,400,000	\$74,336
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CivicSD Loan	\$3,023,374	Architectural, Survey, & Engineering	\$2,218,724	\$19,635
Housing Commission Proposed loan	\$8,550,000	Development Impact Fees & Permits	\$2,804,660	\$24,820
Deferred developer's fee	\$1,009,420	Construction Interest & Fees	\$1,775,000	\$15,708
Federal Tax Credit Equity	\$17,438,555	Financing costs	\$1,011,141	\$8,948
State Tax Credit Equity	\$5,391,890	Legal	\$350,000	\$3,097
		Other soft costs	\$876,500	\$7,757
		Soft Cost Contingency	\$524,341	\$4,640
		Developer's fee	3600000	\$31,858
<b>Total Development Cost</b>	<b>\$54,659,865</b>	<b>Total Development Cost (TDC)</b>	<b>\$54,659,865</b>	<b>\$483,715</b>

**Table 4 – Hilltop Family Housing L.P. Key Performance Indicators**

Development Cost Per Unit	$\$48,677,811 \div 113 \text{ units} =$	\$430,777
Housing Commission Subsidy Per Unit	$\$8,550,000 \div 113 \text{ units} =$	\$75,664
Acquisition Cost Per Unit	$\$5,700,000 \div 113 \text{ units} =$	\$50,442
Gross Building Square Foot Hard Cost	$\$54,659,865 \div 145,047 \text{ sq. ft.} =$	\$377
Net Rentable Square Foot Hard Cost	$\$54,659,865 \div 124,772 \text{ sq. ft.} =$	\$438

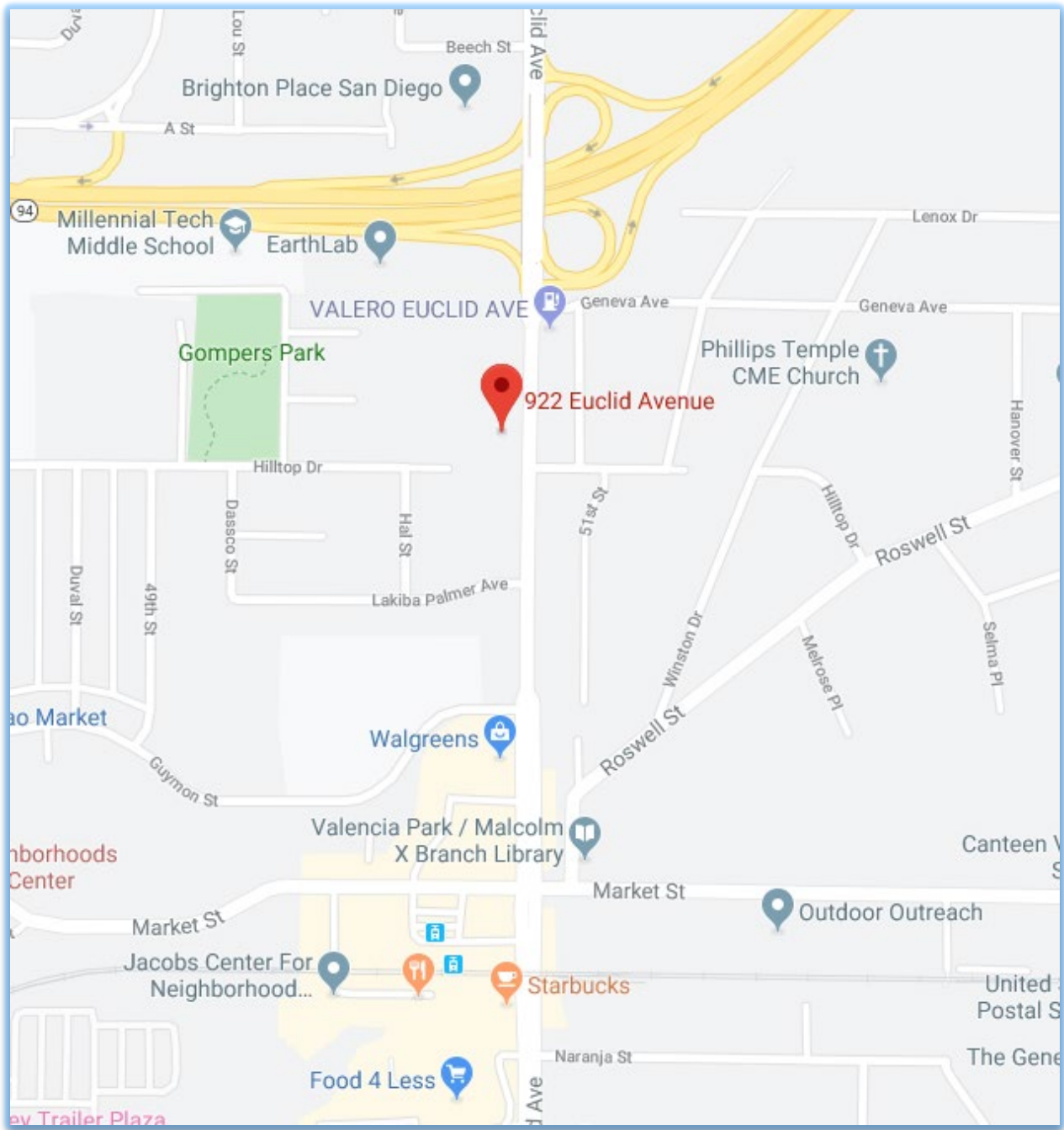
**Table 5 – Hilltop Family Housing L.P., Comparable Development Projects**

Project Name	Year	Units	Prevailing Wages	Total Development Cost	Cost Per Unit	HC Subsidy Per Unit	Gross Hard Cost Sq. Ft.
<b>Subject- Hilltop Family Housing L.P.</b>	<b>2020</b>	<b>113</b>	<b>No</b>	<b>\$54,659,865</b>	<b>430,777</b>	<b>\$75,664</b>	<b>\$377</b>
Civita	2017	203	No	\$99,859,721	\$491,919	0	\$332
Town & Country	2018	145	Yes	\$48,166,994	\$332,186	\$91,358	\$90
Ten Fifty B	2010	229	Yes	\$88,682,000	\$387,258	0	\$447

**Table 6 – Hilltop Family Housing Affordability & Monthly Estimated Rent Table**

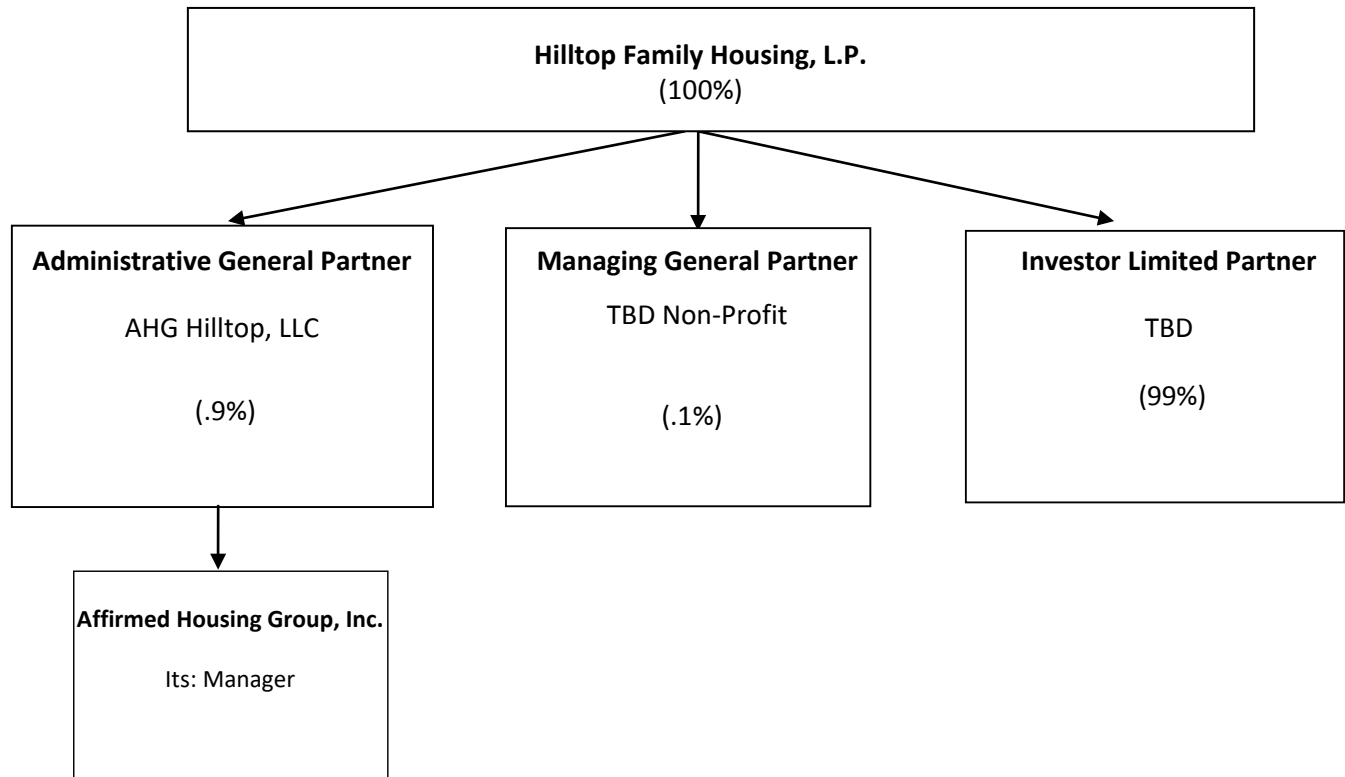
<b>Unit Type</b>	<b>AMI</b>	<b>Number of Units</b>	<b>Maximum Gross Rents</b>
Studio	30%	14	\$420
One-Bedroom	30%	12	\$480
One- Bedroom	60%	11	\$998
Two-Bedroom	60%	36	\$1,121
Three-Bedroom	60%	20	\$1,240
Four-Bedroom	60%	18	\$1,332
Subtotal residential units		111	
Managers' units (one & two bedrooms)	--	2	--
Total Units		113	

Attachment 2



**Hilltop Family Housing, LP OWNERSHIP STRUCTURE:****Limited Partnership**

Affirmed Housing Group, Inc., a Delaware for-profit corporation, has formed a Limited Partnership that will be the 100% ownership entity of the affordable housing project. Affirmed Housing Group will own .9% interest, the Investor Limited Partner will have 99% interest in the limited partnership, and the Managing General Partner will own .1% of the limited partnership.

**OFFICERS AND/OR MANAGERS RESPONSIBLE FOR THE PROJECT:**

1. James Silverwood  
President  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128
2. Jimmy Silverwood  
Vice President of Acquisitions & Development  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128
3. Jonathan Taylor  
Senior Project Manager  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128

Affirmed Housing Group, Inc. will act as the General Partner in the development of the affordable housing project. Affirmed Housing Group's role in the development will be to obtain all the necessary funding to develop and operate the project, process entitlements, select consultants, General Contractor and property management company, oversee architectural design, construction management and other aspects of the development process as well as manage the limited partnership for the life of the project.

Hilltop & Euclid

922-1040 Euclid Ave., San Diego 92114  
 113 Family Affordable Units (3 residential bldgs; 1 community bldg) + 8,300 SF Commercial  
 + 47 for sale homes by other developer  
 4% + State Tax Credits + CivicSD Loan & Land Donation + SDHC Loan

SOURCES

Name of Lender/Source	Amount of Funds	Per Unit	%
Permanent Loan	\$ 8,220,000	72,743	15.0%
Civic SD Land Donation	\$ 8,200,000	72,566	15.0%
CivicSD Predevelopment Loan	\$ 2,826,626	25,014	5.2%
CivicSD Loan-Affordable	\$ 3,023,374	26,756	5.5%
SDHC Loan	\$ 8,550,000	75,664	15.6%
Deferred Developer Fee	\$ 1,009,420	8,933	1.8%
Federal Tax Credit Equity	\$ 17,438,555	154,323	31.9%
State Tax Credit Equity	\$ 5,391,890	47,716	9.9%
<b>TOTAL USES</b>	<b>\$54,659,865</b>	<b>483,716</b>	<b>100.0%</b>

USES

Property Acquisition Cost	\$	8,400,000	74,336	15.4%
<b>Total New Construction Costs</b>	<b>\$</b>	<b>30,366,513</b>	<b>268,730</b>	<b>55.6%</b>
<b>Hard Cost subtotal</b>	<b>\$</b>	<b>30,366,513</b>	<b>268,730</b>	<b>55.6%</b>
<b>Construction Contingency</b>	<b>\$</b>	<b>2,732,986</b>	<b>24,186</b>	<b>5.0%</b>
Architecture & Engineering	\$	2,218,724	19,635	4.1%
Construction Interest & Fees	\$	1,775,000	15,708	3.2%
Capitalized Reserves	\$	297,000	2,628	0.5%
Taxes & Insurance	\$	180,000	1,593	0.3%
Cost of Issuance	\$	-	-	0.0%
Other: Const Mgmt & Deputy Ser	\$	150,000	1,327	0.3%
Escrow & Title	\$	75,000	664	0.1%
Legal Fees	\$	350,000	3,097	0.6%
Devel Impact Fees & Permits	\$	2,804,660	24,820	5.1%
Tax Credit Fees	\$	309,141	2,736	0.6%
Misc. Soft Costs	\$	876,500	7,757	1.6%
<b>Soft Cost subtotal</b>	<b>\$</b>	<b>9,036,025</b>	<b>79,965</b>	<b>16.5%</b>
<b>Soft Cost Contingency</b>	<b>\$</b>	<b>524,341</b>	<b>4,640</b>	<b>1.0%</b>
<b>Developer Fee</b>	<b>\$</b>	<b>3,600,000</b>	<b>31,858</b>	<b>6.6%</b>
<b>TOTAL USES</b>	<b>\$</b>	<b>54,659,865</b>	<b>483,716</b>	<b>100.0%</b>

\$0

FINANCING ASSUMPTIONS

Permanent Loan Amount	\$8,220,000
Permanent Loan Interest Rate	4.39%
Permanent Loan Term (mo.)	420
Net Operating Income	\$529,028
Debt Service	\$460,124
Debt Coverage Ratio	1.15
Construction Loan Amount	\$27,732,493
Construction Loan Interest Rate	4.31%
Construction Loan Term (mo)	26
Loan to Value	50.74%

INCOME

Type	Qty.	%AMI	Net Income	Total Income
Studio	14	30%	\$ 420	\$ 5,880
1BR	12	30%	\$ 480	\$ 5,760
1BR	11	60%	\$ 998	\$ 10,978
2BR	36	60%	\$ 1,121	\$ 40,356
3BR	20	60%	\$ 1,240	\$ 24,800
4BR	18	60%	\$ 1,332	\$ 23,976
2BR MGR	1		\$ -	\$ -
3BR MGR	1		\$ -	\$ -
<b>TOTAL</b>	<b>113</b>			<b>\$ 111,750.00</b>
Annual Residential Income				\$ 1,340,862
Excess PBV Income:				\$ -
Other Income				\$ 9,492
<b>Total Gross Annual Income</b>				<b>\$ 1,350,354</b>
Vacancy @ 5.0%				\$ (67,043)
<b>TOTAL NET ANNUAL INCOME</b>				<b>\$ 1,283,311</b>

EXPENSES

Administrative	\$ 905	\$ 102,240
Management	\$ 681	\$ 76,999
Utilities	\$ 1,009	\$ 114,000
Payroll	\$ 1,318	\$ 148,990
Total Insurance:	\$ 292	\$ 33,000
Maintenance	\$ 1,080	\$ 122,000
Other: Agency Monitoring Fees	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 5,285</b>	<b>\$ 597,228</b>
Resident Services	\$ 549	\$ 62,000
Replacement Reserves	\$ 500	\$ 56,500
Real Estate Taxes	\$ 103	\$ 11,630
Other: SDHC Monitoring Fee	\$ 147	\$ 16,650
<b>ANNUAL EXPENSES</b>	<b>\$</b>	<b>744,008</b>

TAX CREDIT ASSUMPTIONS

9% Tie Breaker Score	60.10%
Federal Tax Credits Requested	\$1,797,419
Federal Tax Credit Pricing	\$0.98
State Tax Credits Requested	\$6,982,505
State Tax Credit Pricing	\$0.78
LP Interest	99.00%
Applicable Rate - 9%	NA
Applicable Rate - 4%	3.19%
50% Test	56.37%

**CONSTRUCTION & PERMANENT FINANCING**  
Hilltop & Euclid

<b>Construction Financing</b>				
<i>Name of Lender/Source</i>	<i>Term (months)</i>	<i>Interest Rate</i>	<i>Amount of Funds</i>	<i>Int. Reserve</i>
<b>Construction Loan</b>	<b>26</b>	<b>4.31%</b>	<b>27,732,493</b>	<b>1,260,000</b>
Federal Tax Credit Equity			871,928	
Civic SD Land Donation			8,200,000	
CivicSD Predevelopment Loan			2,826,626	
CivicSD Loan-Affordable			2,721,037	
SDHC Loan			8,122,500	
<b>Costs Deferred Until Perm</b>			<b>4,185,282</b>	
<b>Total Funds for Construction</b>			<b>54,659,865</b>	

<b>Permanent Financing</b>				
<i>Name of Lender/Source</i>	<i>Term (months)</i>	<i>Interest Rate</i>	<i>Amount of Funds</i>	<i>Debt Service</i>
<b>Permanent Loan</b>	<b>420</b>	<b>4.39%</b>	<b>8,220,000</b>	<b>460,124</b>
<b>Civic SD Land Donation</b>			<b>8,200,000</b>	
<b>CivicSD Predevelopment Loan</b>	<b>420</b>	<b>3.00%</b>	<b>2,826,626</b>	
<b>CivicSD Loan-Affordable</b>	<b>420</b>	<b>3.00%</b>	<b>3,023,374</b>	
<b>SDHC Loan</b>		<b>4.00%</b>	<b>8,550,000</b>	
<b>Deferred Developer Fee</b>			<b>1,009,420</b>	
<b>Total Permanent Financing</b>			31,829,420	
<b>Federal Tax Credit Equity</b>			17,438,555	
<b>State Tax Credit Equity</b>			5,391,890	
<b>Total Sources of Project Funds</b>			<b>54,659,865</b>	

CONFIDENTIAL

DEVELOPMENT BUDGET

Hilltop & Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan-Affordable	0	Deferred Developer Fee	SDHC Loan	0		70% PVC for New Construction/ Rehabilitation	30% PVC for Acquisition
<b>LAND COST/ACQUISITION</b>												
Purchase Price	200,000.00	200,000	-	-	-	-	-	-	-	200,000		
Donated Land (Eastern 1/2 of Site)	8,200,000.00	8,200,000	-	-	-	-	-	-	-	8,200,000		
Land Carry Cost	-	-	-	-	-	-	-	-	-	-		
<b>Total Land Cost or Value</b>	<b>8,400,000.00</b>	<b>8,400,000</b>	-	-	-	-	-	-	-	<b>8,400,000</b>		
Existing Improvements Value	-	-	-	-	-	-	-	-	-	-		-
Off-Site Improvements	-	-	-	-	-	-	-	-	-	-		-
<b>Total Acquisition Cost</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>		<b>-</b>
<b>Total Land Cost / Acquisition Cost</b>	<b>8,400,000.00</b>	<b>8,400,000</b>	-	-	-	-	-	-	-	<b>8,400,000</b>		
<b>REHABILITATION</b>												
Abatement/Demolition Structures	-	-	-	-	-	-	-	-	-	-	-	-
General Requirements	-	-	-	-	-	-	-	-	-	-	-	-
Contractor Overhead	-	-	-	-	-	-	-	-	-	-	-	-
Contractor Profit	-	-	-	-	-	-	-	-	-	-	-	-
Prevailing Wages	-	-	-	-	-	-	-	-	-	-	-	-
General Liability Insurance	-	-	-	-	-	-	-	-	-	-	-	-
Contractor Contingency	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Rehabilitation Costs</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Relocation Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NEW CONSTRUCTION</b>												
Site Work	3,734,384	3,734,384	-	-	-	-	-	-	-	3,734,384	3,527,834	-
Structures	22,131,479	21,681,479	450,000	-	-	-	-	-	-	21,681,479	21,681,479	-
General Requirements	1,081,100	1,081,100	-	-	-	-	-	-	-	1,081,100	1,081,100	-
Contractor Overhead	1,250,000	1,250,000	-	-	-	-	-	-	-	1,250,000	1,250,000	-
Contractor Profit	1,200,000	1,200,000	-	-	-	-	-	-	-	1,200,000	1,200,000	-
Prevailing Wages	-	-	-	-	-	-	-	-	-	-	-	-
GL Insurance + Bond Premium	650,000.00	650,000	-	-	-	-	-	-	-	650,000	650,000	-
Other:	-	-	-	-	-	-	-	-	-	-	-	-
Other: Commercial Space TI's	319,550	-	319,550	-	-	-	-	-	-	-	-	-
<b>Total New Construction Costs</b>	<b>30,366,512.75</b>	<b>29,596,963</b>	<b>769,550</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>29,596,963</b>	<b>29,390,413</b>	<b>-</b>

DEVELOPMENT BUDGET

Hilltop & Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan-Affordable	-	Deferred Developer Fee	SDHC Loan	-	-	70% PVC for NC/Rehab or 30% PVC for Fed Subsidized NC/Rehab	30% PVC for Acquisition
<b>ARCHITECTURAL FEES</b>												
Design (incl landscape)	1,269,224	1,269,224	-	-	-	-	-	-	-	1,269,224	1,269,224	-
Other:	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Architectural Costs</b>	<b>1,269,224.25</b>	<b>1,269,224</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,269,224</b>	<b>1,269,224</b>	<b>-</b>
<b>Total Survey and Engineering</b>	<b>949,500</b>	<b>949,500</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>949,500</b>	<b>949,500</b>	<b>-</b>
<b>CONST. INTEREST &amp; FEES</b>												
Construction Loan Interest	550,000.00	550,000	-	-	-	-	-	-	-	550,000	550,000	-
Origination Fee	240,000.00	240,000	-	-	-	-	-	-	-	240,000	240,000	-
Cost of Issuance	-	-	-	-	-	-	-	-	-	-	-	-
Bond Premium	-	-	-	-	-	-	-	-	-	-	-	-
Taxes	30,000.00	30,000	-	-	-	-	-	-	-	30,000	30,000	-
GL Insurance	150,000.00	150,000	-	-	-	-	-	-	-	150,000	150,000	-
Title and Recording	75,000.00	75,000	-	-	-	-	-	-	-	75,000	75,000	-
Construction Service Fees (Bank)	75,000.00	75,000	-	-	-	-	-	-	-	75,000	75,000	-
Other: Const Mgmt & Deputy Services	150,000.00	150,000	-	-	-	-	-	-	-	150,000	150,000	-

<b>Total Const. Interest &amp; Fees</b>	<b>1,270,000.00</b>	<b>1,270,000</b>	-	-	-	-	-	-	<b>1,270,000</b>	<b>1,270,000</b>	-
<i>PERMANENT FINANCING</i>											
Loan Origination Fee (Bank + Agencies)	200,000.00	200,000	-	-	-	-	-	-	200,000		
Credit Enhancement/Application Fee		-	-	-	-	-	-	-	-		
Title and Recording		-	-	-	-	-	-	-	-		
Taxes		-	-	-	-	-	-	-	-		
Insurance		-	-	-	-	-	-	-	-		
Other: Cost of Issuance	120,000.00	120,000	-	-	-	-	-	-	120,000		
Other: Post Construction Interest	710,000.00	710,000	-	-	-	-	-	-	710,000		
<b>Total Perm. Financing Costs</b>	<b>1,030,000.00</b>	<b>1,030,000</b>	-	-	-	-	-	-	<b>1,030,000</b>		
<i>LEGAL FEES</i>											
Lender Legal Pd. by Applicant	150,000.00	150,000	-	-	-	-	-	-	150,000	115,000	-
Other : Partnership & Transaction	200,000.00	200,000	-	-	-	-	-	-	200,000	-	-
<b>Total Attorney Costs</b>	<b>350,000.00</b>	<b>350,000</b>	-	-	-	-	-	-	<b>350,000</b>	<b>115,000</b>	-
<i>RESERVES</i>											
Rent Reserves	-	-	-	-	-	-	-	-	-		
Operating Reserve		-	-	-	-	-	-	-	-		
*3- Month Operating Reserve	297,000.00	297,000	-	-	-	-	-	-	297,000		
Other: (Specify)		-	-	-	-	-	-	-	-		
<b>Total Reserve Costs</b>	<b>297,000.00</b>	<b>297,000</b>	-	-	-	-	-	-	<b>297,000</b>		

**DEVELOPMENT BUDGET**

**Hilltop & Euclid**

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan-Affordable	Deferred Developer Fee	SDHC Loan			70% PVC for NC/Rehab or 30% PVC for Fed Subsidized NC/Rehab	30% PVC for Acquisition	
<b>Total Appraisal Costs</b>	10,000.00	10,000	-	-	-	-	-	-	10,000	10,000.00	-	
<b>Total Hard Cost Contingency</b>	2,732,986.00	2,732,986	-	-	-	-	-	-	2,732,986	2,732,986.00	-	
<i>OTHER PROJECT COSTS</i>												
TCAC App/Allocation/Monitoring	309,141.00	309,141	-	-	-	-	-	-	309,141			
Environmental Audit	125,000	125,000	-	-	-	-	-	-	125,000	125,000	-	
Local Dev. Impact Fees	2,469,050.00	2,469,050	-	-	-	-	-	-	2,469,050	2,469,050	-	
Permit Processing Fees	335,610.00	335,610	-	-	-	-	-	-	335,610	335,610	-	
Marketing	25,000.00	25,000	-	-	-	-	-	-	25,000			
Furnishings	310,750.00	310,750	-	-	-	-	-	-	310,750	310,750	-	
Market Study	15,750.00	15,750	-	-	-	-	-	-	15,750	15,750	-	
Accounting/Reimbursables	25,000.00	25,000	-	-	-	-	-	-	25,000	25,000	-	
<b>Soft Cost Contingency</b>	<b>524,341.00</b>	<b>524,341</b>	-	-	-	-	-	-	<b>524,341</b>	<b>524,341</b>	-	
Other: CivicSD Fees	100,000.00	100,000	-	-	-	-	-	-	100,000	100,000	-	
Other: Estimating Services	45,000.00	45,000	-	-	-	-	-	-	45,000			
Other: Community Outreach	100,000.00	100,000	-	-	-	-	-	-	100,000	100,000	-	
Other:		-	-	-	-	-	-	-	-			
<b>Total Other Costs</b>	<b>4,384,642.00</b>	<b>4,384,642</b>	-	-	-	-	-	-	<b>4,384,642</b>	<b>4,005,501</b>	-	
<b>SUBTOTAL PROJECT COST</b>	<b>51,059,865.00</b>	<b>50,290,315</b>	<b>769,550</b>						<b>50,290,315</b>	<b>39,742,624</b>	-	
	<b>Total Project Cost</b>	<b>Total Residential</b>	<b>Total Commercial</b>	<b>Subtotal Eligible Basis</b>							<b>39,742,624</b>	-
<i>DEVELOPER COSTS</i>												
Developer Overhead/Profit	3,600,000.00	3,600,000	-	-	-	-	-	-	3,600,000	3,600,000	-	
Consultant/Processing Agent	-	-	-	-	-	-	-	-	-	-	-	
Project Administration	-	-	-	-	-	-	-	-	-	-	-	
Broker Fees Paid to a Related Party	-	-	-	-	-	-	-	-	-	-	-	
Construction Oversight by Developer	-	-	-	-	-	-	-	-	-	-	-	
Other: (Specify)	-	-	-	-	-	-	-	-	-	-	-	
<b>Total Developer Costs</b>	<b>3,600,000.00</b>	<b>3,600,000</b>	-	-	-	-	-	-	<b>3,600,000</b>	<b>3,600,000</b>	-	
<b>TOTAL PROJECT COSTS</b>	<b>54,659,865.00</b>	<b>53,890,315</b>	<b>769,550</b>						<b>53,890,315</b>	<b>43,342,624</b>	-	
	<b>Bridge Loan Expense During Construction</b>											
	<b>Total Eligible Basis</b>									<b>43,342,624</b>	-	



**PROJECT INCOME INFORMATION**  
**Hilltop & Euclid**

(a) # of Bedrooms	(b) # of Units	(c) Proposed Monthly Rent Less Utilities	(d) Total Monthly Rents (bxc)	(e) Monthly Utility Allow.	(f) Monthly Rent Plus Utilities (c + e)	(g) % of Area Mediam Income	PBVs Rents	PBV Add Mo. Rent Above TCAC	Total Add. Mo. Rents
Studio	14	\$ 420	\$ 5,880	\$ 33.00	\$ 453	30%	\$ -	\$ -	\$ -
1BR	12	\$ 480	\$ 5,754	\$ 38.50	\$ 518	30%	\$ -	\$ -	\$ -
1BR	11	\$ 998	\$ 10,973	\$ 38.50	\$ 1,036	60%	\$ -	\$ -	\$ -
2BR	36	\$ 1,121	\$ 40,356	\$ 44.00	\$ 1,165	60%	\$ -	\$ -	\$ -
3BR	20	\$ 1,240	\$ 24,800	\$ 55.00	\$ 1,295	60%	\$ -	\$ -	\$ -
4BR	18	\$ 1,332	\$ 23,976	\$ 66.00	\$ 1,398	60%	\$ -	\$ -	\$ -
2BR MGR	1	\$ -	\$ -	\$ -	\$ -	MKT	\$ -	\$ -	\$ -
3BR MGR	1	\$ -	\$ -	\$ -	\$ -	MKT	\$ -	\$ -	\$ -
Affordable Units	111	Total Rent	\$ 111,739				Total Tranche B:		\$ -

<b>Aggregate Monthly Rents for All Units:</b>	<b>\$ 111,739</b>
<b>Aggregate Annual Rents for All Units:</b>	<b>\$ 1,340,862</b>

<b>Avg Affordability</b>	53%
--------------------------	-----

Total Affordable Plus Manager Units: **113**

Annual Income from Laundry Facilities **\$ 9,492** **7.00** per unit per month

Annual Income from Vending Machines **-**

Annual Interest Income **-**

Other Annual Income (Specify) **-**

**Total Miscellaneous Income:** 9,492

**Total Annual Potential Gross Income:** **\$ 1,350,354**

**Excess PBV Income:** **\$ -**

**Total Gross Annual Income** **\$ 1,350,354**

Utility Allowances					
	Studio	1 BR	2 BR	3 BR	4 BR
Space Heating:			-	-	-
Water Heating:			-	-	-
Cooking:			-	-	-
Lighting:			-	-	-
Electricity:			-	-	-
Water:*			-	-	-
AC					
City's Fee					
<b>Total:</b>	<b>33</b>	<b>39</b>	<b>44</b>	<b>55</b>	<b>66</b>

*\*Owner paid utilities*

**ANNUAL RESIDENTIAL OPERATING EXPENSES  
Hilltop & Euclid**

		Per Unit	
<b>Administrative</b>	Advertising:	1,000	9
	Legal:	6,000	53
	Accounting/Audit:	12,000	106
	Security:	66,240	586
	General Office Costs:	17,000	150
	<b>Total Administrative:</b>	<b>102,240</b>	<b>905</b>
<b>Management</b>	<b>Total Management Fee:</b>	<b>76,999</b>	<b>681</b>
<b>Utilities</b>	Fuel:	-	-
	Gas:	10,000	88
	Electricity:	38,000	336
	Water/Sewer:	66,000	584
	<b>Total Utilities:</b>	<b>114,000</b>	<b>1,009</b>
<b>Payroll / Payroll Taxes</b>	On-site Manager(s):	46,350	410
	Maintenance Personnel:	72,842	645
	Other: Payroll Burden/Taxes	29,798	264
	<b>Total Payroll/Payroll Taxes:</b>	<b>148,990</b>	<b>1,318</b>
	<b>Total Insurance:</b>	<b>33,000</b>	<b>292</b>
<b>Maintenance</b>	Painting:	5,000	44
	Repairs:	16,000	142
	Trash Removal:	17,000	150
	Exterminating:	7,000	62
	Grounds:	60,000	531
	Other: Elevator + Fire Monitoring	12,000	106
	Other: Cleaning/Interiors	5,000	44
	<b>Total Maintenance:</b>	<b>122,000</b>	<b>1,080</b>
<b>Other Expenses</b>	Other:		-
	Other:		-
	Other:		-
	Other:		-
	Other:	-	-
	<b>Total Other:</b>	<b>0</b>	<b>-</b>

**Total Expenses**

<b>Total Annual Residential Operating Expenses:</b>	<b>597,228</b>
<b>Total Number of Units in the Project:</b>	<b>113</b>
<b>Total Annual Operating Expenses Per Unit:</b>	<b>5,285</b>
<b>Total 3-Month Operating Reserve:</b>	<b>297,000</b>
<b>Total Annual Internet Expense (site amenity election):</b>	<b>-</b>
<b>Total Annual Service Amenities Budget (from project expenses):</b>	<b>62,000</b>
<b>Total Annual Reserve for Replacement:</b>	<b>56,500</b>
<b>Total Annual Real Estate Taxes:</b>	<b>\$11,630</b>
<b>Other: SDHC Monitoring Fee</b>	<b>16,650</b>
<b>Other: Bond Issuance Fee</b>	<b>\$10,275</b>
<b>TOTAL:</b>	<b>754,283</b>

**5,200** min per unit

**549** per unit

**500** per unit

**yes** non-profit

**150**

**6,675** per unit  
**556** per month

**Commercial Income**

Total Annual Commercial/Non Residential Revenue:	-
Total Annual Commercial/Non Residential Expenses:	-
Total Annual Commercial/Non Residential Debt Service:	-
<b>Total Annual Commercial/Non Residential Net Income:</b>	<b>-</b>

**15-YEAR CASH FLOW PROJECTION**

Hilltop & Euclid

	Inflation Factor	Year 1 2022	Year 2 2023	Year 3 2024	Year 4 2025	Year 5 2026	Year 6 2027	Year 7 2028	Year 8 2029	Year 9 2030	Year 10 2031	Year 11 2032	Year 12 2033	Year 13 2034	Year 14 2035
Rental Income	2.5%	1,340,862	1,374,384	1,408,743	1,443,962	1,480,061	1,517,062	1,554,989	1,593,864	1,633,710	1,674,553	1,716,417	1,759,327	1,803,310	1,848,393
PBV INCOME IF APPLICABLE	2.5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL GROSS POTENTIAL REVENUE</b>		<b>1,340,862</b>	<b>1,374,384</b>	<b>1,408,743</b>	<b>1,443,962</b>	<b>1,480,061</b>	<b>1,517,062</b>	<b>1,554,989</b>	<b>1,593,864</b>	<b>1,633,710</b>	<b>1,674,553</b>	<b>1,716,417</b>	<b>1,759,327</b>	<b>1,803,310</b>	<b>1,848,393</b>
Vacancy @	5.0%	67,043	68,719	70,437	72,198	74,003	75,853	77,749	79,693	81,686	83,728	85,821	87,966	90,166	92,420
Other Income	2.5%	9,492	9,729	9,973	10,222	10,477	10,739	11,008	11,283	11,565	11,854	12,151	12,454	12,766	13,085
<b>TOTAL NET RENTAL INCOME</b>		<b>1,283,311</b>	<b>1,315,394</b>	<b>1,348,279</b>	<b>1,381,985</b>	<b>1,416,535</b>	<b>1,451,948</b>	<b>1,488,247</b>	<b>1,525,453</b>	<b>1,563,590</b>	<b>1,602,679</b>	<b>1,642,746</b>	<b>1,683,815</b>	<b>1,725,910</b>	<b>1,769,058</b>
Advertising	3.5%	1,000	1,035	1,071	1,109	1,148	1,188	1,229	1,272	1,317	1,363	1,411	1,460	1,511	1,564
Legal	3.5%	6,000	6,210	6,427	6,652	6,885	7,126	7,376	7,634	7,901	8,177	8,464	8,760	9,066	9,384
Accounting	3.5%	12,000	12,420	12,855	13,305	13,770	14,252	14,751	15,267	15,802	16,355	16,927	17,520	18,133	18,767
Security	3.5%	66,240	68,558	70,958	73,441	76,012	78,672	81,426	84,276	87,225	90,278	93,438	96,708	100,093	103,596
Other Admin	3.5%	17,000	17,595	18,211	18,848	19,508	20,191	20,897	21,629	22,386	23,169	23,980	24,819	25,688	26,587
Management Fee	3.5%	76,999	79,694	82,483	85,370	88,358	91,450	94,651	97,964	101,393	104,941	108,614	112,416	116,350	120,423
Gas	3.5%	10,000	10,350	10,712	11,087	11,475	11,877	12,293	12,723	13,168	13,629	14,106	14,600	15,111	15,640
Electricity	3.5%	38,000	39,330	40,707	42,131	43,606	45,132	46,712	48,347	50,039	51,790	53,603	55,479	57,421	59,430
Water & Sewer	3.5%	66,000	68,310	70,701	73,175	75,737	78,387	81,131	83,970	86,909	89,951	93,100	96,358	99,731	103,221
On-Site Manager	3.5%	46,350	47,972	49,651	51,389	53,188	55,049	56,976	58,970	61,034	63,170	65,381	67,670	70,038	72,489
Maintenance Personnel	3.5%	72,842	75,391	78,030	80,761	83,587	86,513	89,541	92,675	95,918	99,274	102,750	106,347	110,069	113,921
Other Payroll	3.5%	29,798	30,841	31,920	33,037	34,194	35,391	36,629	37,911	39,238	40,611	42,033	43,504	45,027	46,603
Insurance	3.5%	33,000	34,155	35,350	36,588	37,868	39,194	40,565	41,985	43,455	44,976	46,500	48,069	49,655	51,276
Painting	3.5%	5,000	5,175	5,356	5,544	5,738	5,938	6,146	6,361	6,584	6,814	7,053	7,300	7,555	7,820
Repairs	3.5%	16,000	16,560	17,140	17,739	18,360	19,003	19,668	20,356	21,069	21,806	22,570	23,360	24,177	25,023
Trash Removal	3.5%	17,000	17,595	18,211	18,848	19,508	20,191	20,897	21,629	22,386	23,169	23,980	24,819	25,688	26,587
Exterminating	3.5%	7,000	7,245	7,499	7,761	8,033	8,314	8,605	8,906	9,218	9,540	9,874	10,220	10,577	10,948
Grounds	3.5%	60,000	62,100	64,274	66,523	68,851	71,261	73,755	76,337	79,009	81,774	84,636	87,598	90,664	93,837
Fire Monitoring/Elevator	3.5%	17,000	17,595	18,211	18,848	19,508	20,191	20,897	21,629	22,386	23,169	23,980	24,819	25,688	26,587
Other:	3.5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other:	3.5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other:	3.5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other: Bond Issuance Fee	3.5%	10,275	10,635	11,007	11,392	11,791	12,203	12,631	13,073	13,530	14,004	14,494	15,001	15,526	16,070
Service Amenities Budget	3.0%	62,000	63,860	65,776	67,749	69,782	71,875	74,031	76,252	78,540	80,896	83,323	85,822	88,397	91,049
Other: SDHC Monitoring Fee	2.5%	16,650	17,066	17,493	17,930	18,378	18,838	19,309	19,792	20,294	21,313	21,846	22,392	22,952	23,527
Real Estate Taxes	2.0%	11,630	11,863	12,100	12,342	12,589	12,840	13,097	13,359	13,626	13,899	14,177	14,460	14,750	15,045
Replacement Reserve	0.0%	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500
<b>TOTAL EXPENSES</b>		<b>754,283</b>	<b>778,055</b>	<b>802,641</b>	<b>828,071</b>	<b>854,373</b>	<b>881,577</b>	<b>909,714</b>	<b>938,817</b>	<b>968,918</b>	<b>1,000,053</b>	<b>1,032,256</b>	<b>1,065,565</b>	<b>1,100,018</b>	<b>1,135,654</b>
<b>Cash Flow Prior to Debt Service (NOI)</b>		<b>529,028</b>	<b>537,339</b>	<b>545,637</b>	<b>553,915</b>	<b>562,163</b>	<b>570,372</b>	<b>578,533</b>	<b>586,637</b>	<b>594,672</b>	<b>602,627</b>	<b>610,490</b>	<b>618,250</b>	<b>625,892</b>	<b>633,404</b>
DEBT SERVICE - Permanent Loan		460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124
		0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>FORECASTED CASH AVAILABLE</b>		<b>68,904</b>	<b>77,216</b>	<b>85,514</b>	<b>93,791</b>	<b>102,039</b>	<b>110,248</b>	<b>118,410</b>	<b>126,513</b>	<b>134,548</b>	<b>142,503</b>	<b>150,367</b>	<b>158,126</b>	<b>165,769</b>	<b>173,281</b>
Percent of Gross Revenue	8% Max	5.14%	5.62%	6.07%	6.50%	6.89%	7.27%	7.61%	7.94%	8.24%	8.51%	8.76%	8.99%	9.19%	9.37%
25% Debt Service Test	Yr 1-3 Max	14.98%	16.78%	18.58%	20.38%	22.18%	23.96%	25.73%	27.50%	29.24%	30.97%	32.68%	34.37%	36.03%	37.66%
Debt Coverage Ratio	1.15 Min	1.15	1.17	1.19	1.20	1.22	1.24	1.26	1.27	1.29	1.31	1.33	1.34	1.36	1.38
Partnership Management Fee	3.0%	20,000	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878	27,685	28,515	29,371
Asset Management Fee	3.0%	5,000	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129	7,343
<b>Cash Available for Distribution</b>		<b>43,904</b>	<b>51,466</b>	<b>58,991</b>	<b>66,473</b>	<b>73,901</b>	<b>81,267</b>	<b>88,558</b>	<b>95,766</b>	<b>102,879</b>	<b>109,884</b>	<b>116,769</b>	<b>123,520</b>	<b>130,125</b>	<b>136,567</b>
Deferred Fee	1,009,420	43,904	51,466	58,991	66,473	73,901	81,267	88,558	95,766	102,879	109,884	116,769	123,520	130,125	136,567
	2.0%	19,310	18,667	17,861	16,888	15,748	14,438	12,955	11,299	9,468	7,459	5,273	2,908	364	-
balance		984,826	952,028	910,897	861,313	803,159	736,331	660,728	576,261	482,850	380,425	268,930	148,317	18,556	-
<b>CASH FLOW FOR DISTRIBUTION</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>118,011</b>
Soft loan split	50.00%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 59,005
Annual Payment to CivicSD	40.63%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 23,971
Annual Payment to SDHC	59.38%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,034
Annual Payment to Affirmed	50.000%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 59,005

**15-YEAR CASH FLOW PROJECTION**

Hilltop & Euclid

	Inflation Factor	Year 15 2036	Year 16 2037	Year 17 2038	Year 18 2039	Year 19 2040	Year 20 2041	Year 21 2042	Year 22 2043	Year 23 2044	Year 24 2045	Year 25 2046	Year 26 2047	Year 27 2048
Rental Income	2.5%	1,894,603	1,941,968	1,990,517	2,040,280	2,091,287	2,143,569	2,197,159	2,252,087	2,308,390	2,366,099	2,425,252	2,485,883	2,548,030
PBV INCOME IF APPLICABLE	2.5%	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL GROSS POTENTIAL REVENUE</b>		<b>1,894,603</b>	<b>1,941,968</b>	<b>1,990,517</b>	<b>2,040,280</b>	<b>2,091,287</b>	<b>2,143,569</b>	<b>2,197,159</b>	<b>2,252,087</b>	<b>2,308,390</b>	<b>2,366,099</b>	<b>2,425,252</b>	<b>2,485,883</b>	<b>2,548,030</b>
Vacancy @	5.0%	94,730	97,098	99,526	102,014	104,564	107,178	109,858	112,604	115,419	118,305	121,263	124,294	127,402
Other Income	2.5%	13,412	13,747	14,091	14,443	14,804	15,174	15,554	15,943	16,341	16,750	17,168	17,598	18,038
<b>TOTAL NET RENTAL INCOME</b>		<b>1,813,285</b>	<b>1,858,617</b>	<b>1,905,082</b>	<b>1,952,709</b>	<b>2,001,527</b>	<b>2,051,565</b>	<b>2,102,854</b>	<b>2,155,426</b>	<b>2,209,311</b>	<b>2,264,544</b>	<b>2,321,158</b>	<b>2,379,187</b>	<b>2,438,666</b>
Advertising	3.5%	1,619	1,675	1,734	1,795	1,857	1,923	1,990	2,059	2,132	2,206	2,283	2,363	2,446
Legal	3.5%	9,712	10,052	10,404	10,768	11,145	11,535	11,939	12,357	12,789	13,237	13,700	14,179	14,676
Accounting	3.5%	19,424	20,104	20,808	21,536	22,290	23,070	23,877	24,713	25,578	26,473	27,400	28,359	29,352
Security	3.5%	107,222	110,975	114,859	118,879	123,040	127,346	131,804	136,417	141,191	146,133	151,248	156,541	162,020
Other Admin	3.5%	27,518	28,481	29,478	30,509	31,577	32,683	33,826	35,010	36,236	37,504	38,817	40,175	41,581
Management Fee	3.5%	124,637	129,000	133,515	138,188	143,024	148,030	153,211	158,573	164,124	169,868	175,813	181,967	188,336
Gas	3.5%	16,187	16,753	17,340	17,947	18,575	19,225	19,898	20,594	21,315	22,061	22,833	23,632	24,460
Electricity	3.5%	61,510	63,663	65,891	68,198	70,585	73,055	75,612	78,258	80,997	83,832	86,766	89,803	92,946
Water & Sewer	3.5%	106,834	110,573	114,443	118,449	122,594	126,885	131,326	135,922	140,680	145,604	150,700	155,974	161,433
On-Site Manager	3.5%	75,026	77,652	80,370	83,183	86,095	89,108	92,227	95,455	98,796	102,253	105,832	109,536	113,370
Maintenance Personnel	3.5%	117,908	122,035	126,306	130,727	135,302	140,038	144,939	150,012	155,263	160,697	166,321	172,143	178,168
Other Payroll	3.5%	48,234	49,922	51,669	53,478	55,349	57,287	59,292	61,367	63,515	65,738	68,038	70,420	72,884
Insurance	3.5%	53,417	55,287	57,222	59,224	61,297	63,443	65,663	67,961	70,340	72,802	75,350	77,987	80,717
Painting	3.5%	8,093	8,377	8,670	8,973	9,287	9,613	9,949	10,297	10,658	11,031	11,417	11,816	12,230
Repairs	3.5%	25,899	26,806	27,744	28,715	29,720	30,760	31,837	32,951	34,104	35,298	36,533	37,812	39,135
Trash Removal	3.5%	27,518	28,481	29,478	30,509	31,577	32,683	33,826	35,010	36,236	37,504	38,817	40,175	41,581
Exterminating	3.5%	11,331	11,727	12,138	12,563	13,002	13,458	13,929	14,416	14,921	15,443	15,983	16,543	17,122
Grounds	3.5%	97,122	100,521	104,039	107,681	111,449	115,350	119,387	123,566	127,891	132,367	137,000	141,795	146,758
Fire Monitoring/Elevator	3.5%	27,518	28,481	29,478	30,509	31,577	32,683	33,826	35,010	36,236	37,504	38,817	40,175	41,581
Other:	3.5%	0	0	0	0	0	0	0	0	0	0	0	0	0
Other:	3.5%	0	0	0	0	0	0	0	0	0	0	0	0	0
Other:	3.5%	0	0	0	0	0	0	0	0	0	0	0	0	0
Other: Bond Issuance Fee	3.5%	16,632	17,214	17,817	18,440	19,086	19,754	20,445	21,161	21,901	22,668	23,461	24,282	25,132
Service Amenities Budget	3.0%	93,781	96,594	99,492	102,477	105,551	108,717	111,979	115,338	118,798	122,362	126,033	129,814	133,709
Other: SDHC Monitoring Fee	2.5%	23,526	24,114	24,717	25,335	25,968	26,618	27,283	27,965	28,664	29,381	30,115	30,868	31,640
Real Estate Taxes	2.0%	15,345	15,652	15,965	16,285	16,610	16,943	17,281	17,627	17,980	18,339	18,706	19,080	19,462
Replacement Reserve	0.0%	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500
<b>TOTAL EXPENSES</b>		<b>1,172,514</b>	<b>1,210,640</b>	<b>1,250,076</b>	<b>1,290,867</b>	<b>1,333,060</b>	<b>1,376,703</b>	<b>1,421,846</b>	<b>1,468,542</b>	<b>1,516,842</b>	<b>1,566,804</b>	<b>1,618,484</b>	<b>1,671,941</b>	<b>1,727,238</b>
<b>Cash Flow Prior to Debt Service (NOI)</b>		<b>640,771</b>	<b>647,977</b>	<b>655,006</b>	<b>661,842</b>	<b>668,467</b>	<b>674,862</b>	<b>681,008</b>	<b>686,884</b>	<b>692,469</b>	<b>697,740</b>	<b>702,674</b>	<b>707,245</b>	<b>711,428</b>
DEBT SERVICE - Permanent Loan		460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124
		0	0	0	0	0	0	0	0	0	0	0	0	0
<b>FORECASTED CASH AVAILABLE</b>		<b>180,647</b>	<b>187,853</b>	<b>194,882</b>	<b>201,718</b>	<b>208,343</b>	<b>214,738</b>	<b>220,884</b>	<b>226,761</b>	<b>232,346</b>	<b>237,617</b>	<b>242,550</b>	<b>247,122</b>	<b>251,305</b>
Percent of Gross Revenue	8% Max	9.53%	9.67%	9.79%	9.89%	9.96%	10.02%	10.05%	10.07%	10.07%	10.04%	10.00%	9.94%	9.86%
25% Debt Service Test	Yr 1-3 Max	39.26%	40.83%	42.35%	43.84%	45.28%	46.67%	48.01%	49.28%	50.50%	51.64%	52.71%	53.71%	54.62%
Debt Coverage Ratio	1.15 Min	1.39	1.41	1.42	1.44	1.45	1.47	1.48	1.49	1.50	1.52	1.53	1.54	1.55
Partnership Management Fee	3.0%	30,252	31,159	32,094	33,057	34,049	35,070	36,122	37,206	38,322	39,472	40,656	41,876	43,132
Asset Management Fee	3.0%	7,563	7,790	8,024	8,264	8,512	8,768	9,031	9,301	9,581	9,868	10,164	10,469	10,783
<b>Cash Available for Distribution</b>		<b>142,832</b>	<b>148,904</b>	<b>154,765</b>	<b>160,397</b>	<b>165,782</b>	<b>170,901</b>	<b>175,732</b>	<b>180,253</b>	<b>184,443</b>	<b>188,277</b>	<b>191,730</b>	<b>194,777</b>	<b>197,390</b>
Deferred Fee	1,009,420	-	-	-	-	-	-	-	-	-	-	-	-	-
	2.0%	-	-	-	-	-	-	-	-	-	-	-	-	-
balance		-	-	-	-	-	-	-	-	-	-	-	-	-
<b>CASH FLOW FOR DISTRIBUTION</b>		<b>142,832</b>	<b>148,904</b>	<b>154,765</b>	<b>160,397</b>	<b>165,782</b>	<b>170,901</b>	<b>175,732</b>	<b>180,253</b>	<b>184,443</b>	<b>188,277</b>	<b>191,730</b>	<b>194,777</b>	<b>197,390</b>
Soft loan split	50.00%	\$ 71,416	\$ 74,452	\$ 77,382	\$ 80,199	\$ 82,891	\$ 85,450	\$ 87,866	\$ 90,127	\$ 92,221	\$ 94,138	\$ 95,865	\$ 97,389	\$ 98,695
Annual Payment to CivicSD	40.63%	\$ 29,013	\$ 30,246	\$ 31,437	\$ 32,581	\$ 33,675	\$ 34,714	\$ 35,695	\$ 36,614	\$ 37,465	\$ 38,244	\$ 38,945	\$ 39,564	\$ 40,095
Annual Payment to SDHC	59.38%	\$ 42,403	\$ 44,206	\$ 45,946	\$ 47,618	\$ 49,217	\$ 50,736	\$ 52,170	\$ 53,513	\$ 54,756	\$ 55,895	\$ 56,920	\$ 57,825	\$ 58,600
Annual Payment to Affirmed	50.000%	\$ 71,416	\$ 74,452	\$ 77,382	\$ 80,199	\$ 82,891	\$ 85,450	\$ 87,866	\$ 90,127	\$ 92,221	\$ 94,138	\$ 95,865	\$ 97,389	\$ 98,695

**15-YEAR CASH FLOW PROJECTION**

Hilltop & Euclid

	Inflation Factor	Year 28 2049	Year 29 2050	Year 30 2051	Year 31 2052	Year 32 2053	Year 33 2054	Year 34 2055	Year 35 2056
Rental Income	2.5%	2,611,731	2,677,024	2,743,950	2,812,549	2,882,862	2,954,934	3,028,807	3,104,527
PBV INCOME IF APPLICABLE	2.5%	0	0	0	0	0	0	0	0
<b>TOTAL GROSS POTENTIAL REVENUE</b>		<b>2,611,731</b>	<b>2,677,024</b>	<b>2,743,950</b>	<b>2,812,549</b>	<b>2,882,862</b>	<b>2,954,934</b>	<b>3,028,807</b>	<b>3,104,527</b>
Vacancy @	5.0%	130,587	133,851	137,197	140,627	144,143	147,747	151,440	155,226
Other Income	2.5%	18,489	18,951	19,424	19,910	20,408	20,918	21,441	21,977
<b>TOTAL NET RENTAL INCOME</b>		<b>2,499,633</b>	<b>2,562,124</b>	<b>2,626,177</b>	<b>2,691,831</b>	<b>2,759,127</b>	<b>2,828,105</b>	<b>2,898,808</b>	<b>2,971,278</b>
Advertising	3.5%	2,532	2,620	2,712	2,807	2,905	3,007	3,112	3,221
Legal	3.5%	15,189	15,721	16,271	16,841	17,430	18,040	18,672	19,325
Accounting	3.5%	30,379	31,442	32,543	33,682	34,860	36,080	37,343	38,650
Security	3.5%	167,691	173,560	179,635	185,922	192,429	199,164	206,135	213,350
Other Admin	3.5%	43,037	44,543	46,102	47,715	49,386	51,114	52,903	54,755
Management Fee	3.5%	194,927	201,750	208,811	216,119	223,684	231,512	239,615	248,002
Gas	3.5%	25,316	26,202	27,119	28,068	29,050	30,067	31,119	32,209
Electricity	3.5%	96,200	99,567	103,051	106,658	110,391	114,255	118,254	122,393
Water & Sewer	3.5%	167,083	172,931	178,984	185,248	191,732	198,443	205,388	212,577
On-Site Manager	3.5%	117,338	121,445	125,696	130,095	134,648	139,361	144,239	149,287
Maintenance Personnel	3.5%	184,403	190,858	197,538	204,451	211,607	219,013	226,679	234,613
Other Payroll	3.5%	75,435	78,076	80,808	83,637	86,564	89,594	92,729	95,975
Insurance	3.5%	83,542	86,466	89,492	92,624	95,866	99,221	102,694	106,288
Painting	3.5%	12,658	13,101	13,559	14,034	14,525	15,034	15,560	16,104
Repairs	3.5%	40,505	41,923	43,390	44,909	46,481	48,107	49,791	51,534
Trash Removal	3.5%	43,037	44,543	46,102	47,715	49,386	51,114	52,903	54,755
Exterminating	3.5%	17,721	18,341	18,983	19,648	20,335	21,047	21,784	22,546
Grounds	3.5%	151,894	157,210	162,713	168,408	174,302	180,402	186,717	193,252
Fire Monitoring/Elevator	3.5%	43,037	44,543	46,102	47,715	49,386	51,114	52,903	54,755
Other:	3.5%	0	0	0	0	0	0	0	0
Other:	3.5%	0	0	0	0	0	0	0	0
Other:	3.5%	0	0	0	0	0	0	0	0
Other: Bond Issuance Fee	3.5%	26,012	26,922	27,865	28,840	29,849	30,894	31,975	33,094
Service Amenities Budget	3.0%	137,720	141,852	146,107	150,490	155,005	159,655	164,445	169,378
Other: SDHC Monitoring Fee	2.5%	32,431	33,242	34,073	34,925	35,798	36,693	37,610	38,550
Real Estate Taxes	2.0%	19,851	20,248	20,653	21,066	21,487	21,917	22,355	22,803
Replacement Reserve	0.0%	56,500	56,500	56,500	56,500	56,500	56,500	56,500	56,500
<b>TOTAL EXPENSES</b>		<b>1,784,437</b>	<b>1,843,604</b>	<b>1,904,807</b>	<b>1,968,117</b>	<b>2,033,606</b>	<b>2,101,349</b>	<b>2,171,425</b>	<b>2,243,914</b>
<b>Cash Flow Prior to Debt Service (NOI)</b>		<b>715,196</b>	<b>718,520</b>	<b>721,370</b>	<b>723,714</b>	<b>725,521</b>	<b>726,756</b>	<b>727,383</b>	<b>727,365</b>
DEBT SERVICE - Permanent Loan		460,124	460,124	460,124	460,124	460,124	460,124	460,124	460,124
		0	0	0	0	0	0	0	0
<b>FORECASTED CASH AVAILABLE</b>		<b>255,073</b>	<b>258,396</b>	<b>261,246</b>	<b>263,591</b>	<b>265,398</b>	<b>266,633</b>	<b>267,259</b>	<b>267,241</b>
Percent of Gross Revenue	8% Max	9.77%	9.65%	9.52%	9.37%	9.21%	9.02%	8.82%	8.61%
25% Debt Service Test	Yr 1-3 Max	55.44%	56.16%	56.78%	57.29%	57.68%	57.95%	58.08%	58.08%
Debt Coverage Ratio	1.15 Min	1.55	1.56	1.57	1.57	1.58	1.58	1.58	1.58
Partnership Management Fee	3.0%	44,426	45,759	47,131	48,545	50,002	51,502	53,047	54,638
Asset Management Fee	3.0%	11,106	11,440	11,783	12,136	12,500	12,875	13,262	13,660
<b>Cash Available for Distribution</b>		<b>199,540</b>	<b>201,198</b>	<b>202,332</b>	<b>202,909</b>	<b>202,896</b>	<b>202,256</b>	<b>200,951</b>	<b>198,943</b>
Deferred Fee	1,009,420	-	-	-	-	-	-	-	-
	2.0%	-	-	-	-	-	-	-	-
balance		-	-	-	-	-	-	-	-
<b>CASH FLOW FOR DISTRIBUTION</b>		<b>199,540</b>	<b>201,198</b>	<b>202,332</b>	<b>202,909</b>	<b>202,896</b>	<b>202,256</b>	<b>200,951</b>	<b>198,943</b>
Soft loan split	50.00%	\$ 99,770	\$ 100,599	\$ 101,166	\$ 101,455	\$ 101,448	\$ 101,128	\$ 100,476	\$ 99,472
Annual Payment to CivicSD	40.63%	\$ 40,532	\$ 40,868	\$ 41,099	\$ 41,216	\$ 41,213	\$ 41,083	\$ 40,818	\$ 40,410
Annual Payment to SDHC	59.38%	\$ 59,239	\$ 59,731	\$ 60,067	\$ 60,239	\$ 60,235	\$ 60,045	\$ 59,657	\$ 59,061
Annual Payment to Affirmed	50.000%	\$ 99,770	\$ 100,599	\$ 101,166	\$ 101,455	\$ 101,448	\$ 101,128	\$ 100,476	\$ 99,472



**ATTACHMENT 5**  
**PROPOSED LOAN NON-BINDING COMMITMENT TERMS SUMMARY**

East Block Senior Housing  
922-944 Euclid Avenue San Diego, CA 92114  
December 23, 2019

The San Diego Housing Commission (“Housing Commission”) is pleased to submit this non-binding commitment term summary. This commitment terms summary is not a binding contract and is subject to the approval by the San Diego Housing Commission Board of Commissioners (“Board of Commissioners”) and, if necessary, the Housing Authority of the City of San Diego. The purpose of this commitment terms summary is to set forth the general terms and conditions under which the Housing Commission is interested in making a loan (“Housing Commission Loan”) to Hilltop Family Housing L.P., a California limited partnership (“Borrower”), for Hilltop Family Housing (“Project”) with respect to the proposed new construction and permanent financing of a 113-unit development (with 111 affordable units and two unrestricted manager’s unit) located at 922-944 Euclid Avenue, San Diego. Closing must occur within eighteen (18) months of the Board of Commissioners approval of the Housing Commission loan, unless an extension is granted by the President & CEO of the Housing Commission (or by his designee) in his sole discretion.

In the event of a conflict between any term or provision (or absence of any term or provision) of this commitment terms summary and any term or provision of any approval of any applicable board or governing body, the term or provision of such board or governing body shall apply. Provided the Housing Commission Loan is approved by the Board of Commissioners, and if necessary by Housing Authority of the City of San Diego, the following terms shall apply to the Housing Commission Loan. In addition, Exhibit A includes the Borrower’s pro forma which models financial projections of the Project.

The terms of the Housing Commission’s proposed financing shall be as follows:

1. **Maximum loan amount (not to exceed)** - Up to \$8,550,000 as a residual receipts loan. Loan funds to be used for the acquisition, construction and permanent financing of the Project.
2. **Interest Rate**- 4 percent simple interest.
3. **Loan Term** - The loan will be due, and payable in full, in 55 years from completion of the Project.
4. **Loan Payments** - Annual payments on the loan shall equal the 50% percent of the Project’s residual cash. Provided, however, if the Housing Commission approves other lenders whose loans will be paid from residual receipts, then the Housing Commission and such other approved lenders shall share the 50%





percent of the Project’s residual receipts, in proportion to the original principal balances of their respective loans. The following items, in addition to other operating expenses, shall be payable by the Borrower prior to the calculation of residual receipts:

- (i) The year 1 “Limited Partnership Fees” shall be capped at \$25,000. “Limited Partnership Fees” shall be defined to include any and all partnership-related fees including but not limited to: Investor Partnership fees, Asset Management fees, Other Limited Partnership oversight fees, and General Partner Fees. Partnership fee increases will be capped at three (3) percent annually. Unpaid partnership fees shall not accrue and the Housing Commission will require the Limited Partnership Agreement to explicitly state that requirement.
- (ii) Eligible deferred developer fee, and
- (iii) Repayment of eligible development deficit and operating deficit loans.

5. **Affordability-**

- a. Restricted units must remain affordable for 55 years. At escrow closing the Borrower and the Housing Commission shall cause a Declaration of Covenants, Conditions, and Restrictions (CC&R), restricting the rent and occupancy of the affordable units for 55 years, to be recorded against the Project. Such CC&R shall be in a form and format acceptable to the Housing Commission and its General Counsel in their sole discretions.
- b. The affordability shall be as follows:

Unit Type	AMI	Affordable Units
Studio	30%	14
One-Bedroom	30%	12
One-Bedroom	60%	11
Two-Bedroom	60%	36
Three-Bedroom	60%	20
Four-Bedroom	60%	18
Subtotal		111
Manager Unit	N/A	2
Total		113

- 6. **Alternate Funding-** If the Borrower does not secure 4 percent tax credits in the California Tax Credit Allocation Committee’s (CTCAC) October meeting round in 2019, then borrower shall make application for 4% credits in the next available CTCAC funding round. Borrower shall also seek alternative funding, including



but not limited to the State of California Department of Housing and Community Development, County of San Diego, Federal Home Loan Bank, etc. along with tax exempt bonds and 4% tax credits, Housing Commission legal counsel will determine if subsequent approvals for alternative financing structures are required by the San Diego Housing Commission Board of Commissioners and the Housing Authority of the City of San Diego.

7. **Appraised Value** - The purchase price of land and improvements shall not exceed the \$5,500,000 appraised value as shown in the Novogradac Company, November 14, 2018 appraisal report. In the event that the developer, Affirmed, or its affiliate, acquires the land prior to Housing Commission Loan closing, 100% of any net sales proceeds resulting from a subsequent sale to the tax credit limited partnership shall be structured as a Seller Carryback Loan, payable from the Borrower's share of residual receipts. Borrower will submit an updated appraisal report with an effective date that is no more than 90 days before the closing.
8. **Closing Costs** - The Borrower shall pay all escrow, title and closing costs, including, without limitation, paying for an American Land Title Association (ALTA) Lender's Policy for the Housing Commission Loan with endorsements, as acceptable to the Housing Commission's legal counsel.
9. **Construction Costs Third-Party Review** - Prior to loan approval a costs review will be obtained by the Housing Commission with a third-party consultant. Borrower will reimburse the Housing Commission at escrow closing for all reasonable third-party review costs.
10. **Contractor** - The selected construction contractor shall competitively bid at least three qualified subcontractors for each trade and shall be awarded to the lowest qualified and responsive bidder.
  - a. Borrower will submit copies of three qualified bids received from subcontractors for each trade.
  - b. Construction Agreement - Borrower shall submit the proposed Construction Agreement to the Housing Commission for its review and prior approval. The Housing Commission shall have a minimum of two weeks for its review of the proposed Construction agreement.
  - c. Subcontractors – the Borrower shall require the General Contractor to solicit and obtain competitive bids from at least three qualified subcontractors for each major trade involved in the construction of the Project. Those bids will be reviewed and approved by the Borrower. The Borrower and General Contractor shall submit the subcontractors' competitive bids to the Housing Commission for prior review and reasonable approval.
  - d. Change orders at or in excess of \$50,000 shall have Housing Commission





prior written approval. For proposed change orders over \$50,000, the Borrower and General Contractor shall submit to the Housing Commission a detailed explanation of why the change order work is necessary, why the issue was not included in the original scope of work, and why the change is not being charged against the General Contractor's contingency.

- e. Agreement Changes - a Construction Agreement with a Guaranteed Maximum Price (GMP) may not be revised to a Lump Sum or other form of Construction Agreement without the prior written approval of the Housing Commission.
  - f. Insurance - prior to close of escrow, evidence of the General Contractor's insurance acceptable to the Housing Commission's legal counsel shall be provided. The Housing Commission, the Housing Authority of the City of San Diego, and the City of San Diego, shall be named as additional insureds on the General Contractor's insurance policies.
11. **Tax Credit Equity**- Borrower will provide the Letter Of Intent with equity pricing from the low-income housing tax credit (LIHTC) investor within 90 days of closing.
  12. **First Mortgage**- Borrower will provide the term sheet from the first mortgage provider that was used at time of application as well as an update within 90 days of closing.
  13. **Cost Certification** - The Borrower shall submit the final tax credit cost certification to the Housing Commission for its review and approval before the cost certification is completed/finalized.
  14. **Cost Savings and/or Additional Proceeds at Escrow Closing** - In the event that the Borrower obtains funds in excess of those shown as sources in Exhibit A Proforma, then upon the construction loan closing, the excess funds shall be used as follows:
    - a. First, such excess funds shall be used to fund development cost overruns reasonably approved by the Housing Commission.
    - b. Second, upon Construction Loan Closing and subject to lender and investor approval, any excess funds shall be used to pay the Housing Commission Loan as set forth in Section 15 below.
    - c. Other Public Lenders - If the Project financing includes other public lenders who may require cost savings sharing then the cost savings shall be split proportionately based upon the public lenders loan amounts and in conformance with the other public lenders' agreements.



15. **Cost Savings and/or Additional Proceeds at Conversion to Permanent Financing** - In the event that the Borrower obtains funds in excess of those shown as sources in Exhibit A Proforma, (including but not limited to cost savings, improved debt, improved tax credit equity pricing, deferred developer fee if any, and any other sources), then upon conversion to permanent loan, the excess funds shall be used as follows:
- a. First, to pay for development cost overruns reasonably approved by the Housing Commission.
  - b. Second, used to make any necessary adjustment to the total tax credit allocation as may be required by CTCAC.
  - c. Third, payment towards the Borrower's deferred developer fee. A deferred developer fee is currently modeled in the pro forma (Attachment A).
  - d. Fourth, cost savings shall be shared fifty percent (50%) to the Borrower and the other fifty percent (50%) will be paid to the Housing Commission and other soft lenders in proportion to the original principal balance of their loans.
  - e. Excess funds will be applied first to pay down the accrued interest and the remaining amount shall pay down the principal of the Housing Commission Loan.
16. **Developer Fee-**
- a. Maximum Fee \$2,343,591 paid from Development Sources with the excess Deferred Developer Fee calculated per TCAC and SDHC guidelines, not to exceed \$2,493,591.
  - b. Additional developer fee provisions
    - i. If for any reason the Borrower does not collect the entire developer fee from development sources through the last equity installment, with the exception of negative tax credit adjusters, uncollected fee up to \$2,493,591, shall be given priority over Housing Commission residual receipt payments.
    - ii. If any amount of the developer fee is deferred, then such amount shall be repaid during the 15-year tax credit compliance period. Amounts outstanding after the expiration of the 15-year tax credit compliance period shall be contributed to the Project in the form of a capital contribution.
  - c. Developer fee payments shall be paid out incrementally: because this is a tax credit project, the developer fee payments shall be in accordance with lender and investor requirements.
17. **Due Diligence** - The Borrower, at Borrower's expense, shall provide the following: a current appraisal, an environmental review, a lead paint and asbestos review, prior to commencement of construction of the Project.
18. **Environmental Requirements** - Currently HOME funds are **not** planned for this Project. Notwithstanding any provision of this Letter, the parties agree and acknowledge that this Letter constitutes a conditional reservation and does not



represent a final commitment of HOME funds or site approval under 24 CFR Part 58 of the National Environmental Policy Act (NEPA). HOME funds constitute a portion of the funding for the Project, and a final reservation of HOME funds shall occur only upon satisfactory completion of environmental review and receipt by the City of San Diego of a Release Of Funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58 of NEPA. The parties agree that the provision of any HOME funds to the Project is conditioned on the City of San Diego's determination to proceed with, modify or cancel the Project based on the results of subsequent environmental review under NEPA. By execution of this Letter, you acknowledge no legal claim to any amount of HOME funds to be used for the Project or site unless and until the site has received environmental clearance under NEPA. You are also prohibited from undertaking or committing any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, clearance, rehabilitation, conversion, repair or construction prior to environmental clearance under NEPA. Violation of this provision may result in denial of any HOME funds for this Project.

19. **Fees/Payments to Housing Commission** - Borrower will pay to the Housing Commission:
- a) **Underwriting Fee** - a flat underwriting fee in the amount of **\$60,000** will be charged as reimbursement of Housing Commission costs related to underwriting and issuing the loan. This must be included in the total development cost of the Project and is to be paid at close of escrow.
  - b) **Legal Fee** - the Housing Commission charges a legal costs fee for document preparation and review that must be included in the total development cost. Current Housing Commission legal fees are **\$25,000** and are to be paid at the close of escrow.
  - c) **Compliance Affordability Monitoring Fee** - compliance monitoring fees must be incorporated into the operating proforma. Borrower will pay the fee in accordance with the then-existing Housing Commission fee schedule. Current annual affordability monitoring are as follows: \$150 X 111 (Project units to be affordability monitored) = **\$16,650** per year. Additional training and assistance is currently at \$100 per hour.
  - d) **Asset Management Fee**- the Housing Commission charges a 15-year capitalized asset management fee of **\$15,000** and is paid at close of escrow.
  - e) **Third-Party Construction Review** - the Housing Commission requires a third-party review of the construction costs/budget to determine the reasonableness of construction costs. The third-party reviewer will be selected by the Housing Commission and paid for by the borrower. Current fees are an estimated **\$12,500** paid by the developer at close of escrow.
20. **Fees for Asset Management** (amounts not to exceed)-
- a. As detailed in paragraph 4 (above), the year 1 "Limited Partnership Fees" shall





be capped at \$25,000 per year and shall not increase more than 3.0% annually. “Limited Partnership Fees” include Asset management fees (19(d)) related to the investor and general partner’s management of the Project.

- b. Unpaid General Partner fees shall not accrue. The Housing Commission will require the Limited Partnership Agreement to explicitly state this requirement.
  - c. Any changes to the asset management partnership fees will require the prior written approval of the Housing Commission’s President and CEO or his designee.
21. **Financing Gap** - The Borrower will cover any financing gap that arises after Housing Commission underwriting, with its equity, its developer fee, and/or other non-Housing Commission sources, all of which shall be subject to the approval of the Housing Commission in its sole discretion and will not be unreasonably withheld. No additional Housing Commission funds, beyond this Letter of Intent’s \$8,550,000, will be provided for the Project in any Housing Commission’s future Notices of Funds Available.
22. **Funding Sources** - The Housing Commission may fund the Housing Commission Loan from various sources including local, State, and/or federal funds including HOME Investment Partnership Program funds. The Housing Commission reserves the right to allocate available program funds in the best interest of the Housing Commission. Borrower should be familiar with the HOME programs rules and regulations, Federal Davis Bacon law and Section 3.
23. **HOME Investment Partnerships (HOME) Funds** - Currently there are **no** HOME funds planned for the Project. It is estimated that the Project will have approximately eleven (11) HOME restricted units. The Housing Commission reserves the right to adjust the amount of HOME units as deemed necessary.
- a. HOME program regulations will be applicable.
  - b. HOME funds may not be used to fund any of the following:
    - i) Any reserves are not eligible for HOME funds (including but not limited to operating reserves).
    - ii) Offsite improvements are not eligible for funding with HOME funds.
    - iii) Furnishings costs are not eligible for funding with HOME funds.
    - iv) Commercial space improvements are not eligible for funding with HOME funds.
  - c. The HOME IDIS funding system requires at least one HOME draw in a 12 month period and at least of small portion of the HOME funds must remain in the IDIS system until the Project is ready for occupancy.



24. **Insurance** - Borrower shall at all times during the term of the loan maintain General Liability and Property Insurance (fire and extended coverage), workers compensation, builder's completed value risk insurance against "all risks of physical loss" (during construction) and, if required by the Housing Commission, floor and earthquake insurance, in forms acceptable to the Housing Commission and approved by the Housing Commission's General Counsel. The San Diego Housing Commission, the Housing Authority of the City of San Diego, and the City of San Diego shall be listed as an additional insureds: for General Liability Insurance, for Property Insurance, and in the General Contractor's Insurance policy. The San Diego Housing Commission shall be endorsed as a loss payee of the private insurance policies. Evidence of borrower's insurance coverage shall be provided to the Housing Commission prior to close of escrow.
25. **Loan Disbursement Schedule** - Upon submittal and approval of eligible costs, the Housing Commission Loan (up to **\$8,550,000**) will be disbursed as follows:
- Up to 75 percent (**\$6,412,500**) at escrow closing.
  - Up to 15 percent (**\$1,282,500**) to be distributed at 50 percent construction completion,
  - Up to 5 percent (**\$427,500**) to be withheld until final inspection approval and all unconditional lien releases are forwarded to the Housing Commission.
  - Up to 5 percent (**\$427,500**) upon conversion to permanent financing.
- a. The Housing Commission's President and Chief Executive Officer, or his designee, is authorized to modify the Housing Commission Loan disbursement schedule in their sole reasonable discretion.
- b. A portion of the HOME program funds must be withheld until final inspection approval and all unconditional lien releases are forwarded to the Housing Commission.
- c. Loan proceeds are disbursed for work completed upon Housing Commission approval of payment requests in a form approved by the Housing Commission. Verifiable documentation of expenses must be submitted with all payment requests.
- 
26. **Loan Payments** – Annual hard payments will not be required. Annual residual receipts payments at 50 percent of cash flow is required.
- a. Starting at the end of the first year after Project completion, the Housing Commission will split its share of residual cash flow with Housing Commission-approved public lenders loans, in proportion to their respective loan amounts. Residual payments will begin on May 1, in the year immediately following the calendar year in which construction is completed.



- b. The Housing Commission defines residual receipts as the net cash flow of the development after specified expenses and other debt service are paid.
27. **Management of the Development** -
- a. **Management Plan** - Prior to occupancy the Borrower shall submit a Management Plan to the Housing Commission for its review and approval. The Management Plan shall be subject to initial and periodic approval by the Housing Commission, at its reasonable discretion.
  - b. **Approval of Management Fee** - The Borrower's proposed property manager's fee must be approved by the Housing Commission.
  - c. The Housing Commission reserves the right to declare Borrower in default of the loan agreement after an uncured ninety (90) day written notice of malfeasance and/or misfeasance in management of the Project.
  - d. **Manager's Units** - Experienced on-site management is required. There shall be two managers' units.
  - e. **Marketing Plan** - to ensure compliance with HOME regulations and with federal fair housing requirements prior to occupancy the Borrower shall submit a proposed marketing plan for review and approval by the Housing Commission's Civil Rights Analyst in the Procurement and Compliance Division.
28. **Maximum Resident Service Expenses & Case Management**-
- a. For the calculation of Housing Commission's residual receipts the attached pro forma's operating expense budget models maximum allowable resident supportive services expenses at \$50,000 per year (with a 2 percent annual escalator). The Borrower will provide a detailed breakout of these costs on an annual basis. Increasing this amount will require prior Housing Commission approval.
29. **Annual Budget Submittal** - Three months prior to the end of each calendar year, the Borrower shall submit an annual budget for Housing Commission review and prior approval.
30. **Permanent Supportive Housing** - The Project will not have Project Based Vouchers (PBV) from the Housing Commission.
31. **Prevailing Wage**- It is anticipated that the Project will not be subject to Federal Davis-Bacon prevailing wage rates because the anticipated eleven (11) HOME program restricted units does not exceed the 12 HOME unit federal threshold level.
32. **Recourse** - The Housing Commission's loan will be recourse until the timely completion of the construction, after which it will become non-recourse.
33. **Reserves**: Replacement reserves and operating reserves must be consistent with





lender and equity investor requirements. The Housing Commission reserves the right to require higher operating or replacement reserves.

- a. Replacement Reserve -The attached proforma models an annual replacement reserve at \$56,500 (\$500 per unit per year).
  - b. Operating Reserve - The attached proforma models a capitalized four-month operating reserve at \$242,000 at conversion to permanent financing. The operating reserve is to be maintained for the entire term of the Housing Commission's loan.
  - c. Disbursements from Reserves: Housing Commission prior written approval shall be required for any and all disbursements from either the Project's operating reserve funds and/or from the Project's replacement reserve funds.
34. **Section 3** - Section 3 of the HUD Act of 1968 will be applicable and Borrower should be familiar with, and remain in compliance with, all Section 3 requirements.
35. **Security** -The Housing Commission Loan will be secured by a Declaration of Covenants, Conditions and Restrictions (CC&R), a Loan Agreement, and a Deed of Trust which will be senior to the deeds of trust and security instruments securing all other sources of funds secured by the Property, except that the Housing Commission's CC&R and Deed of Trust shall be subordinated to:
- a) The deed of trust and security instruments securing the construction and permanent loan.
  - b) **Lien position** - The lien positions will be approved by the Housing Commission's President and CEO and the Housing Commission's General Counsel. It is intended that the lien positions will be conformance with the public lenders' program requirements, and the requirements of private lenders which may require Housing Commission subordination.
  - c) **Cure Rights** - The Housing Commission shall have the right, but not the obligation, to cure all senior encumbrances in all subordinating agreements that it executes. All subordination agreements shall be subject to the sole approval of the Housing Commission's President and Chief Executive Officer and General Counsel.
36. **Tenant Service Delivery Plan** - Borrower shall submit a draft tenant service delivery plan 90-days prior to occupancy for Housing Commission staff review and comment. Borrower shall submit a revised draft incorporating Housing Commission comment prior to occupancy of the first tenant. A final tenant service deliver plan shall be subject to the approval of the Housing Commission in its reasonable discretion and will not be unreasonably withheld prior to Project lease-up.



SAN DIEGO  
HOUSING  
COMMISSION

37. **Title (ALTA Lender's Policy)** - The Borrower shall acquire, at its sole cost and expense, an ALTA Lender's Policy for the Commission Loan with endorsements acceptable to the Housing Commission.
  
38. **Miscellaneous Additional Conditions** - The Housing Commission reserves the right to impose such additional conditions in the final documentation of the transaction as are reasonably necessary to protect the interests of the Housing Commission and fulfill the intent of this letter.
  
39. **Exhibit A - Proforma** - is attached hereto and is hereby incorporated.

If the Borrower is willing to proceed on the terms and conditions referenced herein, please execute this letter of intent and return it to the undersigned by December 24<sup>th</sup> 2019, so that this letter of intent may be attached to the Housing Authority report.





SAN DIEGO  
HOUSING  
COMMISSION

**ACKNOWLEDGED AND AGREED TO BY:**

Hilltop Family Housing L.P.,

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

San Diego Housing Commission

**By:** \_\_\_\_\_

**Print Name:** Emily S. Jacobs

**Title:** Senior Vice President

**Date:** 12/23/2019

Attachment: Exhibit A Developer's Pro forma

**DUPLICATE**

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(Hilltop & Euclid)**

by and between the

**CITY OF SAN DIEGO,  
a California municipal corporation,**

and

**HILLTOP FAMILY HOUSING, L.P.  
a California limited partnership**

DOCUMENT NO RR-312739  
FILED NOV 05 2019  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(Hilltop & Euclid)**

This Disposition And Development Agreement (“**Agreement**”) is dated as of November 5, 2019, for reference purposes only, and is entered into by and between the City of San Diego, a California municipal corporation (“**City**”), and Hilltop Family Housing, L.P., a California limited partnership (“**Developer**”).

WHEREAS, the City previously approved on June 12, 2018 a prior Disposition and Development Agreement with Developer for the Site described hereinbelow (“**Prior DDA**”).

WHEREAS, on or about June 4, 2019, the City, Developer and other parties entered into a certain Compromise, Settlement & Release (“**Settlement Agreement**”), pursuant to which the City and Developer agreed to rescind the Prior DDA.

WHEREAS, the Prior DDA has now been rescinded, and the City and Developer desire to now enter into this Agreement.

In consideration of the promises and covenants of City and Developer set forth in this agreement, City and Developer agree as follows:

1. **PURPOSES.** The City acts as the Housing Successor to the former Redevelopment Agency of the City of San Diego pursuant to California Health and Safety Code section 34176, and in that capacity City owns that certain real property generally located at the northwest quadrant of the intersection of Hilltop Drive and Euclid Avenue, in the City of San Diego, California, and more specifically defined in Section 2 as the “Site.” The purposes of this Agreement are: (a) for the Developer to process and perform the subdivision, permitting, and mass grading of the Site; (b) for the City to effectuate the California Redevelopment Plan for the Central Imperial Redevelopment Project and convey title to that certain portion of the Site defined in Section 2 as the “Property” to Developer for development of 113 multi-family residential apartments, 111 of which shall be rent-restricted affordable rental units and 2 of which will be manager’s units, along with commercial and retail space, landscaping, public improvements, and parking, all as more specifically defined in Section 2 as the “Project;”; (c) for the City to loan to Developer up to \$5,850,000 to pay a portion of Project costs; and (d) for Developer to operate the Project as an affordable multi-family rental housing development in accordance with the “Regulatory Agreement” defined in Section 2. The Project shall be in accordance with the Encanto Neighborhoods Community Plan, all as reflected in the Approvals. All of these purposes are in the vital and best interests of City and the health, safety, and welfare of City residents.

2. **DEFINITIONS.** The following words, terms, and phrases are used in this Agreement with the following meanings:

2.1 **4% Tax Credits.** Tax Credits allocated by CTCAC at the Federal tax credit rate of approximately four percent (4%).

2.2 **9% Tax Credits.** Tax Credits allocated by CTCAC at the Federal tax credit rate of approximately four percent (9%).

2.3 **Actual Project Costs.** The actual aggregate cost amount in each of the categories of expenses for the Project set forth in the Project Budget and all other costs related to construction of the Project that are incurred by Developer as determined by a cost certification performed at Developer's expense by a certified public accountant acceptable to City within three (3) months after issuance of a final Certificate of Occupancy for the entire Project. Actual Project Costs shall not include any costs related to any litigation that might arise with respect to the Project, or any costs that fall outside of the categories in the Project Budget.

2.4 **Additional Government Financing.** Any other financing obtained by Developer from a Government Lender to be applied towards Actual Project Costs.

2.5 **Affiliate.** Any other Person Controlling or Controlled by or under common Control with the specified Person.

2.6 **Affordable Housing Bond Proceeds.** Low and Moderate Income Housing bond proceeds derived from various Redevelopment Project Areas in the City of San Diego, including the Centre City Redevelopment Project Area, Horton Plaza Redevelopment Project Area and the Central Imperial Redevelopment Project Area. Because the Property is located within the Central Imperial Redevelopment Project Area and outside of, but in proximity to, the Centre City and Horton Plaza Redevelopment Project Areas, the City's use of the Affordable Housing Bond Proceeds toward the Project requires that the City Council make a finding under CRL Section 33334.2(g)(1) that such use of the Affordable Housing Bond Proceeds will be of benefit to the Centre City and Horton Plaza Redevelopment Project Areas. The City Council will have made such finding(s) of benefit before the execution of this Agreement.

2.7 **Agreement.** This Disposition and Development Agreement by and between City and Developer, including all of the attached exhibits, which are incorporated into this Agreement by reference.

2.8 **Application.** Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for financing, development, use or operation of the Project, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument or entitlement necessary for the Project; or (b) to enable Developer to seek any Approval or to use or operate the Project in accordance with this Agreement or the Regulatory Agreement.

2.9 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Project on the Property.

2.10 **Bankruptcy Law.** Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.11 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

2.12 **Builder.** A California licensed general contractor with experience in construction projects similar to the Project.

2.13 **Business Day.** Any weekday on which City is open to conduct regular City functions with City personnel.

2.14 **CEQA.** The California Environmental Quality Act, Public Resources Code section 21000, et seq.

2.15 **CEQA Documents.** Any consistency evaluation, exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, pursuant to CEQA, to issue any Approval or to approve this Agreement or the Project.

2.16 **Certificate of Occupancy.** A Certificate of Occupancy as defined in the Uniform Building Code, published by the International Conference of Building Officials, as adopted by the City from time to time.

2.17 **City.** The City of San Diego, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of San Diego, a California municipal corporation.

2.18 **City Deed of Trust.** A deed of trust in substantially the form of **Exhibit "E"** attached to this Agreement recorded against the Property securing Developer's obligation to repay the City Loan pursuant to the terms of the Developer Note.

2.19 **City Loan.** A residual receipts loan from City to Developer in a maximum principal amount not to exceed five million eight hundred fifty thousand Dollars (\$5,850,000) evidenced by the Developer Note and secured by the City Deed of Trust. Funds provided through the City Loan shall be applied to costs associated solely with the development of the Dwelling Units.

2.20 **City Loan Proceeds Escrow Agreement.** The escrow agreement attached to this Agreement as **Exhibit "W"** for deposit and disbursement of the Affordable Housing Bond Proceeds. The Mayor may, in his or her discretion, revise the City Loan Proceeds Escrow Agreement as needed to accommodate timely funding of the Predevelopment Loan, including substitution of the escrow agent to be used in establishing the escrow account under the City Loan Proceeds Escrow Agreement.

2.21 **City Parties.** Collectively, City, the City Council, and all City elected or appointed officials, employees, agents, and attorneys.

2.22 **City Title Policy.** An ALTA lender's title insurance policy issued by the Title Company, with coverage in the amount of the City Loan, insuring the priority of the City Deed of Trust consistent with the order of recording in Section 8.6.1.

2.23 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a

defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.

2.24 **Close of Escrow.** The first date on which the Escrow Agent has filed all of the documents set forth in Section 8.6.1 with the County for recording in the official records of the County in accordance with Section 8.6.1.

2.25 **Commercial Rent.** The amount to be paid by Developer to the City consisting of fifty percent (50%) of Net Rental Operating Income from the Commercial Space. "Net Rental Operating Income" means the total amount of rent and other income received by Developer from or in connection with the Commercial Space, minus ten percent (10%) of that total income amount as an agreed-upon percentage deduction for operating costs that will apply regardless of actual operating costs affecting the Commercial Space. This definition assumes that Developer will lease the Commercial Space to an independent third party at market rate rent. If Developer leases the Commercial Space to a related entity, or the rent or other income paid to Developer for or in connection with the Commercial Space is otherwise not at the market rate, the Net Rental Operating Income will be determined, subject to approval by the Mayor, in accordance with an estimated market rate rent for the Commercial Space as determined by an analysis by a third party consultant selected by the City.

2.26 **Commercial Space.** The portion of the Project to be leased by Developer and used exclusively for retail and commercial uses, as described in the Project Scope attached to this Agreement as **Exhibit "H"**.

2.27 **Construction Contract.** A current agreement between Developer and Builder for construction of the entirety of the Project for a fixed or guaranteed maximum price expressly set forth in such contract and in accordance with all of the terms and conditions of this Agreement, conditioned only upon: (a) Developer's receipt of all Approvals; (b) closing of all financing sources for the Project described in Section 12; and (c) other commercially reasonable conditions.

2.28 **Construction Drawings.** The construction drawings, plans and specifications for the Predevelopment Work and the Project prepared by or for Developer.

2.29 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlating meanings.

2.30 **County.** The County of San Diego, California.

2.31 **CTCAC.** The California Tax Credit Allocation Committee or successor in function.

2.32 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

2.33 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) six percent (6%) per annum; or (b) the highest rate of interest, if any, that Law allows under the circumstances.

2.34 **Deferred Developer Fee.** If the Developer receives 4% Tax Credits, the amount of One Million Nine Thousand Four Hundred Twenty Dollars (\$1,009,420) of the Developer Fee that will not be paid at or before filing of Form 8609 for the Project with the United

States Internal Revenue Service and is to be paid from net operating income from the completed Project (except as otherwise specifically provided in Section **Error! Reference source not found.** and subject to the requirements of other Lenders and the Tax Credit Investor). If the Developer instead receives 9% Tax Credits, there shall be no Deferred Developer Fee.

2.35 **Developer.** Hilltop Family Housing, L.P., a California limited partnership, and its assignees and transferees permitted by this Agreement.

2.36 **Developer Fee.** If the Developer receives 4% Tax Credits, an aggregate amount not to exceed three million six hundred thousand Dollars (\$3,600,000), inclusive of the Deferred Developer Fee. If the Developer instead receives 9% Tax Credits, an amount not to exceed two million two hundred thousand dollars (\$2,200,000). .

2.37 **Developer Note.** A promissory note in substantially the form of **Exhibit "D"** attached to this Agreement evidencing Developer's obligation to repay the City Loan pursuant to the terms of such note.

2.38 **Developer Official Action.** The official action of the directors, managers, partners or other Persons in Control of Developer in substantially the form attached to this Agreement as **Exhibit "G"** authorizing Developer to enter into and perform this Agreement.

2.39 **Developer Parties.** Collectively, Developer and the directors, officers, employees, agents, shareholders, members, managers, and partners of Developer.

2.40 **Developer Partnership Agreement.** The agreement of limited partnership organizing and establishing Developer as a legal entity.

2.41 **Developer Title Policy.** An extended ALTA owners' policy of title insurance issued by the Title Company, with coverage in an amount reasonably determined by Developer, showing title to the Property vested in Developer consistent with the Title Report. If a survey is required to obtain the Developer Title Policy, such survey must be completed by Developer before the Escrow Closing Date and at Developer's sole cost and expense.

2.42 **Disbursement Agreement.** The agreement for disbursement of the City Loan proceeds in substantially the form attached to this Agreement as **Exhibit "M."**

2.43 **DOF.** The California Department of Finance.

2.44 **Due Diligence Completion Notice.** A written notice from Developer delivered to City, prior to the end of the Due Diligence Period, indicating Developer's unconditional acceptance of the condition of the Property.

2.45 **Due Diligence Investigations.** Developer's due diligence investigations of the Property to determine the suitability of the Property for development and the financial feasibility of the operation of the Project, including investigation of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of Developer, all at the sole cost and expense of Developer.

2.46 **Due Diligence Period.** The time period that commences on the Effective Date and expires at 5:00 p.m. Pacific Standard Time on the date that is sixty (60) calendar days after the Effective Date. The Due Diligence Period may be extended in the Mayor's discretion for up to an additional thirty (30) calendar days.

2.47 **Dwelling Unit.** Any one of the one hundred and thirteen (113) residential apartment units in the Project.

2.48 **Effective Date.** Defined in Section 3.

2.49 **Eligible Predevelopment Costs.** The expenses for Predevelopment Work as identified in the Project Scope attached to this Agreement as **Exhibit "H"** and the Predevelopment Budget attached to this Agreement as **Exhibit "P"**, and actually incurred by Developer for the Predevelopment Work. Eligible Predevelopment Costs shall not include Developer's administrative costs, fees, home office and/or field overhead, or profit. Eligible Predevelopment Costs are split into two categories as shown in the Predevelopment Budget – General Predevelopment Costs and Public Improvement Related Predevelopment Costs.

2.50 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge relating in any manner to the Project or the Property.

2.51 **Environmental Documents.** The following documents regarding the environmental condition of the Property, which have been provided by to Developer: (a) Phase II Environmental Site Assessment, dated December 24, 2015, prepared by Rincon Consultants, Inc.; (b) Jurisdictional Delineation Report, dated December 2016, prepared by Rincon Consultants, Inc.; and (c) CEQA Consistency Evaluation, dated October 23, 2017, prepared by AECOM.

2.52 **Environmental Law.** All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect.

2.53 **Escrow.** An escrow conducted by the Escrow Agent for the disposition of the Property and closing of the City Loan to Developer pursuant to this Agreement.

2.54 **Escrow Agent.** Chicago Title Company, a California corporation, or such other Person mutually agreed upon in writing by both City and Developer.



2.55 **Escrow Closing Date.** The date mutually agreed upon in writing between the Parties for the Close of Escrow, which shall be no later than December 31, 2022, subject to extensions in the Mayor's discretion of up to an aggregate of one hundred and eight (180) calendar days.

2.56 **Escrow Closing Statement.** A statement prepared by the Escrow Agent showing, among other things, the Escrow Agent's estimate of all funds to be deposited or received by City or Developer, respectively, and all charges to be paid by City or Developer, respectively, through the Escrow.

2.57 **Escrow Default.** The unexcused failure to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow pursuant to the terms and conditions of this Agreement, after all other conditions precedent to the Close of Escrow for the benefit of such Party are satisfied or waived by such Party.

2.58 **Escrow Opening Date.** The first date on which a copy of this Agreement signed by both City and Developer is deposited with the Escrow Agent and the Escrow is opened, as provided in Section 8.

2.59 **Equity Interest.** All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

2.60 **Event of Default.** The occurrence of any one or more of the following:

2.60.1 *Monetary Default.* A Monetary Default that continues for fifteen (15) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount or bond, surety or insurance not provided;

2.60.2 *Escrow Closing Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the document or funds not submitted;

2.60.3 *Bankruptcy or Insolvency.* Developer admits in writing that Developer is unable to pay Developer's debts as they become due or Developer becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Agreement, the Property or the Project (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);

2.60.4 *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement; or

2.60.5 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 2.60.3 or Section 2.60.4, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of

such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

2.60.6 *Tax Credit Investor Cure Rights.* Following admission of the Tax Credit Investor as limited partner of Developer, a copy of any Notice of Default delivered to Developer shall also be delivered to the Tax Credit Investor at the address provided to the City by such Tax Credit Investor in writing. The Tax Credit Investor shall have the right, but not the obligation, to cure the Event of Default in the time periods provided to Developer.

2.61 **Federal.** Relating or pursuant to the authority of the federal government of the United States of America.

2.62 **General Predevelopment Costs.** The costs identified as General Predevelopment Costs in the Predevelopment Budget attached to this Agreement as **Exhibit "P"**.

2.63 **Good Faith Deposit.** A deposit in the amount of fifty thousand dollars (\$50,000) to provide security for the performance of Developer's obligations under this Agreement, which has been provided to the City prior to execution of this Agreement. The City acknowledges that Developer has previously made the Good Faith Deposit prior to the date of this Agreement.

2.64 **Government.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

2.65 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted pursuant to Law; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance of the Project in compliance with Law.

2.66 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the construction, installation, use or operation of the Project or any activities conducted at, on, under or from the Property, whether or not caused by a Party.

2.67 **Indemnify.** Where this Agreement states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

2.68 **Indemnitee.** Any Person entitled to be indemnified under the terms of this Agreement.

2.69 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Agreement.

2.70 **Institutional Lender.** Any of the following: (a) a banking corporation (State or Federal), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank, a Fortune 500 company, or a corporation established for the purpose of making mortgage loans for affordable rental projects, or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clause “(a)” of this Section.

2.71 **Insurance Documents.** Copies or originals of insurance policies and endorsements evidencing all insurance coverage required to be obtained or maintained by Developer pursuant to Section 10.

2.72 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Site, Property, Predevelopment Work, or the Project, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Site, Property, Predevelopment Work, or the Project, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.

2.73 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

2.74 **Lender.** The holder of any Security Instrument and such holder’s successors and assigns.

2.75 **Liquidated Damages Amount.** Fifty Thousand Dollars (\$50,000), which shall be paid out of the Good Faith Deposit.

2.76 **Manager Units.** The two (2) Dwelling Units designated for on-site residential managers or maintenance personnel, which shall remain unrestricted in terms of income or affordability levels.

2.77 **Market Rate Parcel.** The portion of the Site excluding the Property. The Market Rate Parcel is anticipated to be sold by the City to a Third Party following completion by Developer of the Predevelopment Work. The Market Rate Parcel is depicted on Exhibit A-3 hereto.

2.78 **Mayor.** The Mayor of City or his or her designee or successor in function.

2.79 **Monetary Default.** Any failure by either Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

2.80 **Monitoring Agreement.** The parties acknowledge that this Agreement is subject to the provisions of California Health and Safety Code Section 33418, which provides in pertinent part: "(a) An agency shall monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, an Authority shall require Developers or managers of the housing to submit an annual report to the Authority. The annual reports shall include for each rental unit the rental rate and the income and family size of the occupants. The income information required by this section shall be supplied by the tenant in a certified statement of a form provided by the Authority." To satisfy the requirements of California Health & Safety Code Section 33418, and prior to loan closing, Developer shall enter into a reporting and monitoring agreement with the City and Housing Commission in substantially the form attached to this Agreement as **Exhibit "T."** Developer shall pay customary monitoring fees.

2.81 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

2.82 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

2.83 **Notice of Affordability Restrictions.** A notice in substantially the form of **Exhibit "F"** attached to this Agreement to be recorded against the Property at the Close of Escrow.

2.84 **Notice of Default.** Any Notice claiming or giving Notice of a Default.

2.85 **Notify.** To give a Notice.

2.86 **Parties.** Collectively, City and Developer.

2.87 **Party.** Individually, either City or Developer, as applicable.

2.88 **Performance Schedule.** The schedule for the performance of certain actions by City or Developer set forth in **Exhibit "I"** attached to this Agreement.

2.89 **Permanent Lender.** Any Lender that provides permanent financing to Developer following completion of construction of the Project.

2.90 **Permit Ready.** An Approval that is in a position to be issued to Developer by the applicable Government upon payment of applicable fees and assessments, and the posting of required bonds, the costs of which are included in the final Project Budget approved by City.

2.91 **Permitted Encumbrance.** Any lien or encumbrance affecting the Property shown on the Title Report, and all Laws applicable to the Property, the City Deed of Trust, any Permitted Security Instrument, utility, street or shared driveway easements directly related to the Project, any encumbrance or conveyance made to comply with an Approval for the Project and any other document required or expressly allowed to be recorded against the Property by the express terms of this Agreement or the Regulatory Agreement.

2.92 **Permitted Security Instrument.** Any Security Instrument: (a) that encumbers only the Property or any interest in the Property; (b) a copy of which (recorded or unrecorded) is delivered to City promptly after being signed, with a certification by the Lender that the copy is complete and accurate and stating the Lender's name and notice address; (c) that is held by a Lender, subject to the jurisdiction of the courts of the State, not immune from suit and cannot elect to be immune from suit; and (d) only secures: (i) the repayment of money used to pay or reimburse the Total Project Costs; or (ii) any Refinancing permitted pursuant to the express terms and conditions of this Agreement.

2.93 **Person.** Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

2.94 **Predevelopment Construction Commencement Date.** The date by which the construction of the Predevelopment Improvements by Developer shall commence, which shall be no later than June 30, 2021, subject to extensions of up to ninety (90) days in the aggregate, in the Mayor's discretion.

2.95 **Predevelopment Improvements.** The improvements to be constructed as part of the Predevelopment Work as set forth in the Project Scope attached to this Agreement as **Exhibit "H"**.

2.96 **Predevelopment Work.** All of the items included in "Predevelopment Work" as described in Section 2.a of the Project Scope attached to this Agreement as **Exhibit "H"**.

2.97 **Predevelopment Loan.** The predevelopment loan by the City to Developer in a maximum principal amount not to exceed Two Million Eight Hundred Twenty-Six Thousand Six Hundred Twenty-Six Dollars (\$2,826,626) evidenced by the Predevelopment Note. The proceeds from the Predevelopment Loan shall be used solely to reimburse Developer for Eligible Predevelopment Costs as set forth in Section 12.

2.98 **Predevelopment Loan Guaranty Agreement.** A guaranty agreement in substantially the form attached to this Agreement as **Exhibit "R"** securing Developer's obligation to repay the Predevelopment Loan pursuant to the terms of the Predevelopment Note.

2.99 **Predevelopment Note.** A promissory note in substantially the form attached to this Agreement as **Exhibit “Q”** attached to this Agreement evidencing Developer’s obligation to repay the Predevelopment Loan pursuant to the terms of such note.

2.100 **Prevailing Wage Action.** Any of the following: (a) any determination by the State Department of Industrial Relations or the Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or the Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code section 1781 or applicable Federal Law.

2.101 **Prohibited Encumbrance.** Any lien, Security Instrument, mechanic’s lien, easement, property interest or other encumbrance recorded or asserted against the Property or the Project that is not a Permitted Encumbrance.

2.102 **Project.** The one hundred and thirteen (113) multi-family residential apartments with appropriate landscaping, retail and commercial space, site improvements, and parking (inclusive of two Manager Units) specifically described in the Project Scope attached to this Agreement as **Exhibit “H”**, subject to the terms and conditions of all Approvals.

2.103 **Project Budget.** The budget set forth in **Exhibit “N”** attached to this Agreement, as may be amended, subject to City approval, to be reflected as the final Project Budget approved by the Mayor in accordance with Section 8.3.4, which is a condition precedent to the Close of Escrow and the funding of the City Loan.

2.104 **Project Commencement Date.** The date within forty-five (45) calendar days following the date of the Close of Escrow when construction of the Project commences.

2.105 **Project Completion Date.** The date that is thirty (30) months following the date of the Close of Escrow.

2.106 **Project Deficit.** Defined in Section 12.8.

2.107 **Project Scope.** The scope of development for the Project, attached to this Agreement as **Exhibit “H”**.

2.108 **Project Surplus.** Defined in Section 12.9.

2.109 **Property.** That certain real property and improvements described in **Exhibit “A - 2”** attached to this Agreement. The Property generally consists of the approximately 4.53 acre portion of the Site located to the east of, and inclusive of, the arroyo dividing the Site as shown on the map included in **Exhibit “A-2”**. No formal legal description currently exists for the Property; however, within ten (10) Business Days of recordation in the official records of the County of the final subdivision map for the Property (which is to be processed by Developer as part of the

Predevelopment Work), Developer shall obtain from the Title Company a formal legal description for the Property, which legal description shall be deemed to supersede and replace all contents of **Exhibit "A-2"** as the description of the Property upon approval and acceptance by the Parties.

2.110 **Public Improvement Related Predevelopment Costs.** The costs identified as Public Improvement Related Predevelopment Costs in the Predevelopment Budget attached to this Agreement as **Exhibit "P"**.

2.111 **Punchlist Work.** Construction of an insubstantial nature that, if not completed, will not delay issuance of a final Certificate of Occupancy (or equivalent approval) for the Project by City or materially interfere with use or occupancy of the Project.

2.112 **Purchase Price.** One dollar (\$1.00).

2.113 **Refinancing.** Any loan secured by a Permitted Security Instrument that Developer obtains from a lender for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument, where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer exceeding the amount of principal and interest under the existing loan being paid, plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Developer without paying off all or any portion of any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification, or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan.

2.114 **Regulatory Agreement.** That certain "Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Hilltop & Euclid)" to be entered into by and between City and Developer and recorded against the Property at the Close of Escrow, substantially in the form of **Exhibit "C"** attached to this Agreement. The Regulatory Agreement shall be senior to all Security Instruments, except as explicitly provided in this Agreement.

2.115 **Release of Construction Covenants.** City's written certification that the Project is complete in accordance with the terms and conditions of this Agreement, substantially in the form of **Exhibit "B"** attached to this Agreement.

2.116 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned or supplemented from time to time, unless and until paid, satisfied and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable),

then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

2.117 **Senior.** Referring to multiple Security Instruments, the Security Instrument that is most senior in lien of the same type. Where Senior is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type that is senior in lien to such specified Security Instrument. If only one Security Instrument of a particular type exists, then that Security Instrument shall be deemed the Senior Security Instrument of such type.

2.118 **Senior Institutional Lender.** The Institutional Lender making the Senior Project Loan.

2.119 **Senior Project Loan.** A loan that Developer shall obtain from a Senior Institutional Lender in an amount that is sufficient to pay and the proceeds of which are to be used and applied solely to pay: (a) the reasonable costs of obtaining such loan; and (b) the excess of the Total Project Costs over the sum of the amount of the proceeds of the other financing sources for construction of the Project described in Section 12, the proceeds of which will be disbursed to or on behalf of Developer during construction of the Project. Such loan shall provide for normal and customary disbursement controls for the payment of Total Project Costs as construction of the Project progresses and normal and customary fees and expenses for a loan of similar size and purpose. Such loan may also provide for all or a portion of the loan to convert to permanent loan status following completion of construction of the Project.

2.120 **Senior Project Loan Documents.** The various documents and instruments made by and between Developer and Senior Institutional Lender that evidence or perfect the Senior Project Loan or the security for repayment of the Senior Project Loan, including any associated Security Instrument(s). The Regulatory Agreement shall be Senior to all Senior Project Loan Documents, and all related Security Instruments.

2.121 **Site.** That certain real property and improvements legally described in **Exhibit "A - 1"** attached to this Agreement.

2.122 **State.** The State of California.

2.123 **Subordination and Inter-Creditor Agreement.** A subordination and/or inter-creditor agreement entered into by and among City, Developer, and Senior Institutional Lender, in accordance with Section 12.12.

2.124 **Tax Credit Equity.** The amount to be paid by the Tax Credit Investor to acquire the Equity Interests in Developer.

2.125 **Tax Credit Investor.** The Person that provides the Tax Credit Equity. In no event may the Tax Credit Investor be an Affiliate of Developer.

2.126 **Tax Credits.** An allocation from CTCAC of State or Federal low income housing tax credits in the amount specified in the Project Budget to finance a portion of the Total Project



Costs, all in accordance with section 42 of the United States Internal Revenue Code of 1986, as amended, all associated United States Internal Revenue Service regulations, State law and all associated CTCAC regulations.

2.127 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

2.128 **Title Report.** The Preliminary Title Report No. LJ-4389833A, dated June 5, 2017, and updated June 29, 2017, issued by Chicago Title, which Developer has received prior to the Effective Date. Within five (5) Business Days of the creation of the legal description for the Property as set forth in Section 2.109, Developer shall obtain from the Title Company a new Title Report which shall include a current commitment for the Developer Title Policy and copies of all documents referenced in that commitment.

2.129 **Title Company.** Chicago Title Company, a California corporation, or such other Person mutually agreed upon in writing by both City and Developer.

2.130 **Total Project Costs.** The cumulative amount of all costs set forth in the Project Budget.

2.131 **Transfer.** Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right, or obligation or of any legal, beneficial, or equitable interest or estate in such property, right, or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right, or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.131, shall be deemed a Transfer by Developer, even though Developer is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and which constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the Person whose Equity Interest is being transferred; (iv) making of a Permitted Security Instrument; (v) transfer(s) of the outstanding Equity Interests in Developer that, in the aggregate, result in transfer of less than forty percent (40%) of the outstanding Equity Interests in Developer; (vi) issuance of previously unissued or new Equity Interests in Developer that increases the amount of outstanding Equity Interests in Developer by less than ten percent (10%); (vii) the admission of a non-profit public benefit corporation as a managing general partner or manager or member of Developer in order for Developer to qualify for the welfare exemption from property taxation provided under California Revenue and Taxation Code section 214(g); (viii) the transfer by Affirmed Housing Group, Inc. of its general partnership interest in Developer to a limited liability company in which

Affirmed Housing Group, Inc. owns one hundred percent of the membership interests; (ix) grants of easements required for construction of the Project; (ix) actions taken to comply with any Approvals for the Project; (x) a transfer of a limited partnership interest to a Tax Credit Investor and thereafter by the Tax Credit Investor of its limited partnership interest in Developer to a syndicated fund Controlled by the Tax Credit Investor for purposes of syndication of the Tax Credit Equity; (xi) the removal of the general partner of Developer by the Tax Credit Investor in accordance with the Developer Partnership Agreement and replacement of such general partner with a Person approved by the Mayor, which approval shall not be unreasonably withheld; (xii) the grant and exercise of an option and/or right of first refusal from the Tax Credit Investor to the general partner of Developer in accordance with the Developer Partnership Agreement upon the anticipated exit of the Tax Credit Investor from the partnership on or around the expiration of the Tax Credit compliance period; (xiii) the transfer of the Commercial Space from Developer to its Affiliate, subject to Developer and that Affiliate executing an agreement providing for that Affiliate's assumption, on a joint and several basis with Developer, of all obligations with respect to the Commercial Space and the Commercial Rent (as defined the Developer Note) under this Agreement and the Developer Note, as approved by the Mayor in his or her reasonable discretion; or (xiv) any other transfer approved by the Mayor or City Manager, which approval shall not be unreasonably withheld.

2.132 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including, without limitation, strikes, labor troubles or other union activities, extreme weather events, earthquakes, casualty, war, acts of terrorism, riots, litigation, Government action or inaction, , regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

3. **EFFECTIVE DATE.** This Agreement shall not become effective until the first date on which all of the following events have occurred: ("**Effective Date**"): (a) City has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Developer; (b) City has received the Developer Official Action signed by the authorized representative(s) of Developer; (c) this Agreement has been approved by the City Council; (d) this Agreement has been signed by the authorized representative(s) of City; and (e) this Agreement has been approved as to form by the City Attorney.

#### 4. **DEVELOPER DEPOSIT**

4.1 **Delivery.** Developer shall deliver the Good Faith Deposit prior to or concurrently with the execution of this Agreement. The deposit held by the City pursuant to the Exclusive Negotiation Agreement between the Parties with respect to the Project may be credited towards this Good Faith Deposit.

4.2 **Interest.** City shall be under no obligation to pay or earn interest on the Good Faith Deposit, but, if interest shall accrue or be payable thereon, such interest, when received by the City, shall be the property of Developer and shall be promptly paid to Developer upon the return of the Good Faith Deposit to Developer pursuant to this Agreement; to the extent City is entitled to retain the Good Faith Deposit pursuant to this Agreement, any interest earned on the Good Faith Deposit shall be retained by and belong to City as its sole property and may be disposed of by City

as City sees fit.

4.3 **Return or Retention.** The Good Faith Deposit (with interest, if any) shall be returned to Developer within thirty (30) days in the event that Developer is not then in default under this Agreement and the Close of Escrow has occurred. If the City terminates this Agreement under Section 13.1, the Good Faith Deposit (with interest, if any) shall be retained by City as Liquidated Damages.

## 5. **PREDEVELOPMENT WORK AND DUE DILIGENCE.**

5.1 **Predevelopment Work.** Developer shall have commenced the Predevelopment Work prior to execution of this Agreement, and shall perform and complete all Predevelopment Work at and within the times set forth in the Performance Schedule attached to this Agreement as **Exhibit "I"**, which include the deadline for commencement of construction of the Predevelopment Improvements of June 30, 2021. The dates for commencement, performance, and completion of the Predevelopment Work as set forth in the Performance Schedule may each be extended by up to ninety (90) days in the Mayor's sole discretion. Developer shall have access to the Site for the Predevelopment Work pursuant to a Right of Entry Agreement in the form attached to this Agreement as **Exhibit "U"**.

### 5.2 **Due Diligence**

5.2.1 **Time and Expense.** Developer shall complete all Due Diligence Investigations within the Due Diligence Period and shall conduct all Due Diligence Investigations at Developer's sole cost and expense.

#### 5.2.2 **Review of Title.**

(a) **Developer's Title Notice.** Within ten (10) Business Days after the Effective Date, Developer shall deliver to City a written notice confirming Developer's unconditional acceptance of the condition of title to the Property or Developer's disapproval or conditional approval of specific matters in the Title Report. If Developer fails to timely deliver this title notice, Developer shall be deemed to disapprove the condition of title to the Property.

(b) **City's Title Response.** Within five (5) Business Days after receipt of Developer's title notice (unless such notice confirms Developer's unconditional acceptance), City shall deliver to Developer a written response in which City: (i) agrees to cause the removal from the Title Report of any matters disapproved or conditionally approved in Developer's title notice; (ii) agrees to obtain title insurance or other insurance or endorsement in a form reasonably satisfactory to Developer insuring against any matters disapproved or conditionally approved in Developer's title notice; or (iii) elects not take either action described in clauses (i) or (ii) above. If City fails to timely deliver the title response (if necessary), City shall be deemed to elect not to take any action in reference to Developer's title notice. If City elects in the title response to take any action in reference to Developer's title notice, and if Developer then elects to proceed with the purchase of the Property, City shall complete such action before the Escrow Closing Date or as otherwise specified in City's title response.

(c) Developer's Rejection or Waiver. If City elects or is deemed to have elected not to address one or more matters set forth in Developer's title notice to Developer's reasonable satisfaction, then within five Business Days after the earlier of Developer's receipt of City's title response or the expiration of City's deadline to deliver its title response, Developer shall deliver to City a final written notice: (i) rejecting the condition of title to the Property; or (ii) waiving Developer's disapproval or conditional approval of all such matters set forth in Developer's initial title notice and unconditionally accepting the condition of title to the Property. If Developer fails to timely deliver the final title notice, Developer shall be deemed to continue its rejection of the condition of title to the Property.

(d) Termination of Agreement. If Developer's title review pursuant to this Section 5.2.2 results in Developer's ultimate disapproval or deemed disapproval of the condition of title to the Property, then either Party shall have the right, in such Party's sole and absolute discretion, to cancel the Escrow and terminate this Agreement by delivering written notice to the other Party and Escrow Agent before the Due Diligence Period expires. Upon delivery of the written notice of termination, the Parties and Escrow Agent shall proceed in accordance with Section 8.10. If either Party terminates this Agreement in accordance with this Section 5.2.2, such Party shall not incur any resulting liability to the other Party.

(e) Creation of Legal Description. As set forth in Section 2.109 above, a legal description for the Property will be created after the final subdivision map is recorded in the official records of the County. It is anticipated that this will occur after completion of Developer's title review under this Section 5.2.2. Creation of the legal description shall not reopen Developer's title review under this Section 5.2.2., except that to the extent the establishment of the legal description results in creation or disclosure of a new title matter not previously shown on the Title Report, but shown on the updated Title Report issued after creation of the legal description, then Developer's title review shall reopen, but only with respect to that new title matter or matters, if any, and shall occur in accordance with the provisions and deadlines in this Section 5.2.2.

**5.2.3 Developer's Responsibility.** It shall be the sole responsibility of Developer, at Developer's sole cost and expense, to investigate and determine all conditions of the Property and its suitability for the use to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put under the terms of this Agreement, and Developer nevertheless determines to complete the acquisition of the Property, then it will be the sole responsibility and obligation of Developer to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

**5.2.4 Due Diligence Completion Notice.** Developer shall deliver a Due Diligence Completion Notice to City prior to the end of the Due Diligence Period. If Developer does not unconditionally accept the condition of the Property by delivery of its Due Diligence Completion Notice indicating such acceptance, prior to the end of the Due Diligence Period, Developer shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by Developer, then either City or Developer shall have the right to terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person,

by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 8.10.

6. **SUBMISSION OF DEVELOPMENT APPLICATIONS.** Developer shall prepare and submit all required Applications, documents, fees, charges or other items (including deposits, funds or sureties in the ordinary course) required for the Predevelopment Work and construction of the Project, pursuant to all applicable Laws and Approvals, to each Government for review and approval. Further, Developer shall exercise commercially reasonable efforts to complete all Predevelopment Work and obtain all Approvals for the construction of the Project on the Property from each Government in a Permit Ready status, at least five (5) days before the Escrow Closing Date. Prior to commencement of any part of the construction of the Project, Developer shall obtain all Approvals from each Government required for the construction of the Project.

7. **PURCHASE AND SALE OF PROPERTY.**

7.1 Purchase and Sale. City shall sell the Property to Developer, and Developer shall purchase the Property from City, subject to the Permitted Encumbrances and the terms and conditions of this Agreement. Title to the Property shall be transferred by the Grant Deed attached to this Agreement as **“Exhibit O”**.

7.2 “AS-IS” Acquisition. The Close of Escrow shall evidence Developer’s unconditional and irrevocable acceptance of the Property in the Property’s AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, ocean or tidal impacts, shoring or bluff stability or support, subsurface support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Property (active, inactive or abandoned), the suitability of the Property for the Project or other use, the existence or absence of Hazardous Substances affecting the Property and with full knowledge of the physical condition of the Property, the nature of City’s interest in and use of the Property, all Laws applicable to the Property and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Property. Developer represents and warrants to City that: (a) Developer has had ample opportunity to inspect and evaluate the Property and the feasibility of the uses and activities Developer is entitled to conduct on the Property in accordance with this Agreement; (b) Developer is experienced in real estate development; (c) Developer is relying entirely on Developer’s experience, expertise and Developer’s own inspection of the Property in the Property’s current state in proceeding with acquisition of the Property; (d) Developer accepts the Property in the Property’s present condition; (e) to the extent that Developer’s own expertise with respect to any matter regarding the Property is insufficient to enable Developer to reach an informed conclusion regarding such matter, Developer has engaged the services of Persons qualified to advise Developer with respect to such matters; (f) Developer has received assurances acceptable to Developer by means independent of City or City’s agents of the truth of all facts material to Developer’s acquisition of the Property pursuant to this Agreement; and (g) the Property is being acquired by Developer as a result of Developer’s own knowledge, inspection and investigation of the Property and not as a result of any representation made by City or City’s agents relating to the condition of the Property, unless such statement or representation is expressly and

specifically set forth in this Agreement. City expressly and specifically disclaims any express or implied warranties regarding the Property.

7.3 Investigation and Remediation. City has no obligation under this Agreement to investigate or remediate the existence of any violation of Environmental Laws or Hazardous Substance or any Hazardous Substance Discharge affecting the Property before or after the Close of Escrow. If Developer closes the purchase of the Property and encounters any violation of Environmental Laws or Hazardous Substance or any Hazardous Substance Discharge affecting the Property or the Project, Developer shall investigate and remediate such violation or condition in accordance with all applicable Law and Government requirements, all at Developer's sole cost and expense. Nothing in this 7.3 shall preclude Developer from recovering for any Claim from a Person other than a City Party.

7.3.1 Developer Acknowledgement of Receipt of Documents. Developer acknowledges receipt of the Environmental Documents, which to the best knowledge of the City, constitutes all environmental reports, studies, and other environmental documents relevant to the environmental condition of the Property within the City's possession or control. City does not warrant the accuracy of the Environmental Documents or that the Environmental Documents constitute all the documents that may exist regarding the conditions of the Property, and Developer is obligated to conduct its own inquiry to determine if more information is available.

7.3.2 Developer Assumption of Risk. Developer acquires the Property with knowledge that there may be environmental contamination on, in, under or about the Property and that some Hazardous Substances may remain at the Property after the completion of the Project. City shall have no liability for, and shall not defend or indemnify Developer with respect to any liability, loss or claim resulting from the existence of Hazardous Substances on, in, under or about the Property.

7.3.3 Release of City. Developer hereby waives, releases and discharges the City and its members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the City's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except with respect to any Environmental Claim arising from City's breach of its maintenance covenant under Section 7.5. Developer acknowledges that it is aware of and familiar with the provisions of section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under section 1542 of the California Civil Code.

Initials of Authorized  
City Representative

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Initials of Authorized  
Developer Representative

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7.4 Condemnation. If City receives notice that any portion of the Property or any interest in any portion of the Property becomes the subject of any eminent domain proceeding prior to Close of Escrow, including the filing of any notice of intended condemnation or proceedings in the nature of eminent domain commenced by any Government, City shall immediately Notify Developer of such occurrence. If in the reasonable discretion of Developer, the subject condemnation activities will prohibit development of the Project on the Property, then this Agreement shall terminate on the date of the Notice from City to Developer of such condemnation activities and Developer shall be entitled to a refund of the Good Faith Deposit. If this Agreement does not terminate pursuant to the immediately preceding sentence, then this Agreement shall continue in full force and effect in accordance with its terms, and City shall only be obligated to convey that portion of the Property that was not subject to condemnation to Developer at the Close of Escrow and City shall be entitled to receive all of the condemnation award and other compensation regarding such condemnation of all or a portion of the Property.

7.5 Maintenance of Property. City agrees, prior to the commencement of the Predevelopment Work, to continue to maintain the Property in substantially the same condition as the City maintained the Property on the Effective Date. Also, City agrees not to enter into any contracts with respect to the Property that will survive the Close of Escrow, without Developer's prior written consent.

7.6 Delivery of Property Free of Tenants. At the Close of Escrow, City will deliver possession of the Property to Developer free and clear of any contractual or other rights created by or with the consent of City for any Person (other than Developer) to use or occupy the Property.

7.7 City Not to Encumber. City agrees not to place any matters of record against the Property (other than Permitted Exceptions and any matters arising from City's issuance or exercise of any remedy related to any Approval for the Project), prior to the Close of Escrow, without the prior written consent of Developer.

7.8 Escrow. For the purposes of exchanging funds and documents to complete the sale of the Property from City to Developer and the purchase of the Property by Developer from City, pursuant to the terms and conditions of this Agreement.

7.9 Payment of Purchase Price. At least one (1) Business Day preceding the Escrow Closing Date, the Developer shall deposit an amount of money equal to the sum of Purchase Price and all costs payable by Developer regarding the purchase and sale of the Property pursuant to this Agreement into the Escrow.

8. **ESCROW.** The purchase and sale of the Property and the closing of the City Loan shall take place through the Escrow to be administered by Escrow Agent. The Parties shall cause the Escrow to be opened at a mutually agreed upon date selected by the Parties to allow timely Close of Escrow in accordance with the Performance Schedule. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. This Section 8 constitutes the joint instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the property and the closing of the City Loan. Developer and City shall submit such further escrow instructions consistent with the provisions of this Agreement as may be reasonably required. In the event of any conflict between the provisions of this Agreement and any further escrow instructions, the provisions of this Agreement shall control.

8.1 **Escrow Agent Authority.** City and Developer authorize Escrow Agent to:

8.1.1 **Charges.** Pay and charge City and Developer for their respective shares of the applicable fees, taxes, charges, or costs payable by either City or Developer regarding the Escrow;

8.1.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

8.1.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

8.1.4 **Counterpart Documents.** Utilize documents signed by City or Developer in counterparts, including attaching separate signature pages to one version of the same document.

8.2 **Developer's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Developer, Developer's obligation to close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Developer) of each of the following conditions precedent on or before the Escrow Closing Date:

8.2.1 **Title Policy.** Title Company is prepared to issue the Developer Title Policy to Developer upon payment of the premium.

8.2.2 **Approvals.** Developer has processed all Approvals required from each Government for construction of the Project on the Property, the terms and conditions of such Approvals are reasonably satisfactory to Developer, and all such Approvals are Permit Ready;

8.2.3 **CEQA Documents.** Adoption, approval, or certification of the CEQA Documents required by each Government. The Developer acknowledges that this condition has been satisfied as of the date of this Agreement.

8.2.4 **Senior Project Loan.** The closing and funding of the Senior Project Loan concurrent with the close of the Escrow;



8.2.5 **Additional Government Financing.** The closing and funding of any Additional Government Financing to be funded at the Close of Escrow in the amount specified in the Project Budget;

8.2.6 **Tax Credit Equity Funding.** The Tax Credit Equity to be funded at the Close of Escrow in the amount specified in the Project Budget, is deposited into the Escrow by the Tax Credit Investor;

8.2.7 **City Escrow Deposits.** City deposits all of the items into Escrow required by Section 8.5;

8.2.8 **Settlement/Closing Statement.** Developer reasonably approves Developer's Escrow Closing Statement; and

8.2.9 **City Pre-Closing Obligations.** City performs all of City's material obligations under this Agreement required to be performed by City prior to the Escrow Closing Date.

8.3 City's Conditions Precedent to the Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by City, City's obligation to make the City Loan and close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by the Mayor or Mayor's designee in his or her sole discretion) of each of the following conditions precedent on or before the Escrow Closing Date:

8.3.1 **Senior Project Loan.** The closing and funding of the Senior Project Loan concurrent with the close of the Escrow;

8.3.2 **Additional Government Financing.** The closing and funding of any Additional Government Financing to be funded at the Close of Escrow in the amount specified in the Project Budget;

8.3.3 **Tax Credit Equity Funding.** The Tax Credit Equity to be funded at the Close of Escrow in the amount specified in the Project Budget, is deposited into the Escrow by the Tax Credit Investor.

8.3.4 **Approvals.** Developer has processed all Approvals required from each Government for construction of the Project on the Property, the terms and conditions of such Approvals are reasonably satisfactory to City, and all such Approvals are Permit Ready;

8.3.5 **Document Approval.** City has received from Developer and approved all of the documents listed below in this Section 8.3.4 in City's reasonable discretion. Developer shall deliver draft and final versions of each document listed in this Section 8 to City in accordance with the Performance Schedule. Further, Developer shall have all of the following described documents completed and signed by all of the Persons required to make such documents operative (if applicable) and shall have delivered true, accurate and legible copies or originals (as specified in this Agreement) of all such documents to City, at least one (1) Business Day before the Escrow Closing Date:

- (a) A copy of the Construction Contract;

- (b) All Insurance Documents;
- (c) A copy of the Developer Partnership Agreement;
- (d) Copies of the Senior Project Loan Documents;
- (e) The final Disbursement Agreement;
- (f) The final Project Budget; and
- (g) The Construction Drawings.

8.3.6 **City Title Policy.** Title Company is prepared to issue the City Title Policy to City upon payment of Title Company's premium for such policy;

8.3.7 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each required Government. The City acknowledges that this condition has been satisfied as of the date of this Agreement;

8.3.8 **Subordination and Inter-Creditor Agreement.** The Subordination and Inter-Creditor Agreement has been signed by the authorized representative(s) of Developer, City and Senior Institutional Lender and Developer has received an original of the fully signed agreement;

8.3.9 **Developer Escrow Deposits.** Developer deposits all of the items into Escrow required by Section 8.4;

8.3.10 **Settlement/Closing Statement.** City reasonably approves City's Escrow Closing Statement; and

8.3.11 **Developer Pre-Closing Obligations.** Developer performs all of Developer's material obligations under this Agreement required to be performed by Developer prior to the Escrow Closing Date.

8.4 Developer's Escrow Deposits. Developer shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to City, at least one (1) Business Day prior to the Escrow Closing Date:

8.4.1 **Developer Note.** The Developer Note signed by the authorized representative(s) of Developer;

8.4.2 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of Developer in recordable form;

8.4.3 **City Deed of Trust.** The City Deed of Trust signed by the authorized representative(s) of Developer in recordable form;

8.4.4 **Senior Project Loan Security Instruments.** The Permitted Security Interest securing repayment of the Senior Project Loan, signed by the authorized representative(s) of Developer;

8.4.5 **Subordination and Inter-Creditor Agreement.** The Subordination and Inter-Creditor Agreement signed by the authorized representative(s) of Developer;

8.4.6 **Disbursement Agreement.** The Disbursement Agreement signed by the authorized representative(s) of Developer;

8.4.7 **Other Senior Institutional Lender Agreements.** Any other agreements requested by the Senior Institutional Lender to be entered into by Developer, signed by the authorized representative(s) of Developer; and

8.4.8 **Other Reasonable Items.** Any other documents or funds required to be delivered by Developer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not previously been delivered by Developer.

8.5 **City's Escrow Deposits.** City shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Developer, at least one (1) Business Day prior to the Escrow Closing Date:

8.5.1 **Grant Deed.** The Grant Deed signed by the authorized representative(s) of City and Developer;

8.5.2 **City Loan Proceeds.** Not to exceed \$5,850,000 for disbursement pursuant to the Developer Note, Disbursement Agreement, and City Loan Proceeds Escrow Agreement;

8.5.3 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of City in recordable form;

8.5.4 **Notice of Affordability Restrictions.** The Notice of Affordability Restrictions signed by the authorized representative(s) of City in recordable form;

8.5.5 **Subordination and Inter-Creditor Agreement.** The Subordination and Inter-Creditor Agreement signed by the authorized representative(s) of City;

8.5.6 **Disbursement Agreement.** The Disbursement Agreement signed by the authorized representative(s) of City; and

8.5.7 **Other Reasonable Items.** Any other documents or funds required to be delivered by City under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not been previously delivered by City.

8.6 **Closing Procedure.** Upon Escrow Agent's receipt of written confirmation from both Developer and City that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

8.6.1 **Recordation and Distribution of Documents.** Filing with the Recorder of the County for recording in the official records of the County regarding the Property in the following order of priority at Close of Escrow: (a) the Regulatory Agreement; (b) the Notice of Affordability

Restrictions; (c) the Permitted Security Instrument securing the Senior Project Loan; (d) the City Deed of Trust; (e) the Permitted Security Instrument securing any Additional Government Financing; (f) the Subordination and Inter-Creditor Agreement(s); and (g) any other documents to be recorded regarding the Property through the Escrow in accordance with the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of the County through the Escrow to City, Developer, and any other Person designated in the written instructions of the Parties to receive a conformed copy of each such document. Each conformed copy of a document filed for recording in the official records of the County shall show all recording information. The Parties intend and agree that this Section 8.6.1 shall establish the relative priorities of the documents and interests to be recorded in the official records of the County through the Escrow, by providing for recordation of Senior interests prior in time to junior interests, in the order provided in this Section 8.6.1, subject to the terms and conditions of the Subordination and Inter-Creditor Agreement.

The Regulatory Agreement shall be Senior to all Security Instruments. However, the Mayor may, in his or her sole discretion, allow the Permitted Security Instrument securing any Additional Government Financing to be Senior to the Regulatory Agreement when explicitly required by applicable Law or the program regulations of the Additional Government Financing, consistent with California Health and Safety Code section 33334.14(a)(1). In addition, the Mayor may, in his or her sole discretion, allow the Permitted Security Instrument securing any Additional Government Financing to be Senior to the City Deed of Trust when explicitly required by applicable Law or the program regulations of the Additional Government Financing.

**8.6.2 Distribution of Other Documents.** Delivering originals or copies of all documents to be delivered through the Escrow that are not filed for recording (if any) to the Parties and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document.

**8.6.3 Funds.** Distributing all funds held by Escrow Agent pursuant to the Escrow Closing Statements approved in writing by City and Developer, respectively.

**8.7 Close of Escrow.** The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The Mayor is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of City up to a maximum time period extension of one hundred and eighty (180) calendar days, in the aggregate, in the Mayor's sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 8.10. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 8.7, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 8.7 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and

conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

8.8 Escrow Costs. Escrow Agent shall notify Developer and City of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both City and Developer at least two (2) Business Days prior to the Escrow Closing Date. Developer shall pay the premium charged by the Title Company for the Developer Title Policy, including any endorsements or other supplements to the coverage of the Developer Title Policy that may be requested by Developer, and the premium charged by the Title Company for the City Title Policy, exclusive of any endorsements or other supplements to the coverage of the City Title Policy that may be requested by City that are not also requested by the Senior Institutional Lender for its lender's policy of title insurance regarding the Permitted Security Instrument securing repayment at the Senior Project Loan. Developer shall pay all of the fees and other costs as the Escrow Agent may charge for the conduct of the Escrow, all recording fees, documentary transfer taxes and any and all other charges, fees and all taxes levied by each and every Government relative to the conveyance of the Property through the Escrow.

8.9 Escrow Cancellation Charges. If the Escrow fails to close due to City's Default under this Agreement, City shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Developer's Default under this Agreement, Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Default of either Developer or City, Developer and City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.

8.10 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

8.10.1 **Cancellation Instructions.** The Parties shall, within three (3) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

8.10.2 **Return of Funds and Documents.** Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow or title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Developer or Escrow Agent shall return to City all documents previously delivered by City to Developer or Escrow Agent regarding this Agreement or the Escrow; (b) City or Escrow Agent shall return to Developer all documents previously delivered by Developer to City or Escrow Agent regarding this Agreement or the Escrow; (c) City or Escrow Agent shall, unless otherwise provided in this Agreement, return to Developer the Good Faith Deposit and all funds deposited in Escrow by Developer, less Developer's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to City all funds deposited in Escrow by City,

less City's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9.

## 9. PROJECT DEVELOPMENT AND USE.

9.1 Developer's Covenant to Develop the Project. Developer covenants to and for the benefit of City that, after the Close of Escrow, Developer shall commence, pursue, and complete the development of the Project on the Property in accordance with the terms and conditions of this Agreement. Developer covenants and agrees, for itself, its successors and assigns, that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement and all applicable Laws and Approvals. The covenants of this Section 9.1 shall run with the land of the Property, until the earlier of: (a) the date of issuance of a Release of Construction Covenants for the Project; or (b) the twentieth (20th) anniversary of the date of the Close of Escrow.

### 9.2 Construction Start and Completion of Project.

9.2.1 **Commencement.** Developer shall commence construction of the Project within forty-five (45) days of the date of Close of Escrow. Thereafter, Developer shall diligently proceed to pursue and complete the construction of the Project, in a good and workmanlike manner, in accordance with the terms and conditions of this Agreement, all applicable Laws, and all Approvals.

9.2.2 **Completion.** On or before the Project Completion Date, Developer shall do all of the following:

(a) Record a Notice of Completion, in accordance with California Civil Code section 8182, for the entirety of the Project;

(b) Request each applicable Government to inspect the Project, as required by all applicable Approvals or Laws;

(c) Address any defects or deficiencies that may be disclosed by any inspection conducted pursuant to Section 9.2.2(b) to the satisfaction of the applicable Government; and

(d) Request each applicable Government to issue all final Certificates of Occupancy or other Approvals necessary for the occupancy and operation of the completed Project and take such other actions reasonably required to obtain all such Certificates of Occupancy or other Approvals.

9.3 Compliance with Laws. All work performed in connection with the construction of the Project shall comply with all applicable Laws and Approvals.

9.4 Prevailing Wage. The Parties agree that the Project is subject to prevailing wage rate requirements pursuant to San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861. Developer shall pay prevailing wage rates pursuant to San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 for construction work performed pursuant to this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair, and

maintenance work performed pursuant to this Agreement cumulatively exceeding \$15,000, all as further described in **Exhibit "L"** attached to this Agreement.

9.5 Developer Attendance at City Meetings. Developer agrees to have one or more of Developer's employees or consultants who are knowledgeable regarding this Agreement and the construction of the Project, such that such Person(s) can meaningfully respond to City Council or City staff questions regarding the progress of the Project, attend meetings with City staff or meetings of the City Council, when requested to do so by City staff, with reasonable advance Notice to Developer.

9.6 City Right to Inspect Project and Property. Developer agrees that City shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project upon reasonable advance Notice. Any and all City representatives who enter the Property shall at all times be accompanied by a representative of Developer, while on the Property. Developer shall make a representative of Developer available for this purpose at all times during normal construction hours, upon reasonable advance Notice from City. If in City's reasonable judgment it is necessary, Developer agrees that City shall have the further right, from time to time, to retain one or more consultants to inspect the Project and verify compliance by Developer with the provisions of this Agreement. Developer acknowledges and agrees that any such City inspections are for the sole purpose of protecting City's rights under this Agreement, are made solely for City's benefit, City's inspections may be superficial and general in nature, are for the purposes of informing City of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and Developer shall not be entitled to rely on any such inspection(s) as constituting City's approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the progress and quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to Developer.

9.7 Release of Construction Covenants. Developer may request that City inspect the completed Project and issue a Release of Construction Covenants for the Project following: (1) the issuance of a final Certificate of Occupancy for the Project by City; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (excluding any outstanding Punchlist Work) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered; (5) evidence reasonably satisfactory to the City that the Property has been developed in accordance with this Agreement, the Scope of Development, and plans approved by the City pursuant to this Agreement; and (6) occurrence of the "Occupancy Date" under the Regulatory Agreement. Following City's receipt of such a written request from Developer for a Release of Construction Covenants, City shall promptly inspect the Project to determine whether or not the Project has been completed in compliance with this Agreement. If City determines that the Project is complete (excluding any outstanding Punchlist Work) and in compliance with this Agreement, City shall issue a Release of Construction Covenants for the Project to Developer. If City determines that the Project is not complete or not in compliance with this Agreement, City



shall send Notice to Developer describing with specificity each non-conformity within thirty (30) calendar days following City's receipt of Developer's written request for a Release of Construction Covenants. The Notice shall also contain City's opinion of the action(s) Developer must take to obtain a Release of Construction Covenants from City. If the reason for Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Developer or Punchlist Work, City may issue a Release of Construction Covenants upon the delivery by Developer to City of a bond, irrevocable standby letter of credit or other security reasonably acceptable to City in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by City.

9.8 Use of the Property. Developer covenants and agrees for itself, its successors, its assigns, and every successor interest to the Property or any part of the Property, that Developer, such successor, and such assigns shall use the Property only for the uses specified in the Approvals and this Agreement, including all Exhibits to this Agreement, specifically including (i) residential affordable rental units (as further described in the Regulatory Agreement), consisting of the 113 Dwelling Units; (ii) the Commercial Space; (iii) parking; and (iv) all other uses identified in this Agreement and its Exhibits, and the Approvals.

9.9 Use of the Commercial Space. Use of the Commercial Space shall be in accordance with the terms of the Regulatory Agreement. As set forth in more detail in the Developer Note, Developer shall pay Commercial Rent to the City from the Commercial Space.

10. **INSURANCE.** Developer shall obtain and maintain, to protect the City Parties against all insurable Claims relating to this Agreement, the Property, the Predevelopment Work, or the Project, at the sole cost and expense of Developer, all of the insurance coverage described in **Exhibit "J"** attached to this Agreement (or its then reasonably available equivalent) beginning prior to commencement of the Predevelopment Work, and continuing until issuance of a Release of Construction Covenants for the Project. After completion of construction of the Project, the insurance requirements of the Regulatory Agreement apply.

## 11. **INDEMNIFICATION.**

11.1 City Indemnity Obligations. City shall Indemnify the Developer Parties against any Claim to the extent such Claim arises out of any wrongful intentional act or negligence of the City Parties, but only to the extent that City may be held liable under applicable law for such wrongful intentional act or negligence, and exclusive of any violation of law (including the State Constitution) relating to City's approval of, entry into, or performance of this Agreement (in accordance with Developer's assumption of such risks under Section 14.14). Nothing in this Agreement is intended nor shall be interpreted to: (a) waive any limitation on City's liability, any exemption from liability in favor of City, any claim presentment requirement for bringing an action regarding any liability of City or any limitations period applicable to liability of City, all as set forth in Government Code sections 800; *et seq.*, sections 900, *et seq.*, or in any other law, or (b) require City to Indemnify any Person beyond such limitations on City's liability.

11.2 Developer Indemnity Obligations. Developer shall Indemnify the City Parties against any Claim to the extent such Claim arises from or relates to: (a) any wrongful intentional act or negligence of the Developer Parties; (b) any Application made by or at Developer's request;

(c) any agreements that Developer (or anyone claiming by or through Developer) makes with a Third Person regarding this Agreement, the Property or the Project; (d) any worker's compensation claim or determination relating to any employee of the Developer Parties or their contractors; or (e) any Prevailing Wage Action. In addition, notwithstanding any other provision of this Agreement to the contrary, including Sections 7.3.3 and 11.1, Developer shall Indemnify the City Parties against any Environmental Claim.

11.3 Independent of Insurance Obligations. Developer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Agreement. Developer's obligation to Indemnify the City Parties under this Agreement is independent of Developer's insurance and other obligations under this Agreement. Developer's compliance with Developer's insurance obligations and other obligations under this Agreement shall not in any way restrict, limit or modify Developer's obligations to Indemnify the City Parties under this Agreement and are independent of Developer's obligations to Indemnify the City Parties and other obligations under this Agreement.

11.4 Survival of Indemnification and Defense Obligations. The obligations of the Parties under this Agreement to Indemnify each other or other Persons shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to any such obligation under this Agreement to Indemnify each other or other Persons are fully, finally, absolutely and completely barred by applicable statutes of limitations.

11.5 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

11.5.1 **Prompt Notice.** The Indemnitee shall promptly Notify the Indemnitor of any Claim.

11.5.2 **Selection of Counsel.** The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably acceptable to the Indemnitee, except in the event of a potential or actual conflict of interest, such counsel is reasonably determined by the Indemnitee to be incompetent regarding such representation, or the Indemnitor provides a defense to the Indemnitee under a reservation of rights. Even though the Indemnitor shall defend the Claim, Indemnitee may, at Indemnitee's option and Indemnitee's own expense (except where Indemnitor provides a defense to Indemnitee under a reservation of rights, a conflict of interest between Indemnitor and Indemnitee or another Person exists that requires the Indemnitee to be represented by separate legal counsel from Indemnitor's legal counsel, or Indemnitor's legal counsel is reasonably determined by the Indemnitee to be incompetent regarding the representation, in each case, Indemnitor shall pay the Legal Costs of Indemnitee's separate legal counsel), engage separate counsel to advise Indemnitee regarding the Claim and Indemnitee's defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel, subject to applicable conflict of interest and privileged communication limitations.

11.5.3 **Cooperation.** The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

11.5.4 **Settlement.** The Indemnitor may only settle a Claim against an Indemnitee with the consent of the Indemnitee. Any settlement shall procure a complete release of the Indemnitee from the subject Claim, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits any liability.

## 12. FINANCING.

12.1 Predevelopment Loan. Subject to the terms and conditions of this Agreement, the Predevelopment Note, and the Predevelopment Loan Guaranty Agreement, City shall disburse Predevelopment Loan proceeds to or for the benefit of Developer in accordance with the terms and conditions of the Disbursement Agreement. The Predevelopment Loan proceeds shall be used solely to reimburse the Developer for seventy five percent (75%) of the General Predevelopment Costs and one hundred percent (100%) of the Public Improvement Related Predevelopment Costs, not to exceed the original principal amount of the Predevelopment Loan.

12.1.1 Conditions Precedent to Disbursement of the City Predevelopment Loan Proceeds. Upon satisfaction of the conditions precedent set forth below, as reasonably determined by the Mayor, City shall disburse the City Predevelopment Loan proceeds to reimburse the Developer for Eligible Predevelopment Costs:

- (a) Predevelopment Note. Execution and delivery of the City Predevelopment Note;
- (b) Predevelopment Loan Guaranty Agreement. Execution and delivery of the City Predevelopment Loan Guaranty Agreement;
- (c) Assignment of Agreements, Plans, Specifications and Entitlements. Execution and delivery of the Assignment of Agreements, Plans, Specifications and Entitlements and consent from each professional providing services for which Developer is seeking reimbursement.

12.1.2 Predevelopment Loan Funding. It is anticipated that the City will fund the Predevelopment Loan using Affordable Housing Bond Proceeds. The Affordable Housing Bond Proceeds will be deposited into an escrow account pursuant to the City Loan Proceeds Escrow Agreement attached to this Agreement as **Exhibit "V"**, to be disbursed in accordance with this Agreement, the Predevelopment Loan Note, and the City Loan Proceeds Escrow Agreement.

12.1.3 Disbursement Request for Predevelopment Loan Proceeds. Disbursement of City Predevelopment Loan Proceeds shall be made in accordance with a Predevelopment Loan disbursement schedule to be mutually agreed upon in writing by the Parties. Developer shall have submitted to City invoices, receipts, canceled checks, or other written documentation satisfactory to the City evidencing that Developer has incurred and is responsible for payment of twenty five percent (25%) of General Predevelopment Costs up to the date of the Disbursement Request ("**Developer's Share**"), which shall not be subject to reimbursement from City Predevelopment Loan proceeds. Developer shall submit to City invoices, receipts, canceled checks, or other written documentation satisfactory to the Mayor evidencing Developer's payment of General

Predevelopment Costs and Public Improvement Related Predevelopment Costs identified in the Predevelopment Budget, less the Developer's Share, together with a written disbursement request.

12.1.4 Repayment of the Predevelopment Loan. At and subject to the Close of Escrow, the amount owing under the City Predevelopment Note shall be included in the principal amount of the City Loan as an Acquisition and Development Cost, and the City Predevelopment Note shall be endorsed as "paid in full" and returned to Developer. If this Agreement is terminated prior to the Closing Date, the outstanding principal balance and accrued interest of the Predevelopment Loan shall be due and payable in full in accordance with the Predevelopment Note.

12.1.5 City Loan. Subject to the terms and conditions of this Agreement, the Developer Note, and the City Deed of Trust, City shall disburse to or for the benefit of Developer an amount not to exceed the original principal amount of the City Loan in accordance with the terms and conditions of the Disbursement Agreement. As an inducement to City to make the City Loan, Developer has agreed to enter into this Agreement and has agreed to the performance of the terms and conditions set forth in this Agreement. Developer shall apply the City Loan proceeds solely toward payment of Total Project Costs in accordance with the Project Budget. All change orders under any contract for construction of the Project exceeding \$50,000 (or series of such change orders) shall require pre-approval by City, which approval shall not be unreasonably withheld. Developer shall not be entitled to apply any portion of the City Loan proceeds to reimburse Developer for any internal management, administrative, or overhead expenses or for any purpose other than paying a portion of the Total Project Costs. City agrees that the City Deed of Trust will be subordinate to the Permitted Security Instrument securing the Senior Project Loan. In the event that Affordable Housing Bond Proceeds remain in the escrow account established pursuant to the City Loan Proceeds Escrow Agreement, the City may fund a portion of the City Loan with Affordable Housing Bond Proceeds through disbursements from that escrow account in accordance with this Agreement, the Developer Note, and the City Loan Proceeds Escrow Agreement. The City Loan proceeds are not pledged to the Senior Institutional Lender nor shall they constitute security for the Senior Project Loan.

12.1.6 City shall not unreasonably withhold or delay approval of any requested change order for which the Senior Institutional Lender's approval is not required, under the terms of the Senior Project Loan Documents, or which has been approved by the Senior Institutional Lender if, within ten (10) working days after receipt of the request, City receives such explanation and/or back-up information as was received and relied upon by the Senior Institutional Lender in connection with its approval of the change order, and if the following conditions are satisfied:

(a) to the extent the change order is limited to a reallocation of budgeted funds among Project Budget line items without any increase in the total Project Budget or the City Loan, (i) the funds in the line item(s) to be reduced remain sufficient for completion of the Project, and (ii) the requested increase in one or more line item(s) is to be used to pay approved costs; and

(b) to the extent the change order involves an increase in the total Project Budget, (i) additional funds in an amount equal to the increase in the total Project Budget will be provided by Developer or the Senior Institutional Lender and (ii) the requested increase in the Project Budget is to be used to pay approved costs.

City will be deemed to have approved a Revision meeting one of the above conditions if the City has not responded with disapproval within fifteen (15) working days after receipt of a reasonable explanation and complete back-up information evidencing the satisfaction of the condition from Developer. Upon approval (or deemed approval) of any change order, the Project Budget shall be replaced by the approved revised Project Budget.

12.1.7 Repayment of City Loan. Developer shall repay the City Loan pursuant to the terms and conditions of the Developer Note. The Developer Note shall be secured by the City Deed of Trust. The City Deed of Trust shall only be subordinate in lien priority regarding the Property to the Regulatory Agreement, the Notice of Affordability Restrictions, all matters identified in Schedule B of the City Title Policy issued to City and the Permitted Security Instrument securing the Senior Project Loan, in accordance with the Subordination and Inter-Creditor Agreement.

12.1.8 No Other City Financial Assistance. City shall be under no obligation to contribute any financial assistance to the construction or operation of the Property or the Project other than the City Loan, regardless of Actual Project Costs or the existence of any Project Deficit.

12.2 Senior Project Loan. The Developer shall obtain the Senior Project Loan such that when the amount of the available proceeds of the Senior Project Loan are combined with the amount of the proceeds of all other financing sources for the construction of the Project, Developer will have sufficient funds to pay all of the Total Project Costs.

12.3 Additional Government Financing. The Developer shall obtain the Additional Government Financing necessary such that when the amount of the available proceeds of the Additional Government Financing are combined with the amount of the proceeds of all other financing sources for the Project, Developer will have sufficient funds to pay all of the Total Project Costs.

12.4 Tax Credit Financing. Commencing in 2020, Developer shall apply for 4% Tax Credits. Developer may attempt an award of 9% Tax Credits for the Project if Developer is able to structure the Project financing with 9% Tax Credits in a manner that does not increase the City Loan. In order to implement the financing of the Project, the Mayor, in his sole and absolute discretion, shall have the authority to make all necessary amendments and/or modifications to this Agreement, including its attachments, to reflect the 4% or 9% Tax Credit financing structure, so long as: (i) the total amount of the City Loan is not increased; (ii) such amendments and/or modifications do not result in any increased financial risk to the City and do not materially impair the City's interests; (iii) such amendments and/or modifications are otherwise consistent with this Agreement; and (iv) such amendments and/or modifications to the form of the Developer Note are non-substantive and only result in changes that reflect the methods of financing set forth in this Section 12. If Developer fails to apply for a 9% or 4% Tax Credits on or before the second round of 2021 in accordance with this Section 12.4, City shall have the right to terminate this Agreement upon fifteen (15) calendar days' Notice to Developer.

12.5 Additional Subordinate Financing. In the event that additional subordinate financing is obtained for this Project, notwithstanding any provision to the contrary in this Agreement or any attachments hereto, City and Developer may mutually agree in writing to include such additional funding sources and to make adjustments to the Project Budget as appropriate and reasonably necessary to reflect such additional subordinate financing.

12.6 Developer Fee. The Developer shall be entitled to receive the Developer Fee for its services related to development of the Project. The portion of the Developer Fee other than the Deferred Developer Fee may only be paid to the Developer in accordance with the following schedule: (a) twenty-five percent (25%) of the Developer Fee at Close of Escrow; (b) an additional twenty-five percent (25%) of the Developer Fee at completion of fifty percent (50%) of construction of the Project; (c) an additional twenty-five percent (25%) of the Developer Fee at completion of one hundred percent (100%) of construction of the Project; (d) twenty percent (20%) of the Developer Fee at completion of initial lease up; and (3) the remaining five percent (5%) of the Developer Fee at filing of Form 8609 for the Project with the United States Internal Revenue Service. The Deferred Developer Fee shall be paid to Developer from net operating income from the completed Project (except as otherwise specifically provided in this Section 12). Notwithstanding any other provisions of this Agreement, to the extent that the Senior Institutional Lender or the Tax Credit Investor have more restrictive requirements regarding the amount or timing of payment of all or any portion of the Developer Fee than those set forth in this Agreement, the more restrictive requirements shall control.

12.7 Residual Receipts Payments. Residual Receipts (as defined in the Developer Note) from the operation of the Project in years 1 through 30 shall be paid first to pay any outstanding amount of Developer Fee, until paid in full, then 50% to Developer and 50% to City and any Additional Government Financing to be repaid from Residual Receipts (“**Additional Government Residual Receipts Financing**”), for allocation between City and other Subordinate Financing to pay each of the City and any Additional Government Residual Receipts Financing, respectively, in the percentages determined by dividing the original principal amounts of their respective loans by the sum of the original principal amounts of all of their loans. Residual Receipts from the operation of the Project in years 31 through 55 shall be paid 30% to Developer and 70% to City and any Additional Government Residual Receipts Financing, for pro rata allocation as described above. Developer’s share of Residual Receipts shall first be applied to pay any outstanding amount of Developer Fee, until the amount of the Developer Fee is paid in full.

12.8 Project Deficit. The Parties acknowledge and agree that the City Loan is intended to partially finance the financing “gap” of the Project (the amount needed to pay the excess of the Total Project Costs over the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project), but in no event to provide funding (when combined with the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project), in excess of the Actual Project Costs. If the Actual Project Costs exceed the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project (the difference being a “**Project Deficit**”), Developer shall be solely responsible for paying the Project Deficit and the Parties intend that the amount of the Deferred Developer Fee will be increased by the amount of the Project Deficit; provided, however, that City agrees that Developer may transfer sums among line items within the Project Budget that are unexpended at the completion of the work delineated in such line item to the account and line item for contingencies or another account for another line item in the Project Budget to reduce or eliminate any amount that would otherwise

constitute a Project Deficit. Notwithstanding the foregoing, the City agrees to consent to the allocation from the Contingency line item to any other line item in the Project Budget if a Senior Institutional Lender consents to such allocation.

12.9 Project Surplus. If the Actual Project Costs are less than either the Total Project Costs or the amount of the proceeds of the other financing sources obtained by Developer to pay costs of construction of the Project (in each case, the difference being a “**Project Surplus**”), then the amount of the Project Surplus shall be distributed first to pay the Deferred Developer Fee, then 25% to Developer and 75% to City to reduce the principal balance of the City Loan. Developer’s share of Project Surplus shall first be applied to pay any outstanding amount of Developer Fee, until the amount of the Developer Fee is paid in full.

12.10 Independent Cost Certification. The determination as to whether or not a Project Deficit or Project Surplus has occurred regarding the Project shall be made based on a cost certification performed by an independent certified public account acceptable to the City at Developer’s expense not later than four (4) months following Completion of the Project. The allocation of Project Surplus described in this paragraph shall not apply in favor of the City, or shall be adjusted as reasonably necessary, to the extent that such allocation is prohibited by any established Federal or State law, regulation or policy governing the use of any financing sources issued by Federal or State agencies or will cause an adverse effect under any established Federal or State law, regulation or policy with respect to the calculation of the "tiebreaker" score attributable to the application submitted by Developer to CTCAC seeking an allocation of Tax Credits toward the Project. Upon approval of any revision, the Project Budget shall be replaced by the approved revised Project Budget. City shall use best efforts to respond to any request for approval of a change order or revision within 10 business days, and in any event shall do so within 15 business days.

12.11 Developer Responsibility for Project Costs. Developer acknowledges that the Actual Project Costs may exceed the Total Project Costs or the financing or other funding sources available to Developer for construction of the Project. Developer additionally acknowledges that the financing or other funding sources available to Developer for construction of the Project may be different in type or amount from those set forth in this Agreement. Accordingly, Developer acknowledges and agrees that Developer shall be responsible for paying all of the Actual Project Costs, whether or not the Actual Project Costs exceed Total Project Costs or the financing or other funding sources available to Developer for construction of the Project.

12.12 Subordination and Inter-Creditor Agreement. After Developer has given Notice to City of the identity of the Senior Institutional Lender that has provided a loan commitment to Developer regarding the Senior Project Loan, City, Developer, and Senior Institutional Lender shall negotiate in good faith towards terms and conditions for the Subordination and Inter-Creditor Agreement. The Subordination and Inter-Creditor Agreement shall be subject to reasonable agreement among City, Developer, and Senior Institutional Lender; provided, however, that the Regulatory Agreement shall be Senior to all Security Instruments related to the Senior Project Loan, without exception. Agreement on the form and substance of the Subordination and Inter-



Creditor Agreement among City, Developer, and Senior Institutional Lender shall be express conditions precedent to the Close of Escrow for the benefit of both City and Developer.

12.13 Minor Modifications. If the Senior Institutional Lender or the Tax Credit Investor requires any reasonable minor modification of this Agreement or other document to be provided under this Agreement in reference to making the Senior Project Loan or providing the Tax Credit Equity, as applicable, then City, Developer and the applicable financing party shall negotiate in good faith regarding any such reasonable minor modification of this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender or the Tax Credit Investor. Notwithstanding the foregoing provisions of this Section 12.13, City shall not be obligated to negotiate regarding any modification that would modify any payment amount, any time period for development or construction of the Project, the duration of or affordability levels or number of affordable units specified in the Regulatory Agreement, the "Maturity Date" under the Developer Note, or any bond, deposit or other security required under this Agreement or other document to be provided under this Agreement. If any modification of this Agreement is agreed to by City, pursuant to this Section 12.13, then City shall sign such modification and deposit such modification in Escrow. Escrow Agent shall only release such modification upon the closing of the Senior Project Loan. Any modification to this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender shall be expressly subject to a condition precedent that the Senior Project Loan closes.

12.14 Mayor Authority. The authority provided to the Mayor in Section 12.13, includes authority to: (a) make minor non-material modifications to this Agreement pursuant to Section 12.13 and (b) negotiate and enter into a Subordination and Inter-Creditor Agreement on behalf of City pursuant to Section 12.12.

12.15 Only Permitted Encumbrances. Developer shall not record and shall not allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is a Prohibited Encumbrance. Developer shall remove or cause to be removed any Prohibited Encumbrance made or recorded against the Property or shall assure the complete satisfaction of any such Prohibited Encumbrance to the satisfaction of the City, in the City's sole and absolute discretion; provided, however, Developer shall have the right to contest the validity of any tax, assessment, lien or charge in good faith. The covenants of Developer set forth in this Section 12.15 regarding the placement of encumbrances on the Property shall run with the land of the Property and bind successive owners of the Property, until recording of a Release of Construction Covenants for the Project. After completion of construction of the Project, the restrictions on encumbrance under the Regulatory Agreement shall apply.

12.16 City Right to Discharge Prohibited Encumbrances. After sixty (60) calendar days' Notice to Developer of a Prohibited Encumbrance and provided that Developer has not caused such Prohibited Encumbrance to be removed during such time period or is not diligently pursuing removal of such Prohibited Encumbrance, where removal reasonably requires more than sixty (60) calendar days, the City shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property and receive reimbursement from Developer for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by the City to discharge a Prohibited Encumbrance that is not reimbursed to the City by Developer within thirty (30) calendar days following Notice that such

amount is due shall accrue Default Interest from the date of such Notice, until paid in full. Nothing in this Section 12.16, though, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest does not subject all or any portion of the Property to forfeiture or sale.

### 13. REMEDIES AND INDEMNITY

13.1 PRE-CLOSING LIQUIDATED DAMAGES TO CITY. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, CITY MAY CANCEL THE ESCROW AND TERMINATE THIS AGREEMENT. UPON CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT, CITY SHALL BE RELIEVED OF ALL OBLIGATIONS OF CITY UNDER THIS AGREEMENT, INCLUDING THE OBLIGATION TO MAKE THE CITY LOAN TO DEVELOPER. ANY SUCH ESCROW CANCELLATION AND TERMINATION OF THIS AGREEMENT SHALL BE WITHOUT ANY LIABILITY OF CITY TO DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTION. CITY AND DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY CITY, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES CITY WOULD SUFFER, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, CITY AND DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF CITY'S DAMAGES IN SUCH EVENT IS THE LIQUIDATED DAMAGES AMOUNT (AS DEFINED IN SECTION 2.75 OF THIS AGREEMENT). THEREFORE, UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT BY CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW, THE ESCROW AGENT SHALL IMMEDIATELY CANCEL THE ESCROW AND THE PARTIES AND ESCROW AGENT SHALL PROCEED IN ACCORDANCE WITH SECTION 8.10. ALSO, DEVELOPER SHALL PAY THE LIQUIDATED DAMAGES AMOUNT TO CITY, WITHIN FIVE (5) DAYS FOLLOWING ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW; PROVIDED, HOWEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, CITY SHALL HAVE THE RIGHT TO RECOVER CITY'S REASONABLY INCURRED THIRD PARTY LEGAL COSTS INCURRED IN COLLECTING THE LIQUIDATED DAMAGES AMOUNT, IN ADDITION TO THE LIQUIDATED DAMAGES

AMOUNT. THE LIQUIDATED DAMAGES AMOUNT IS IN ADDITION TO RETENTION OF THE GOOD FAITH DEPOSIT.

Initials of Authorized  
City Representative

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Initials of Authorized  
Developer Representative

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13.2 LIMITATION ON DAMAGES. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED.

13.3 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 13.1 and Section 13.2.

13.4 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

13.5 No-Fault Termination by City. The Close of Escrow is contingent on all Approvals, including but not limited to, approval of the subdivision maps and Site Development Permit which are necessary to allow sale of the Property to Developer and sale of the Market Rate Parcel to a Third Party. The Unavoidable Delay provisions and any other provisions of this Agreement notwithstanding, if despite Developer's diligent and good faith efforts, Developer fails to obtain the necessary Approvals within the time set forth in the Performance Schedule, the City may terminate this Agreement with fifteen (15) days Notice to Developer. If such failure to obtain the necessary approvals is despite Developer's diligent and good faith efforts, and not a result of any lack of diligence or good faith by Developer, such termination would be a no-fault termination so that termination on the above described basis alone would not trigger Liquidated Damages or retention of the Developer Deposit. Nothing in this paragraph shall be construed as limiting the City's right to retain the Developer Deposit and receive the Liquidated Damages Amount in response to any other uncured Developer Default.

#### 14. GENERAL PROVISIONS

14.1 Compliance with City Standard Contract Provisions. Developer shall comply with the City's standard contract provisions set forth in **Exhibit "K"** attached to this Agreement.

14.2 Notices, Demands, and Communications between the Parties. Any and all Notices submitted by any Party to another Party or Escrow Agent or by Escrow Agent to a Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified mail through the

United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below in this Section 14.2 or to the Escrow Agent, as designated in writing by the Escrow Agent. Notices may be sent in the same manner to such other addresses as either Party or Escrow Agent may from time to time designate by Notice in accordance with this Section 14.2. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is dispatched by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service or two (2) calendar days after the Notice is deposited with the United States Postal Service in accordance with this Section 14.2. Any attorney representing a Party may give any Notice on behalf of such Party. Following admission of a Tax Credit Investor as limited partner of Developer, a copy of any Notice delivered to Developer shall be sent to the Tax Credit Investor at the Tax Credit Investor's address provided to City in writing. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Developer: Hilltop Family Housing, L.P.  
c/o Affirmed Housing Group, Inc.  
13520 Evening Creek Drive North  
Suite 160  
San Diego, CA 92128  
Attn: James Silverwood

With a Copy to: David Cohen  
Katten Muchin  
Roseman LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, CA  
90067-3012

To City: City of San Diego  
401 B Street, Suite 400  
San Diego, CA 92101  
Attention: Hilltop & Euclid Project  
Manager

14.3 Relationship of Parties. The Parties each intend and agree that City and Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

14.4 Warranty against Payment of Consideration for Agreement. Developer represents and warrants to City that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Developer and Third Persons to

whom fees are paid for professional services related to planning, design or construction of the Project or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of Developer's agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 14.4 shall entitle City to terminate this Agreement immediately without liability, and cancel the Escrow (if open) upon seven (7) days' Notice to Developer and, if the Escrow is open, to Escrow Agent. Upon any such termination of this Agreement, Developer shall immediately refund any payments made to or on behalf of Developer by City pursuant to this Agreement prior to the date of such termination.

14.5 No Discrimination or Segregation. Developer covenants by and for itself and all Persons claiming under or through Developer that this Agreement is made and accepted upon and subject to the following conditions:

14.5.1 **Standards.** There shall be no discrimination against or segregation of any Person or group of Persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property or the Project, nor shall Developer or any Person claiming under or through Developer 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 Property or the Project.

14.5.2 **Interpretation.** With respect to familial status, Section 14.5.1 shall not be construed to apply to housing for older persons, as defined in section 12955.9 of the Government Code. With respect to familial status, nothing in Section 14.5.1 shall be construed to affect sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of section 51 and section 1360 of the Civil Code and subdivisions (n), (o), and (p) of section 12955 of the Government Code shall apply to Section 14.5.1.

14.6 Non-liability of City Officials and Employees. No elected official or employee of City shall be personally liable to Developer, or any successor in interest to Developer, in the event of any Default by City under this Agreement or for any amount that may become due to Developer or to Developer's successor on any obligations under the terms of this Agreement, except to the extent resulting from the negligence or willful misconduct of such elected official or employee.

14.7 Inspection of Books and Records. Subject to other rights of the City under this Agreement or Law to obtain or receive information from Developer, City shall have the right at all reasonable times, at City's cost and expense, to inspect the books and records of Developer pertaining to the Property or the Project. City shall not disclose proprietary information of Developer to Third Persons, unless required by law or otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of City under this Agreement.

14.8 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar

years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

14.9 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words “include” and “including” in this Agreement shall be construed to be followed by the words: “without limitation.” Each collective noun in this Agreement shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this Agreement includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

14.10 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

14.11 Unavoidable Delay; Extension of Time for Performance.

14.11.1 **Notice.** Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay (if any), performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

14.11.2 **Assumption of Economic Risks.** EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY’S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND

OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized  
City Representative(s)

Initials of Authorized  
Developer Representative(s)

14.12 Tax Consequences. Developer acknowledges and agrees that Developer shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Developer related to this Agreement.

14.13 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

14.14 Developer Assumption of Risks of Legal Challenges. Exclusive of Claims for which City has agreed to Indemnify Developer pursuant to Section 11.1, Developer assumes the risk of delays or damages that may result to Developer from each and every Third Person legal action related to: (a) City's approval of this Agreement, even in the event that an error, omission or abuse of discretion by City is determined to have occurred; or (b) any associated Approvals. If a Third Person files a legal action for which Developer assumes the risk under this Section 14.14, Developer shall have the option to either: (1) prior to the Close of Escrow, cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 8.10; (2) after the Close of Escrow, terminate this Agreement and cause the return of all of the City Loan to City; or (3) at any time, Indemnify City against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Should Developer fail to Notify City of Developer's election pursuant to this Section 14.14 at least fifteen (15) days before response to the legal action is required by City, Developer shall be deemed to have elected to cancel the Escrow and terminate this Agreement pursuant to option "(1)" or "(2)," as applicable, under this Section 14.14, without further Notice to or action by either Party. City shall reasonably cooperate with Developer in defense of City in any legal action subject to this Section 14.14, subject to Developer completely performing Developer's indemnity obligations for such legal action. Should Developer elect or otherwise be required to Indemnify City regarding

a legal action subject to this Section 14.14, but fail to or stop providing such indemnification of City, then City shall have the right to immediately terminate this Agreement or cancel the Escrow (or both) by Notice to Developer and Escrow Agent (in the latter case, if the Escrow is open). Nothing contained in this Section 14.14 is intended to be nor shall be deemed or construed to be an express or implied admission that City may be liable to Developer or any other Person for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 14.14 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

14.15 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

14.16 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

14.17 Entire Agreement. This Agreement (including the exhibits attached to this Agreement) integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

14.18 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both City and Developer.

14.19 Prohibition against Transfers, Changes in Ownership, Management or Control of Developer, or Assignment. Developer acknowledges and agrees that the qualifications and identity of Developer are of particular importance and concern to City. Developer further acknowledges and agrees that City has relied and is relying on the specific qualifications and identity of Developer in entering into this Agreement and City would not have entered into this Agreement, but for the specific qualifications and identity of Developer. As a consequence, before the recordation of a Release of Construction Covenants for the Project, Transfers by Developer are only permitted with the prior written consent of City, in City's sole and absolute discretion. Developer represents and warrants to City that Developer has not made and agrees that Developer will not create or permit to be made or created any Transfer, except in accordance with this Section 14.19, whether made or created voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 14.19 shall be voidable at the election of City, in City's sole and absolute discretion. Developer acknowledges and agrees that the restrictions on Transfers set forth in this Section 14.19 are reasonable. Developer agrees to reimburse City for all costs and expenses incurred by City in connection with City's review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses, up to a maximum amount of \$5,000.

14.20 Exhibit List. All of the exhibits attached to this Agreement are as follows:



Exhibit A	Site and Property Descriptions and Depiction
Exhibit B	Release of Construction Covenants
Exhibit C	Regulatory Agreement
Exhibit D	Developer Note
Exhibit E	City Deed of Trust
Exhibit F	Notice of Affordability Restrictions
Exhibit G	Developer Official Action
Exhibit H	Project Scope
Exhibit I	Performance Schedule
Exhibit J	Insurance Requirements
Exhibit K	City Contract Provisions
Exhibit L	Prevailing Wage Requirements
Exhibit M	Disbursement Agreement
Exhibit N	Project Budget
Exhibit O	Grant Deed
Exhibit P	Predevelopment Budget
Exhibit Q	Predevelopment Note
Exhibit R	Predevelopment Loan Guaranty Agreement
Exhibit S	Assignment of Agreements, Plans, Specifications, and Entitlements
Exhibit T	Reporting and Monitoring Agreement
Exhibit U	Right of Entry
Exhibit V	City Loan Proceeds Escrow Agreement

14.21 No Implied Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

14.22 Mayor Implementation. City shall implement this Agreement through its Mayor. The Mayor is authorized to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement, issue approvals, interpretations or waivers and enter into amendments to this Agreement, all on behalf of City, to the extent that any such action(s) does/do not materially or substantially change the Project scope, materially increase the monetary obligations of City, result in an increase of greater than ten percent (10%) in the amount of the Total Project Costs, or result in an increase of greater than ten percent (10%) in the aggregate principal amount of the loans secured by Security Instruments to which the City Deed of Trust is subordinated. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise in this Agreement or by action of the City Council. Nothing in this Section 14.22 shall restrict the submission to the City Council of any matter within the Mayor's authority under this Section 14.22, in the Mayor's sole and absolute discretion, to obtain the City express and specific authorization on such matter. The specific intent of this Section 14.22 is to authorize certain actions on behalf of City by the Mayor, but not to require that such actions be taken by the Mayor without consideration by the City Council.

14.23 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

14.24 Counterparts. This Agreement shall be signed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes thirty-eight (48) pages and fourteen (22) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

14.25 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronic means shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of the authorized representative(s) of each Party shall be required for each document to be recorded.

14.26 Attorney's Fees. If either Party initiates any litigation or other legal proceeding to interpret or enforce any provision of this Agreement, then the prevailing Party in such litigation or proceeding shall be entitled to recover its reasonable attorneys' fees and other legal expenses from the non-prevailing Party, in addition to any other damages or remedies to which the prevailing Party is entitled.

**[Remainder of page intentionally blank. Signatures appear on following page.]**

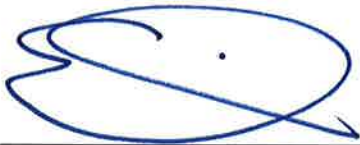
**SIGNATURE PAGE  
TO  
DISPOSITION AND DEVELOPMENT AGREEMENT  
(Hilltop & Euclid)**

**CITY:**

**DEVELOPER:**

CITY OF SAN DIEGO,  
a municipal corporation


Hilltop Family Housing, L.P.,  
a California limited partnership

By:   
\_\_\_\_\_  
Erik Caldwell  
Deputy Chief Operating Officer  
Smart and Sustainable  
Communities

By: Affirmed Housing Group, Inc., a Delaware  
corporation  
Its: General Partner  
By:   
\_\_\_\_\_  
James Silverwood  
President

Approved as to form:

MARA W. ELLIOTT  
City Attorney

By:   
\_\_\_\_\_  
Adam Wander  
Deputy City Attorney

Dated: 12/18/19



SAN DIEGO  
HOUSING  
COMMISSION

ITEM 102

## EXECUTIVE SUMMARY

### HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

DATE: June 15, 2018

HCR18-053

COUNCIL DISTRICT(S): Citywide

ORIGINATING DEPARTMENT: Real Estate Division

CONTACT/PHONE NUMBER: Tina Kessler (619) 578-7569

#### REQUESTED ACTION:

That the San Diego Housing Commission recommend that the Housing Authority of the City of San Diego approve the proposed changes to the Multifamily Mortgage Revenue Bond Policy PO300.301, attached to the staff report, that incorporates feedback from California Debt Limit Allocation Committee staff following submission of the policy for which the Housing Authority of the City of San Diego approved amendments on December 11, 2017.

#### EXECUTIVE SUMMARY OF KEY FACTORS:

- Proposed amendments to the Multifamily Mortgage Revenue Bond Program Policy (Bond Policy), as described in this report, will bring the Housing Authority's policy into conformance with applicable law.
- As of December 2017, approximately \$805,232,981 of Multifamily Mortgage Revenue Bonds are outstanding and provide financing for 68 developments with a total of 9,393 units; 7,964 of these units are restricted at various levels of affordability.
- The Housing Commission's Bond Program policy was originally adopted in 1989, and subsequently revised in 1992, 1994, 1996, 1999, 2008, 2013, and 2017.
- Although the Housing Authority acts as the issuer of the bonds, there is no financial liability to the City, the Housing Authority, and the Housing Commission in connection with the issuance or repayment of bonds.
- Proposed major changes to the Policy as outlined in this report include: (1) adding language regarding the requirement that the CDLAC resolution be included as an attachment to the Bond Regulatory Agreement and (2) adding additional language on the responsibilities and process for completing the CDLAC annual certificate of compliance forms.



## REPORT

**DATE ISSUED:** June 7, 2018

**REPORT NO:** HCR18-053

**ATTENTION:** Chair and Members of the San Diego Housing Commission  
For the Agenda of June 15, 2018

**SUBJECT:** Multifamily Mortgage Revenue Bond Program Policy Amendments

**COUNCIL DISTRICT:** Citywide

### REQUESTED ACTION

That the San Diego Housing Commission recommend that the Housing Authority of the City of San Diego approve the proposed changes to the Multifamily Mortgage Revenue Bond Policy PO300.301, attached to the staff report, that incorporates feedback from California Debit Limit Allocation Committee staff following submission of the policy for which the Housing Authority of the City of San Diego approved amendments on December 11, 2017.

### STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) recommend that the Housing Authority of the City of San Diego (Housing Authority) take the following actions, as described in this report.

- 1) Approve the proposed amendments to the Multifamily Mortgage Revenue Bond Policy as discussed in this report to incorporate into the Housing Commission's policy additional revisions requested by California Debt Limit Allocation Committee (CDLAC) staff for conformance with applicable law. Changes to the policy will apply only to bond issuances in progress and new bond applications received after the Housing Authority's proposed approval; and
- 2) Authorize the President and Chief Executive Officer of the Housing Commission, or his designee, to perform such acts as necessary or appropriate to implement the revised Bond Policy and administer the Housing Commission's Bond Program.

### SUMMARY

The Housing Commission's Multifamily Mortgage Revenue Bond Program (Bond Program) has been utilized since 1982 to support the development of affordable housing in the City of San Diego (City). Since inception, the Bond Program has issued more than \$1 billion in tax-exempt Multifamily Mortgage Revenue Bonds (also known as Multifamily Housing Revenue Bonds) to provide below-market rate financing for affordable housing developments.

As of December 2017, approximately \$805,232,981 of Multifamily Mortgage Revenue Bonds (Bonds) are outstanding and provide financing for 68 developments with a total of 9,393 units—7,964 of which are restricted at various levels of affordability. A summary of current bond financed projects is provided as Attachment 1.

State and local governmental agencies and joint powers authorities can issue taxable and tax-exempt Bonds. The Housing Authority is the local governmental agency responsible for issuing Bonds for multifamily rental housing development projects located in the City of San Diego. The Housing Commission established and administers the program (Attachment 2), which allows the Housing Authority to issue Bonds. The Housing Authority issues Bonds on behalf of private businesses for the purpose of acquiring, rehabilitating and developing multifamily rental housing. The Bond Program provides developers with favorable financing rates and access to non-competitive low-income housing tax credits. Interest earnings on tax-exempt Bonds are excluded from federal gross income and therefore are exempt from federal income taxation. The Bonds lower the interest rate paid by the developers of multifamily rental housing.

Under federal and state law, to be eligible for bond financing, multifamily housing developments must set aside at least 20 percent of their units for occupancy by households earning no more than 50 percent of Area Median Income (AMI), currently \$48,650 per year for a family of four. Alternatively, a minimum of 10 percent of the units may be restricted at 50 percent of AMI, with an additional 30 percent of the units restricted at 60 percent of AMI, currently \$58,380 per year for a family of four. Due to the combined requirements of state, local, and federal funding sources, projects financed under the Bond Program are affordable for 55 years and often provide deeper affordability levels than the minimum levels required under the Bond Program.

Developments that utilize tax-exempt Bonds are eligible for an allocation of non-competitive low-income housing tax credits. Equity from the sale of low-income housing tax credits can provide a significant portion of the financing necessary to develop affordable housing (approximately 30-40 percent of the total development costs).

Although the Housing Authority acts as the issuer of the bonds, there is no financial liability to the City of San Diego, the Housing Authority, or the Housing Commission in connection with the issuance or repayment of bonds. The Bonds are special, limited obligations of the Housing Authority payable solely from private revenue sources, such as project cash flows and equity payments.

The Bond Program policy has been periodically updated to respond to changes in the regulatory environment and to remain a useful incentive to produce affordable housing within the City. The Housing Commission's Bond Program policy was originally adopted in 1989, and subsequently revised in 1992, 1994, 1996, 1999, 2008, 2013, and 2017.

#### Recommended Major Changes

The following material changes to the Bond Policy are recommended:

1. Section 3.2 – includes language requiring the CDLAC resolution be included as an attachment to the Bond Regulatory Agreement.
2. Section 10.4 – includes additional language on responsibilities and process for completing the CDLAC certificate of compliance forms.

#### FISCAL CONSIDERATIONS:

Approving this action will not change the Housing Authority-Approved Fiscal Year 2018 budget.

For Fiscal Years 2019 and thereafter, approving this action will result in revenue changes from bond issuance and application fees.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION**

The Housing Commission's Bond Program policy was originally adopted by the Housing Authority in 1989, and subsequently revised in 1992, 1994, 1996, 1999, 2008, 2013, and 2017.

**KEY STAKEHOLDERS and PROJECTED IMPACTS**

Key stakeholders include: affordable housing developers, the Housing Commission, the Housing Authority and prospective low-income tenants. It is projected that the proposed changes will make the Bond Program administration more efficient, bring it into compliance with CDLAC and IRS requirements, and provide program clarity to staff and the public.

**ENVIRONMENTAL REVIEW**

This activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(4), as it is a government administrative activity that will not result in direct or indirect physical changes in the environment. This activity is also exempt from review under the National Environmental Policy Act as no federal funding is involved in this action.

Respectfully submitted,

*Tina Kessler*

Tina Kessler  
Housing Programs Manager  
Real Estate Division

Approved by,

*Deborah N. Ruane*

Deborah N. Ruane  
Executive Vice President & Chief Strategy Officer  
San Diego Housing Commission

Attachments: 1) Summary of Bond Projects  
2) Bond Program Summary  
3) Strikeout and Underline Bond Policy with proposed changed  
4) Draft Bond Policy Amendments

Hard copies are available for review during business hours at the security information desk in the main lobby and at the fifth floor reception desk of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials in the "Public Meetings" section of the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

**ATTACHMENT 1  
SUMMARY OF BOND FINANCED PROJECTS  
THROUGH CALENDAR YEAR 2017**

Project	Address	Council District	Community	Issue Date	Original Issuance Amount	Principal Balance as of 12/31/2017	Total Units	Restricted Units	Project Type
16th and Market	640 16th Street	3	Downtown	6/26/07	\$ 40,000,000	\$ 2,761,982	136	134	New Construction
Alabama Manor	3822-3866 Alabama Street	3	Greater North Park	4/19/07	\$ 5,808,006	\$ 3,793,128	67	66	Acq/Rehab
Alpha Square (2014)	550 14th Street	3	Downtown	3/14/14	\$ 6,200,000	\$ -	53	53	New Construction
Atmosphere II (2015)	1453 Fourth Avenue	3	Downtown	3/18/15	\$ 25,687,989	\$ 8,935,162	105	103	New Construction
Bay Vista Methodist Heights	4888 Logan Avenue	4	Encanto	2/7/08	\$ 24,190,000	\$ 24,190,000	268	267	Acq/Rehab
Beyer Courtyard Apartments	920 Beyer Boulevard	8	Otay Mesa-Nestor	10/22/04	\$ 7,400,000	\$ 3,798,039	60	59	New Construction
Boulevard Apartments	3137 El Cajon Blvd	3	Greater North Park	5/9/08	\$ 6,000,000	\$ -	24	23	New Construction
Canyon Rim Apartments	10931 Gerana Street	5	Rancho Penasquitos	6/21/00	\$ 32,440,000	\$ -	504	352	Acq/Rehab
Casa Colina del Sol Apts	5207 52nd Place	9	Mid-City City Heights	11/21/03	\$ 3,465,000	\$ 2,770,000	75	74	Acq/Rehab
Celadon (2013)	929 Broadway	3	Downtown	1/29/13	\$ 21,600,000	\$ 1,410,387	121	120	New Construction
Cielo Carmel I (2015)	6050 Camino San Fermin	1	Pacific Highlands Ranch	3/11/15	\$ 16,322,832	\$ 10,877,298	107	106	New Construction
Cielo Carmel II (2015)	6050 Camino San Fermin	1	Pacific Highlands Ranch	3/11/15	\$ 13,816,772	\$ 9,109,575	90	89	New Construction
City Heights Scattered Sites (2014)	Scattered sites	9	Mid-City City Heights	2/12/14	\$ 8,000,000	\$ 4,607,875	132	129	Acq/Rehab
City Scene Apartments (2010)	4105 Georgia Street	3	Greater North Park	11/23/10	\$ 5,400,000	\$ 2,034,790	31	30	New Construction
Colina Park North	4333 Dawson Avenue	9	Mid-City City Heights	12/20/07	\$ 4,500,000	\$ -	64	63	Acq/Rehab
COMM 22 Family Housing (2013)	2225 and 2325 Commercial St.	8	Logan Heights	2/27/13 & 5/30/13	\$ 28,700,000	\$ 3,281,628	130	128	New Construction
COMM 22 Senior Housing (2013)	690 Beardsley Street	8	Logan Heights	10/8/13	\$ 15,500,000	\$ -	70	69	New Construction
Creekside Village Apartments	4685 Nogal Street	4	Encanto	6/24/99	\$ 6,000,000	\$ 5,005,000	144	43	Acq/Rehab
Del Sol Apartments	3606-3690 Del Sol Boulevard	8	Otay Mesa-Nestor	9/10/06	\$ 12,421,531	\$ 12,421,531	91	90	Acq/Rehab
Delta Village Apartments	4368 Delta Street	9	Southeastern San Diego	6/29/05	\$ 9,000,000	\$ 5,600,000	108	107	Acq/Rehab
Fairbanks Commons (2012)	15870 Camino San Bernardo	5	Black Mountain Ranch	12/12/12	\$ 35,900,000	\$ 18,171,111	165	163	New Construction
Fairbanks Ridge	16016 Babcock Street	5	Black Mountain Ranch	6/28/05	\$ 30,000,000	\$ 10,833,013	204	203	New Construction
Fairbanks Square (2013)	16050 Potomac Ridge Road	5	Black Mountain Ranch	11/27/13	\$ 15,370,000	\$ 7,321,090	100	98	New Construction
Fairbanks Terrace (2016)	16325 Paseo Del Sur	5	Black Mountain Ranch	4/13/16	\$ 15,300,000	\$ 7,275,000	83	82	New Construction
Harbor View Villas Apartments	404 North 47th Street	4	Encanto	11/28/01	\$ 3,590,000	\$ 2,295,000	60	59	Acq/Rehab
Hillside Gardens Apartments	5802 University Avenue	9	Mid-City Eastern	12/24/04	\$ 37,510,000	\$ 37,510,000	380	76	Acq/Rehab
Hollywood Palms (2001)	4366 Home Avenue	9	Mid-City City Heights	8/7/01	\$ 6,055,000	\$ 4,220,000	94	93	New Construction
Independence Point (Willie James Jones) (2014)	327-405 South Willie James Jones Avenue	4	Encanto	7/18/14	\$ 7,525,000	\$ 230,127	32	31	New Construction
Island Village Apartments	1245 Market Street	3	Downtown	12/31/01	\$ 11,000,000	\$ -	281	280	New Construction
Kalos Apartments (2011)	3783-3825 Florida Street	3	Greater North Park	7/20/11	\$ 14,588,000	\$ 5,475,435	83	82	New Construction
Knox Glen Apartments (2012)	4754 Logan Avenue	4	Encanto	11/7/12	\$ 5,024,982	\$ 3,103,423	54	53	Acq/Rehab
Mayberry Townhomes (2015)	4328-70 & 4490 Mayberry Street	9	Southeastern San Diego	9/1/15	\$ 9,959,732	\$ 6,217,867	70	69	Acq/Rehab
Mesa Verde Apartments (2016)	7785 Mission Gorge Road	7	Navajo	4/7/16	\$ 22,378,000	\$ 14,491,860	90	89	New Construction
Mirada at La Jolla Colony Apts	7568 Charmant Drive	1	University	8/12/19	\$ 39,601,440	\$ 39,601,440	444	89	New Construction
Mission Apts (2011)	1815-1875 Hancock Street	2	Midway - Pacific Highway	5/27/11	\$ 12,888,363	\$ 5,047,660	85	84	New Construction
North Park Seniors (2016)	4200 Texas Street	3	North Park	7/27/16	\$ 15,000,000	\$ 8,265,722	76	75	New Construction
Parkside Apartments	4010-4050 Park Haven Court	4	Southeastern San Diego	11/21/01	\$ 1,800,000	\$ 643,932	40	39	Acq/Rehab
Parkside Terrace	505 13th Street	3	Downtown	3/3/08	\$ 17,114,159	\$ 4,300,385	77	76	New Construction
Rancho del Norte	16775 Saintsbury Glen	5	Black Mountain Ranch	12/5/03 & 10/3/05	\$ 6,600,000	\$ 5,235,000	119	118	New Construction
Rancho del Sol (2015)	6711 Torenia Trail	1	Pacific Highlands Ranch	1/14/15	\$ 17,363,000	\$ 9,519,346	96	95	New Construction
Redwood Villa	3060 53rd Street	4	Mid-City Eastern	9/14/07	\$ 6,050,000	\$ 2,195,000	92	90	Acq/Rehab
Regency Centre Apartments	4765 Home Avenue	9	Mid-City City Heights	7/14/00	\$ 4,100,000	\$ 2,821,635	100	99	Acq/Rehab
San Diego Square (2014)	1055 Ninth Avenue	3	Downtown	11/25/14	\$ 17,825,000	\$ 17,149,926	156	154	Acq/Rehab
Sorrento Tower Apts (2011)	2875 Cowley Way	2	Clairemont Mesa	4/29/11	\$ 14,500,000	\$ 12,345,000	198	197	Acq/Rehab
Stratton Apartments	5765 Mount Alifan Drive	6	Clairemont Mesa	6/21/00	\$ 19,825,000	\$ -	312	218	Acq/Rehab
Studio 15 Apartments	1475 Imperial Avenue	3	Downtown	10/25/06	\$ 20,500,000	\$ 7,530,000	275	273	New Construction
Ten Fifty B	1050 B Street	3	Downtown	5/9/08	\$ 48,500,000	\$ 8,723,921	229	226	New Construction
Terramar Apartments (2011)	13481-13483 Silver Ivy Lane	5	Torrey Highlands	7/27/11	\$ 3,963,000	\$ 1,063,058	21	20	New Construction
Torrey Highlands Apartments	13370 Torrey Meadows Drive	5	Torrey Highlands	7/20/01	\$ 4,780,000	\$ -	76	75	New Construction
Torrey Vale - Elms & Ivy (2016)	6525 Rancho Del Sol Way	1	Pacific Highlands Ranch	1/15/16	\$ 6,200,000	\$ 2,481,339	28	27	New Construction
Trolley Residential (2015)	4981 Market Street	4	Encanto	6/26/15	\$ 13,000,000	\$ 900,000	52	51	New Construction
Villa Andalucia Apartments	6587-6595 Rancho Del Sol Way	1	Pacific Highlands Ranch	6/27/02	\$ 2,231,000	\$ 1,360,000	32	31	New Construction
Villa Glen Apartments	6984-6996 Torrey Santa Fe Rd.	5	Torrey Highlands	6/27/02	\$ 2,048,000	\$ 1,040,000	26	25	New Construction
Villa Nueva	3604 Beyer Blvd.	8	San Ysidro	9/13/07	\$ 37,500,000	\$ 37,500,000	398	395	Acq/Rehab
Village Green Apartments	4140 Bonillo Drive	4	Mid-City Eastern	10/1/09	\$ 9,664,172	\$ 5,941,473	93	92	Acq/Rehab
Vista La Rosa (2016)	2002 Rimbey Ave	8	Otay Mesa-Nestor	6/20/16	\$ 48,756,000	\$ 48,756,000	240	238	Acq/Rehab
Vista Terrace Hills (2016)	1790 Del Sur Boulevard	8	San Ysidro	9/30/16	\$ 96,690,556	\$ 84,679,085	262	260	Acq/Rehab
Westminster Manor (2014)	1730 Third Avenue	3	Uptown	11/18/14	\$ 27,300,791	\$ 13,820,618	152	150	Acq/Rehab
Windwood Village Apartments	12730-12770 Briarcrest Place	1	Pacific Highlands Ranch	9/25/02	\$ 6,768,000	\$ 3,260,000	92	91	New Construction
	Subtotal				\$ 1,007,221,325	\$ 541,920,858	7,847	6,771	
Park & Market (2017)	Park & Market Street	3	Downtown	6/20/17	\$ 216,500,000	\$ 30,300,000	426	85	New Construction
Bella Vista (2017)	4742 Solola Avenue	4	Southeastern San Diego	8/4/17	\$ 35,300,000	\$ 35,300,000	170	169	Acq/Rehab
Casa Puleta (2017)	1445 South 45th Street	9	Southeastern San Diego	8/18/17	\$ 5,400,000	\$ 5,400,000	54	53	Acq/Rehab
New Palace (2017)	1814 5th Avenue	3	Uptown	9/1/17	\$ 10,500,000	\$ 10,500,000	80	79	Acq/Rehab
Luna at PHR (2017)	Carmel Valley Rd at Village Center Loop Rd	1	Carmel Valley	9/22/17	\$ 21,817,057	\$ 21,817,057	79	77	New Construction
Luther Tower (2017)	1455 2nd Avenue	3	Downtown	10/26/17	\$ 18,700,000	\$ 18,700,000	200	198	Acq/Rehab
Coronado Terrace (2017)	1151 25th Street	8	Otay Mesa-Nestor	10/27/17	\$ 93,395,972	\$ 93,395,972	312	310	Acq/Rehab
Town and Country (2017)	4066 Messina Drive	4	Southeastern San Diego	11/21/17	\$ 28,363,000	\$ 28,363,000	145	143	Acq/Rehab
Farimount Family (2017)	6121 Fairmount Avenue	7	Navajo	12/22/17	\$ 19,536,094	\$ 19,536,094	80	79	New Construction
	Subtotal				\$ 449,512,123	\$ 263,312,123	1,546	1,193	
	<b>Totals:</b>				<b>\$ 1,456,733,448</b>	<b>\$ 805,232,981</b>	<b>9,393</b>	<b>7,964</b>	

Affordable Units Project Type	
3,632	New Construction
+	4,332 Acq/Rehabilitation
	<b>7,964 Total Affordable Units</b>



HOUSING COMMISSION  
MULTIFAMILY HOUSING REVENUE  
BOND PROGRAM SUMMARY

**General Description:** The multifamily housing bond program provides below-market financing (based on bond interest being exempt from income tax) for developers willing to set aside a percentage of project units as affordable housing. Multifamily housing revenue bonds are also known as "private activity bonds" because the projects are owned by private entities, often including nonprofit sponsors and for-profit investors.

**Bond Issuer:** Housing Authority of the City of San Diego. There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds. There is no pledge of the City's faith, credit or taxing power nor of the Housing Authority's faith and credit. The bonds do not constitute a general obligation of the issuer because security for repayment of the bonds is limited to specific private revenue sources, such as project revenues. The developer is responsible for the payment of costs of issuance and all other costs under each financing.

**Affordability:** Minimum requirement is that at least 20% of the units are affordable at 50% of Area Median Income (AMI). Alternatively, a minimum of 10% of the units may be affordable at 50% AMI with an additional 30% of the units affordable at 60% AMI. The Housing Commission requires that the affordability restriction be in place for a minimum of 15 years. Due to the combined requirements of state, local, and federal funding sources, projects financed under the Bond Program are normally affordable for 30-55 years and often provide deeper affordability levels than the minimum levels required under the Bond Program.

**Rating:** Generally "AAA" or its equivalent with a minimum rating of "A" or, under conditions that meet IRS and Housing Commission requirements, bonds may be unrated for private placement with institutional investors (typically, large banks). Additional security is normally achieved through the provision of outside credit support ("credit enhancement") by participating financial institutions that underwrite the project loans and guarantee the repayment of the bonds. The credit rating on the bonds reflects the credit quality of the credit enhancement provider.

**Approval Process:**

- **Inducement Resolution:** The bond process is initiated when the issuer (Housing Authority) adopts an "Inducement Resolution" to establish the date from which project costs may be reimbursable from bond proceeds (if bonds are later issued) and to authorize staff to work with the financing team to perform a due diligence process. The Inducement Resolution does not represent any commitment by the Housing Commission, Housing Authority, or the developer to proceed with the financing.
  
- **TEFRA Hearing and Resolution (Tax Equity and Fiscal Responsibility Act of 1982):**

To assure that projects making use of tax-exempt financing meet appropriate governmental purposes and provide reasonable public benefits, the IRS Code requires that a public hearing be held and that the issuance of bonds be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located (City Council). This process does not make the City financially or legally liable for the bonds or for the project.

[Note: It is uncommon for the members of the City Council to be asked to take two actions at this stage in the bond process---one in their capacity as the City Council (TEFRA hearing and resolution) and another as the Housing Authority (bond inducement). Were the issuer (Housing Authority) a more remote entity, the TEFRA hearing and resolution would be the only opportunity for local elected officials to weigh in on the project.]

- **Application for Bond Allocation:** The issuance of these "private activity bonds" (bonds for projects owned by private developers, including projects with nonprofit sponsors and for-profit investors) requires an allocation of bond issuing authority from the State of California. To apply for an allocation, an application approved by the Housing Authority and supported by an adopted inducement resolution and by proof of credit enhancement (or bond rating) must be filed with the California Debt Limit Allocation Committee (CDLAC). In addition, evidence of a TEFRA hearing and approval must be submitted prior to the CDLAC meeting.
- **Final Bond Approval:** The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a final resolution authorizing the issuance. Prior to final consideration of the proposed bond issuance, the project must comply with all applicable financing, affordability, and legal requirements and undergo all required planning procedures/reviews by local planning groups, etc.
- **Funding and Bond Administration:** All monies are held and accounted for by a third party trustee. The trustee disburses proceeds from bond sales to the developer in order to acquire and/or construct the housing project. Rental income used to make bond payments is collected from the developer by the trustee and disbursed to bond holders. If rents are insufficient to make bond payments, the trustee obtains funds from the credit enhancement provider. No monies are transferred through the Housing Commission or Housing Authority, and the trustee has no standing to ask the issuer for funds.

**Bond Disclosure:** The offering document (typically a Preliminary Offering Statement or bond placement memorandum) discloses relevant information regarding the project, the developer, and the credit enhancement provider. Since the Housing Authority is not responsible in any way for bond repayment, there are no financial statements or summaries about the Housing Authority or the City that are included as part of the offering document. The offering document includes a paragraph that states that the Housing Authority is a legal entity with the authority to issue multifamily housing bonds and that the Housing Commission acts on behalf of the Housing Authority to issue the bonds. The offering

## ATTACHMENT 2

document also includes a paragraph that details that there is no pending or threatened litigation that would affect the validity of the bonds or curtail the ability of the Housing Authority to issue bonds. This is the extent of the disclosure required of the Housing Authority, Housing Commission, or the City. However, it is the obligation of members of the Housing Authority to disclose any material facts known about the project, not available to the general public, which might have an impact on the viability of the project.

San Diego Housing Commission		
<b>BOND ISSUANCE AND POST-ISSUANCE COMPLIANCE POLICY</b>		
Subject: <b>MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM</b>		
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## 1. SUMMARY

- 1.1 Federal, state and local legislation authorize the issuance of mortgage revenue bonds by local governments to finance the development, acquisition, construction and rehabilitation of multifamily rental projects. The interest on the bonds can be exempt from federal and state income taxation, and provide below market rate financing for qualified projects. In addition, properly-structured tax-exempt mortgage revenue bonds can qualify projects for allocations of federal low-income housing tax credits, which may provide a significant portion of the funding necessary to develop affordable housing. The San Diego Housing Commission ("Housing Commission") has established a program (the "Program") to issue mortgage revenue bonds for qualified multifamily rental projects within the City of San Diego (the "City"). The Housing Commission's Program uses tax-exempt and taxable mortgage revenue bonds (including notes and other debt instruments) issued by the Housing Authority of the City of San Diego (the "Housing Authority") to subsidize the development of affordable rental housing within the City.
- 1.2 There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds; there is no pledge of the City's or the Housing Authority's faith, credit or taxing power and the bonds do not constitute general obligations of the issuer because the security for repayment of bonds is limited to project revenue and other sources specified in the documentation for each financing. Bonds for affordable housing projects are often effectively structured as real estate loans, and the obligation to repay the bonds is secured by a first deed of trust on the bond-financed property. The Program is completely self-supporting; developers must secure funding to pay for costs of issuance of the bonds and all other costs of each financing.
- 1.3 Bonds issued under the Program should generally be privately placed with a financial institution, or publicly issued with a minimum rating of "A", or its equivalent, by one or more of the nationally recognized rating agencies listed in Section 4.1. Proceeds of the bonds may be used for both costs of construction or rehabilitation and permanent financing. The effective mortgage rate is the aggregate of the applicable bond rate and the add-on fees charged under the program, such as lender, trustee, issuer's fee, etc. The bond rate, for fixed rate bonds, is determined at the time of a bond sale and the resulting mortgage rate is typically below conventional mortgage rates. The project loans generally have a 30-year amortization schedule although the bond maturity may be shorter.
- 1.4 The goals of the Program include: increase and preserve the supply of affordable rental housing; encourage economic integration within residential communities; maintain a quality living environment for residents of assisted projects and surrounding properties; and, in the event of provision of public funds towards the project, optimize the effectiveness of Housing Commission, or other public funding by maximizing the leveraging of private sector funds.
- 1.5 The bond issuance and related loan amount for individual projects is based upon project costs, interest rates, revenues available to pay debt service, and the appraised value of the project being financed. The Housing Authority will consider multiple properties as part of a single bond financing on a case by case basis. If a tax-exempt financing is involved, bond and related loan amounts will be subject to the procedures of the California Debt Limit Allocation Committee ("CDLAC"), as described in Section 2.3 below.

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- 1.6 Projects must consist of complete rental units, including kitchens and bathrooms. Bond proceeds may be used for costs of land acquisition (up to 25% of tax-exempt bond proceeds), construction, rehabilitation, improvements, architectural and engineering services, construction interest, loan fees and other capital costs of the project incurred after the date sixty days before the bond inducement date specified in Section 7.3. Tax-exempt bond proceeds cannot be used to acquire property from a party related to the buyer. No more than 2% of tax-exempt bond proceeds can be used to finance costs of issuance, such as the services of the financing team members, rating and printing of bonds, cost related to bond allocation, etc. Pursuant to federal tax-exempt bond requirements, if bonds are used for acquisition and rehabilitation, an amount equal to at least 15 percent of the portion of the acquisition cost of the building and related equipment financed with the proceeds of bonds must be used for rehabilitation of the project. The loans are assumable upon transfer of the project with the approval of the credit enhancement provider or bond purchaser, and the President and Chief Executive Officer of the Housing Commission (“CEO”) or his designee.
- 1.7 The Housing Commission receives compensation for its services in preparing bond issuances by charging an up-front administrative fee payable at the bond closing. In addition, the Housing Commission also receives ongoing, annual fees for compliance monitoring of regulatory restrictions and administrative oversight of outstanding bond issues.
- A. The administrative fee due on the bond closing date, is an amount equal to 25 basis points (0.25%) of the initial principal amount of bonds issued (or in the case of draw-down bonds [a bond structure with multiple draws over time]) the initial maximum authorized principal amount of bonds), not to exceed for tax-exempt bonds the amount otherwise allowed by the Internal Revenue Service (“IRS”).
- B. The annual ongoing administrative fee will be an amount equal to (a) prior to conversion to permanent financing, 0.125% of the maximum authorized principal amount of the bonds as of the closing date for the bonds, and (b) after conversion to permanent financing, if applicable, 0.125% of the outstanding principal amount of the bonds immediately after conversion to permanent financing; however, the annual ongoing fee in any event will not be less than \$10,000. The annual fee will be charged each year during the compliance period under the Bond Regulatory Agreement for the project (see Section 3.1), to recover administrative and monitoring costs of the Housing Commission, which will be charged to all projects for such compliance period, including projects where bonds are fully repaid prior to the end of the compliance period. The ongoing annual fee will be due and payable without the requirement for any invoice to be delivered to the project owner, on the first day of the month in which the anniversary of the bond closing occurs based on the facts in existence as of such first day of such month.
- C. The annual ongoing administrative fee will remain fixed based on using the principal amount of bonds outstanding at permanent financing conversion regardless of any later reductions of the outstanding principal of the bonds.
- D. Additional monitoring fees may be charged for monitoring affordable housing units governed by regulatory agreements in addition to the Bond Regulatory Agreement, or for projects with more than 50 units.

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- E. At the time of the application, the project proponent must pay a \$3,000 non-refundable application fee to the Housing Commission.
- 1.8 Due to IRS limitations applicable to fees charged by issuers of tax-exempt bonds where the bond purchaser and the tax credit investor are the same or related entities, the Housing Authority will not issue bonds for projects where the tax credit investor is also the same or a related entity to the bond purchaser. Exceptions may be granted on a case-by-case basis, in the discretion of the Housing Authority's Executive Director or his designee.
- 1.9 To the extent that contractors will be providing services on behalf of a project proponent or a project owner related to the requirements of these Policies, the project proponent or project owner, as applicable, shall provide the Housing Commission with a written statement describing their relationship with the contractor and any rights the contractor has to income and obligations generated from any proposed bond issuance activity.
- 2. TYPES OF BONDS**
- 2.1 The Housing Authority may issue either tax-exempt or taxable bonds (which include notes or other debt instruments), or both. Taxable bonds would generally be issued only in combination with tax-exempt bonds. Taxable bonds do not require an allocation of tax-exempt bond authority from CDLAC but still require compliance with State law requirements governing the Housing Authority's ability to issue bonds.
- 2.2 The interest paid on taxable bonds is not exempt from federal taxation. These bonds are not subject to federal volume "cap" limitations and therefore do not require allocation authority from CDLAC. Taxable bond issues must meet all applicable requirements of this Policy (including rating requirements), State law requirements and any additional regulations that may be promulgated, from time to time, by the Housing Commission.
- 2.3 Bond interest on which is tax-exempt under federal tax law (other than refunding bonds and 501(c)(3) bonds described below), require an allocation of bond authority from CDLAC. To obtain the allocation, the Housing Authority must submit an application to CDLAC on behalf of the project proponent. Submittal of the application is at the discretion of the Housing Authority, not the project proponent. The project proponent must provide all deposits and pay all fees required by CDLAC when due.
- 2.4 The Housing Authority may issue bonds described in section 145(c) of the federal tax code on behalf of qualified nonprofit organizations. The interest on these 501(c)(3) bonds is tax-exempt and these bonds do not require an allocation from CDLAC, but cannot be used with the Low Income Housing Tax Credit Program.
- 2.5 The Housing Authority will consider the issuance of bonds to refund outstanding bonds subject to the following conditions:
- A. The project proponent agrees to cover all costs of the issuer, including costs for the issuer's municipal advisor, bond counsel, and trustee (if applicable).

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- B. The affordability restrictions of the existing bond regulatory agreement are subject to extension. The Housing Commission reserves the right to impose additional requirements on a case by case basis. All specifics of refunding proposals must be approved by the Housing Authority.
  - C. The provisions of Section 52080(g) of the California Health and Safety Code shall apply to projects financed under the Program, which requires that low-income units remain affordable, except in certain circumstances, until thirty (30) years after the commencement of the qualified project period (as referred to therein).
  - D. Except in limited circumstances, the provisions of Sections 65863.10 and 65863.11 of the California Government Code shall apply to projects financed under the Program, and project proponents are advised to review the requirements of such Sections.
  - E. Default refunding applications require a default refunding analysis (to determine the eligibility for a default refunding). The Housing Commission shall choose the firm to conduct the analysis. The project applicant will deposit the cost for the study with the Housing Commission before the study begins.
- 2.6 Bonds for projects are intended to be non-recourse conduit financing in which none of the Housing Commission, the Housing Authority or the City will be responsible for the repayment of the debt. The Housing Authority's own capital improvement plans and budgets should not be impacted by the bond financing of projects

### **3. AFFORDABILITY REQUIREMENTS**

- 3.1 Term of Rental and Affordability Restrictions – The project must remain as rental housing and continuously meet the affordability requirements as provided in Sections 3.2, 3.3 and 3.4 for the longer of (a) the Qualified Project Period (as defined in Internal Revenue Code of 1986), (b) as long as the bonds remain outstanding, (c) such period as may be required in the opinion of Bond Counsel to satisfy applicable federal or State law, or (d) such period as may be required by CDLAC (typically 55 years). Additional affordability may be required as described in 2.5(C) above. The rent of “in-place” tenants at the conclusion of the required affordability period will continue to be governed by the applicable affordability restriction, so long as those tenants continue to live in the development. The Housing Authority reserves the right to impose additional affordability restrictions.

A Bond Regulatory Agreement containing the rental and affordability restrictions will be recorded against the project property and must be complied with by subsequent owners. The Bond Regulatory Agreement may be terminated upon expiration of restrictions or in the event of casualty loss or foreclosure, and the subsequent retirement of bonds as a result of foreclosure.

The Bond Regulatory Agreement will be drafted by the Housing Authority's bond counsel for the financing and must be in a form acceptable to and approved by the Housing Authority. The Bond Regulatory Agreement will set forth federal, state and Housing Authority requirements applicable to the operation of the project and pursuant to Section 5220(c)(1) of the CDLAC Regulations must

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incorporate by reference and as an attachment the CDLAC resolution allocating private activity bond authority to the Housing Authority for the project.

State law requires advance notice and other requirements upon termination of affordability requirements, some of which also place restrictions on the sale of previously affordable housing projects, pursuant to the provisions described in 2.5(D) above.

3.2 Income Restrictions – To be eligible for tax-exempt bond financing, federal law requires that the project meet one of the following conditions:

- A. A minimum of 20% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size; or
- B. A minimum of 40% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 60% of area median income, as adjusted by family size.

In any event, State law requires that a minimum of 10% of the units in the project be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, at specified rent levels.

Project owners must certify their tenant's eligibility semi-annually or as otherwise required by the Housing Commission in the applicable Bond Regulatory Agreement. If a tenant is no longer eligible, the next available unit in the project (if federal tax credits apply to the project, in the building in which the unit was located) must be rented to a new eligible tenant and the current tenant's rent can be raised to a market level. A unit occupied only by full time students does not count towards the very low and low income unit set-aside requirements.

Affordability definitions are based on the area median income for the County of San Diego as established by the US Department of Housing and Urban Development. The median income is subject to change annually. Household size is determined under Section 34312.3(c)(1)(B) and (c)(2)(B) of the California Health and Safety Code consistent with Section 42(g)(2)(C) of the Internal Revenue Code. Section 42(g)(2)(C) requires that, in calculating rents, occupancy of units is assumed to be one person per studio unit, and for each other unit with one or more separate bedrooms, 1.5 individuals for each separate bedroom.

3.3 Rent Restrictions – The maximum rent for the affordable set-aside units shall not exceed 30% of one-twelfth of 50% of area median income, or 30% of one-twelfth of 60% of area median income (as the case may be, depending on the selected set-aside). The maximum rent amounts are further reduced by a utility allowance for tenant-paid utilities in the amounts determined by the Housing Commission's CEO or his designee. In the event tax-exempt bonds are used with Low Income Housing Tax Credits, or any other public funds, the most restrictive rents of the applicable programs shall apply. The affordability of restricted units in relation to the project's market rents will be considered as part of the Housing Commission's approval of the financing. The maximum rent



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amounts will also apply if the set-aside units are occupied by Section 8 tenants (tenant based vouchers).

In calculating restricted rents, household size/occupancy shall be as described in the last paragraph of Section 3.2 above.

- 3.4 Unit Distribution – The set-aside units must proportionately reflect the mix of all units in the project, be distributed throughout the project and have the same floor area, amenities, and access to project facilities as market-rate units. The objective of the program is to provide a set-aside of units with lower rents, not to create special “low-income sections” within larger developments.
- 3.5 Additional Affordability Restrictions under Restructuring of Existing Bond Issues– Additional public benefit in the form of deeper income targeting; additional rent restrictions; extension of the term of restrictions; additional number of restricted units; or any combination thereof, will be negotiated in connection with refundings or debt restructurings of existing bond issues. The level of additional restrictions will be determined in the context of the overall financial feasibility of each financing. Should the bond restructuring result in an extension of the maturity of the bonds, a minimum of 10% of the units in the project will be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, with rents set at the corresponding affordability level, for the term of the restructured bond.

**4. CREDIT CONSIDERATIONS**

- 4.1 Required Rating on the Bonds – Any bonds issued under the Program that are sold to the public should generally be rated “A”, or its equivalent, or better from one or more of the following nationally recognized rating agencies: Moody's Investors Service, S&P Global Ratings, or Fitch Ratings. The same rating requirement applies in the case of a substitution of existing credit facility for bonds that are outstanding.
- 4.2 Credit Enhancement– A preferred way of obtaining the required rating on the bonds in accordance with Section 4.1 is through the provision of additional, outside credit support for the bond issue provided by rated, financially strong private institutions, such as government sponsored entities (including the Federal National Mortgage Association [Fannie Mae] or the Federal Home Loan Mortgage Corporation [Freddie Mac]), other government insured mortgage programs, or other qualified credit enhancement providers as long as the minimum bond rating is obtained. The rating on such bonds is determined based on the credit worthiness of the participating credit enhancement provider. The project proponent is required to identify and obtain any such credit enhancement. As the primary source of security for the repayment of bonds, the credit enhancement provider reviews and approves the borrower (credit, financial capability, experience, etc.) and the project and its feasibility, including the size of the loan and the terms of repayment, using their own underwriting criteria.
- 4.3 Rated Bonds Without Credit Enhancement– Fixed rate bonds can be issued without credit enhancement if the proposed financing structure results in the required minimum rating on the bonds by a rating agency as provided in Section 4.1. However, bonds issued without credit enhancement will only be sold to qualified institutional buyers (“QIBs”) as defined under Rule

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144A of the Securities Act of 1933 and in minimum \$100,000 denominations, unless waived by the CEO in his sole discretion.

4.4 Privately Placed Bonds – The rating requirement specified in Section 4.1 is waived under the following conditions:

- A. The bonds are privately placed with QIBs, or institutional “accredited investors,” as defined in Sections 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, or any entity in which all of the equity owners meet the requirements of at least one such subsection.
- B. The bonds must be sold in minimum \$100,000 denominations.
- C. All initial and subsequent purchasers (including purchasers of participation interests in the bonds) must sign a sophisticated investor letter (Investor Letter) in a form approved by the Housing Commission. While the bonds remain unrated, their transferability will be restricted to QIBs or institutional accredited investors who sign an Investor Letter.
- D. Unless otherwise approved by the Housing Commission Board, the bonds may not be held at any time by more than 15 investors.
- E. Upon terms acceptable to the Housing Commission, bonds may be placed in a trust or custodial arrangement with participations sold to investors.
- F. The Housing Authority as issuer reserves the right to require that a trustee or fiscal agent participate in privately placed bond transactions.

The purpose of these conditions is to assure that the bonds are placed with investors who are experienced in investing in unrated municipal securities and can conduct their own analysis or real estate credit underwriting. Bond funds and affordable lending financial institutions are the types of entities this condition anticipates.

- 4.5 Bonds with Hedges/SWAPs. The project proponent shall disclose to the Housing Commission at the time of application of its intention to purchase an interest rate cap, hedge or swap, and such instrument shall be obtained in an arm's length transaction. Under no circumstances shall the Housing Commission or Housing Authority be a party to such swaps or hedges.
- 4.6 Indemnification. The project owner shall agree to defend and indemnify the Housing Authority against liability related to the bond financing and the project, and agree to reimburse the Housing Authority for all expenses incurred by the Housing Authority in issuing the bonds and monitoring the project. The Housing Authority reserves the right to require a parent company or personal guaranty of such indemnification and expense reimbursement obligations.

**5. OTHER ISSUERS**

- 5.1 The Housing Authority, in very limited situations, will allow issuers other than the Housing Authority to issue bonds for multifamily housing projects located within the City of San Diego.

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Any project proponent considering the use of any issuer other than the Housing Authority should contact Housing Commission staff prior to proceeding with the project. The required City approvals of bond issuances by issuers other than the Housing Authority will be recommended only if the financing proposal is part of a pooled issuance involving projects located in multiple jurisdictions and the project proponent can demonstrate that a pooled issuance is required for the projects to be financial viable. All Housing Authority affordability requirements, procedures and requirements will apply to projects using "outside issuers," including an issuance fee of 0.25 percent of the bond issuance amount to be paid to the Housing Authority upon issuance of the bonds as described in Section 1.7 above. A TEFRA hearing and approval by the City Council of the City ("City Council"), as described in Section 7.4, on behalf of another issuer will include a provision that the owner, operator or manager of the project considered for financing by tax-exempt debt will not change without the prior approval of the Housing Commission's CEO or his designee. Units governed by the applicable Bond Regulatory Agreement using tax-exempt financing shall be monitored by Housing Commission staff for compliance with the terms and conditions of the applicable CDLAC resolution annually or as otherwise determined by the Housing Authority and are subject to annual Housing Commission monitoring fees in accordance with the existing Housing Commission fee schedule.

**6. SELECTION OF THE FINANCING TEAM**

- 6.1 Through separate Requests for Qualifications ("RFQ"), a pool of bond counsels, and a pool of municipal advisors, will be established to serve as financing team participants on individual bond transactions. The RFQ process is a fair and competitive process which includes advertising, a competitive selection process and interviewing, if necessary. Firms will be selected in accordance with the Housing Commission's applicable equal opportunity policies.
- 6.2 The establishment of each pool will be made by a selection committee with the approval of the Housing Commission Board. The selection committee will consist of Housing Commission staff and representatives from other City departments, such as the City Attorney's Office, City Auditor, and Debt Management. Generally, the selection will be made for a one -year period. The term may be extended for four additional one-year periods by the CEO or his designee.
- 6.3 The bond counsel and municipal advisor specifically represent the interests and concerns of the Housing Commission, the Housing Authority and the City in ensuring the integrity of the bond transaction. The project sponsor may, at its own expense, add additional members to the finance team to represent its interests.
- 6.4 The municipal advisor for each transaction will be designated by the CEO or his designee from the selected pool for approval by the Housing Commission Board based on past performance, experience with similar transactions, and capacity to meet the project deadlines. The municipal advisor will prepare a feasibility study on whether it is economically advisable to proceed with the financing, including: evaluation of the financial strength of the project; assumptions regarding income and expenses; sources of security for bonds in addition to a mortgage on the project; the borrower's financial situation and experience in operating and managing multifamily rental projects; marketability of the bonds; rights and resources of parties to the transaction in the event of default. The municipal advisor will provide financial advice on all relevant issues to best protect

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the interests of the City and the Housing Authority. The compensation for municipal advisory services to determine whether it is advisable to proceed with a financing will not be payable by the project proponent and will not be contingent on the sale of the bonds.

- 6.5 Bond counsel will be designated for each financing by the CEO or his designee from the selected pool based on past performance, experience with similar transactions, and capacity to meet the project deadlines, subject to approval by the Housing Commission Board. Bond counsel will prepare the necessary legal documentation for the bonds, including provisions regarding compliance with any applicable continuing disclosure requirements, provide an opinion regarding the validity of the bonds and their tax exempt status (if applicable), and provide legal advice on all relevant issues to best protect the interests of the Housing Commission, the City and the Housing Authority, including but not limited to the project monitoring requirements for federal tax State law and CDLAC purposes.
- 6.6 Bond Underwriter /Remarketing Agent/Private Placement Purchaser -The project proponent shall select the construction and permanent lender/bond purchaser and method of selling the bonds for a given transaction, subject to the requirements set forth herein and the approval of the Housing Commission. Except as provided in Section 1.8 above, the Housing Authority will not allow a bond transaction where the tax credit investor is also the bond purchaser or a related party thereto. The practice of allowing the project proponent to propose the lender and bond structure is intended to create an incentive for qualified financial firms to actively work with borrowers to structure and present feasible financing proposals that meet Program requirements.
- 6.7 In the event the project proponent has not identified a proposed financing structure for a given transaction, the Housing Commission will select an underwriter, lender, or private placement purchaser through a request for proposals process.
- 6.8 Any bond trustee or fiscal agent (a financial institution designated by the Housing Authority as the custodian of funds and official representative of bondholders), if required by the Housing Commission as the bond structure for the financing, will be approved by the CEO or his designee based upon a request for proposals process.
- 7. THE FINANCING PROCESS**
- 7.1 Application – A project proponent interested in new-money financing must submit an application for bond financing, or in the case of an existing financing a request for bond refunding or restructuring, to the Housing Commission. Part of the required information is a disclosure statement, on each of the parties involved in the developer /ownership entity. Housing Commission staff will review the application for feasibility.
- 7.2 Deposit–At the time of the application, the project proponent must post a \$10,000 application deposit to cover the preliminary costs of the Housing Commission related to the proposed bond issuance, reissuance or restructuring. If the financing proceeds to closing, the deposit may be subject to return after the bond closing. If the bond issue does not proceed to closing, then the \$10,000 application deposit will become nonrefundable, and will be retained by the Housing

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Commission for payment toward the preliminary costs incurred by the Housing Commission and its consultants. The \$10,000 application deposit may be waived by the CEO or his designee.

- 7.3 Inducement/Reimbursement Resolution– In conjunction with the City Attorney's Office and bond counsel, a bond inducement/reimbursement resolution (hereafter an “inducement resolution”) will be drafted and adopted by the Housing Authority. All new money projects must be the subject of an inducement resolution. An inducement resolution is a conditional expression of the Housing Authority's “official intent “to issue bonds for a given project and is required for tax-exempt financing under Treasury Regulation Section 1.150-2(e). Adoption of the inducement resolution establishes, through the public record, the date from which project costs incurred may be determined to be eligible for financing under the Program with proceeds of tax-exempt bonds. Therefore, applicants are encouraged to induce their projects as soon as practicable to clearly identify the project, its location, maximum number of units, the maximum amount of financing, and the proposed ownership entity.
- A. Application to CDLAC– The inducement resolution also authorizes Housing Commission staff to submit an application to CDLAC, on behalf of the project proponent, for a private activity bond allocation if the bonds are to be tax-exempt.
  - B. No Binding Financial Commitment – Adoption of the inducement resolution does not represent any commitment by the Housing Commission, Housing Authority, or the project proponent to proceed with the financing. The adoption by the Housing Authority of an inducement resolution, by itself, does not authorize any subordinate financing by the Housing Commission or any other entity of the City. The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a required resolution authorizing such issuance and approving related bond documents.
  - C. No Land Use or Building Code Approval – Adoption of the inducement resolution shall not be construed to signify that the project complies with the planning, zoning, subdivision and building laws and ordinances of the City or suggest that the Housing Authority, the City, or any officer or agent of the Housing Authority or the City will grant any such approval, consent or permit that may be required in connection with the development of a given project.
- 7.4 TEFRA Hearing and Approval – In order for interest on the bonds to be tax-exempt and in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and Section 147(f) of the Internal Revenue Code of 1986, the issuance of bonds must be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located, after a public hearing for which a public notice (describing the proposed location of the project, the number of units, and proposed bond issuance amount) is given. As the legislative body for the City of San Diego, the issuance of any tax-exempt bonds by the Housing Authority must be approved by the City Council. The purpose of the public hearing is to provide an opportunity for interested persons to provide their views on the proposed bond issuance and on the nature and location of the project. The TEFRA hearing will be conducted by City Council at the date and time specified in the TEFRA notice. The TEFRA notice shall be published in a newspaper of general circulation within the City at least 14 days in advance of the TEFRA hearing.

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- 7.5 Bond Allocation – Prior to the issuance of tax exempt bonds (other than 501(c)(3) bonds), the Housing Authority must apply for, and receive an allocation of bond issuing authority from CDLAC. To receive such an allocation, the Housing Authority and the project proponent must document their readiness to proceed with the bond financing, and must comply with all applicable CDLAC regulations.
- 7.6 Performance Deposit – At the time of the application to CDLAC, the project proponent must deposit with the Housing Authority an amount equal to one half of one percent of the requested allocation amount (or such other amount as may be required by CDLAC) as a performance deposit. The deposit will be returned to the project proponent only in accordance with CDLAC procedures; and the deposit is subject to reversion to CDLAC if the financing does not close under applicable CDLAC regulations.
- 7.7 Local Review– All projects must be in compliance with the City's zoning requirements and adopted community plans. Prior to requesting the Housing Authority approval of a new-money bond issuance, the project must undergo all planning procedures and land use approvals, including discretionary review, community planning group review, and environmental analysis, as required. All projects must be reviewed by the applicable community planning group(s) prior to final bond authorization recommendation by the Housing Commission Board of Commissioners.
- 7.8 Coordination with City Finance Representatives– Housing Commission staff will work with the City Attorney's Office, the City's Debt Management Department, and other City departments, as necessary, in preparing bond issuances for affordable housing projects.
- 7.9 Compliance with City's Disclosure Ordinance – As a related entity of the City, the Housing Commission will adhere to the City disclosure ordinance (0-19320) as it may be amended from time to time, which applies to publicly offered bonds. The Housing Commission will present offering statements and disclosure documents for review and approval, as appropriate, by the City's Disclosure Practices Working Group.
- 7.10 Housing Commission/Housing Authority – Final Approval- Housing Commission staff recommendations to proceed with a proposed bond issuance, reissuance, or bond restructuring will be presented for approval by the Housing Commission. If approved, staff will work with the approved financing team to structure the financing and to prepare the necessary bond documents. The resulting bond documents, authorizing resolution, staff report, and other relevant docket materials will be submitted for final approval by the Housing Authority, a minimum of four weeks prior to the Housing Authority meeting date, at which the adoption by the Housing Authority of a resolution authorizing the issuance of the bonds is to be considered.
- 8. TENANT RELOCATION**
- 8.1 As required by CDLAC regulations (Section 5211 "Tenant Relocation") if low-income tenants will receive a rent increase exceeding five percent (5%) of their current rent, then a relocation plan is required to address economic displacement. Where applicable, the project proponent shall provide

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evidence that there location plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act (42 U.S.C.61).

**9. PROHIBITION OF CERTAIN “SUBSTANTIAL USERS”**

9.1 The Housing Commission and Housing Authority, each in its sole and absolute discretion, reserves the right to reject and not issue bonds for proposed projects where, in the proposed financial structure, the proposed bond purchaser is the same entity or a related entity as the project owner(including, but not limited to, tax credit investor limited partners) or involves any other arrangement which may limit the Housing Commission or Housing Authority's ability to charge administrative fees in the amounts detailed in Section 1.7 above, including but not limited to the circumstances described in Section 1.8 above.

**10. POST ISSUANCE COMPLIANCE**

10.1 Use of Bond Proceeds and Bond-Financed or Refinanced Assets. It is the Housing Commission’s policy that the project owner shall be responsible for:

- A. Monitoring the use of bond proceeds and the use of bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the bonds to ensure compliance with covenants and restrictions set forth in the documents relating to the bonds;
- B. Maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of bonds, including a final allocation of bond proceeds;
- C. Consulting with bond counsel and other legal counsel and advisers in the review of any contracts or arrangements involving use of bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the documents relating to the bonds;
- D. Maintaining records for any contracts or arrangements involving the use of bond-financed or refinanced assets as described in 10.2 below;
- E. Conferring at least annually with personnel responsible for bond-financed or refinanced assets to identify and discuss any existing or planned use of bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the bond documents; and
- F. To the extent that the project owner discovers that any applicable tax restrictions regarding use of bond proceeds and bond-financed or refinanced assets will or may be violated, consult promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.

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- 10.2. Record Keeping Requirement. It is the Housing Commission's policy that the project owner shall be responsible for maintaining the following documents for the term of each issue of bonds (including refunding bonds, if any), plus at least three years:
- A. A copy of the bond closing transcript(s) and other relevant documentation delivered to the project owner at or in connection with closing of the bond issue;
  - B. A copy of all material documents relating to capital expenditures financed or refinanced by bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for bond proceeds and evidence as to the amount and date for each expenditure of bond proceeds, as well as documents relating to costs paid or reimbursed with bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with bond proceeds, including a final allocation of bond proceeds;
  - C. A copy of all contracts and arrangements involving the use of bond-financed or refinanced assets; and
  - D. In respect of any investment of bond proceeds or collateral securing the repayment of the bonds, a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee or fiscal agent statements, in connection with any investment agreements, and copies of all bidding documents, if any.

For housing bond financings subject to the requirements of Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), it is the Housing Commission's policy that the project owner shall be responsible for maintaining until the end of the "qualified project period" within the meaning of Section 142(d)(2)(A) of the Code, plus at least three years, a copy of all records evidencing compliance with the requirement of Section 142(d) of the Code, including tenant income verifications, leases and tenant records.

The project owner, in the documents relating to the bonds and/or other documents finalized at or before the issuance of the bonds, shall agree to the foregoing records retention requirements and procedures.

- 10.3 At completion of the new construction or rehabilitation work, the project owner shall provide to the Housing Commission staff a certification from the project's architect that the project includes all design elements that formed the basis for CDLAC's award of bond allocation points (including but not limited to sustainable building methods and/or energy efficiency elements). Additionally, at or before completion of the new construction or rehabilitation of the project, and in any event prior to conversion of bonds to permanent financing, the project owner shall provide the Housing Commission with the final actual sources and uses of funds in the form of an independent cost certification and shall confirm to the Housing Commission staff that such sources and expenditures comply with all state and federal legal requirements, including the requirements set forth in the tax or arbitrage certificate with respect to tax-exempt bonds.



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- 10.4 Annual Certification of Public Benefits and On-going Compliance – As required by CDLAC regulations, all projects that receive a CDLAC bond allocation and are within an existing regulatory period and/or compliance period, shall be monitored by the Housing Commission staff for compliance with the terms and conditions of the CDLAC allocation resolution. The Housing Commission may choose to hire an outside compliance monitoring firm to assist with such requirements. It is acknowledged that the Housing Authority is required to collect, ~~review and submit to CDLAC~~ from the project owner the Certification of Compliance I, Certification of Compliance II, and CDLAC Completion Certificate, for each issuance of bonds, when applicable. The Housing Authority will rely on the information in the Certifications of Compliance I and Certificates of II in completing Applicant Public Benefit forms to CDLAC; however CDLAC may request copies of those forms be submitted to in on a case by case basis.
- A. Annually, on or before February 1 of each year until the expiration of the later of the qualified project period or compliance period under the applicable CDLAC Resolution and Bond Regulatory Agreement, the project owner shall provide a written certification of compliance to the Housing Commission, to confirm that the completed project meets the terms and conditions stated in the CDLAC Resolution.
  - B. The Housing Commission shall review the project owner's certification of compliance and may request supporting documents that evidence compliance as necessary in the sole reasonable discretion of the Housing Commission.
  - C. Annually, no later than March 1 of each year until the expiration of the qualified project period or compliance period under the CDLAC Resolution and Bond Regulatory Agreement, the Housing Commission shall complete and submit to CDLAC the Certification of Compliance II For Qualified Residential Rental Projects in such format as required by CDLAC, indicating that the completed project meets the terms and conditions stated in the applicable CDLAC Resolution.
  - D. The project owner is also required to submit IRS Form 8703 annually to the IRS on or before each March 31 as long as the bond are outstanding. Form 8703 provides annual information to the IRS to help them determine whether a project continues to be a qualified residential rental project under section 142(d) of the Internal Revenue Code of 1986, as amended.
  - E. For projects receiving allocation of bond authority from CDLAC after December 31, 2016, CDLAC requires that a review of 20% of all management files associated with federally bond-restricted units either on site or electronically be performed upon project completion and every 3 years thereafter.
  - F. For projects which are not satisfying the terms and conditions stated in the CDLAC Resolution, the Housing Commission will work with CDLAC staff and Housing Commission legal counsel to institute remedial action, as necessary, including an action for specific performance or other available remedy. The Housing Commission may disqualify a bond application from any project owner or member of the development

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partnership who is not in compliance with CDLAC's Post Issuance Compliance requirements, as determined by the Housing Commission and/or by CDLAC.

- 10.5 Transfer of Ownership. The Housing Commission reserves the right to approve any voluntary change in ownership of a bond-financed project (i) to another owner, (ii) that results in a transfer of 50% or more of the total equity interests in a project owner, or(iii) that results in a transfer of any general partner or managing member interest in the project owner. Such approval of transfer ownership shall be at the discretion of the Housing Commission subject to any additional requirements set forth in the applicable tax certificate or Bond Regulatory Agreement. The Housing Commission shall review management practices of the proposed transferee's current and previously owned multifamily housing rental properties. Any proposed transferee (including individuals within an ownership) whose currently-owned multifamily housing rental properties have been found by the Housing Commission to have deficiencies that have not been resolved within the time frame prescribed by the City, Housing Authority or Housing Commission or other local government authority, may not assume ownership of, or an ownership interest in, any bond financed project. The Housing Commission may initiate additional inspections to verify findings.
- 10.6 Carryforward Election. With respect to each allocation of tax-exempt private activity bond issue authority to the Housing Authority in a given calendar year for which less than all of the allocation of volume cap was used, the Housing Commission staff shall contact CDLAC requesting confirmation of the amount, if any, of carryforward election the Housing Authority shall make under section 146(f) of the Internal Revenue Code and the Housing Authority will timely file a Form 8328 with the IRS.
- 10.7 Arbitrage Rebate Compliance. The project owner shall comply with all applicable federal tax laws set forth in the tax or arbitrage certificate and bond documents, including arbitrage rebate compliance. Upon request, the project owner shall provide the Housing Commission with documentation that verifies compliance with federal tax laws set forth in the tax or arbitrage certificate and bond documents, including rebate compliance reports.
- 10.8 Other Required Disclosures. The project owner shall be solely responsible for any and all continuing disclosures under any applicable Securities and Exchange Commission and any Municipal Securities Rulemaking Board (MSRB) rules, requirements and regulations (including but not limited to fixed rate bond issuances with Fannie Mae and/or Freddie Mac involvement).

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Authorized:

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Deborah N. Ruane  
Executive Vice President, Chief Strategy Officer  
San Diego Housing Commission

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~~Ted Miyahara~~  
~~Vice President, Multifamily Housing Finance~~  
Real Estate Division

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Date

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Date

History:

Adopted: 10/16/1989  
Revised: 6/23/1992  
Revised: 6/28/1994  
Revised: 5/28/1996  
Revised: 6/04/1999  
Revised: 9/23/2008  
Revised: 07/30/2013  
Revised: 12/11/2017  
Revised: 06/26/2018

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## 1. SUMMARY

- 1.1 Federal, state and local legislation authorize the issuance of mortgage revenue bonds by local governments to finance the development, acquisition, construction and rehabilitation of multifamily rental projects. The interest on the bonds can be exempt from federal and state income taxation, and provide below market rate financing for qualified projects. In addition, properly-structured tax-exempt mortgage revenue bonds can qualify projects for allocations of federal low-income housing tax credits, which may provide a significant portion of the funding necessary to develop affordable housing. The San Diego Housing Commission ("Housing Commission") has established a program (the "Program") to issue mortgage revenue bonds for qualified multifamily rental projects within the City of San Diego (the "City"). The Housing Commission's Program uses tax-exempt and taxable mortgage revenue bonds (including notes and other debt instruments) issued by the Housing Authority of the City of San Diego (the "Housing Authority") to subsidize the development of affordable rental housing within the City.
- 1.2 There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds; there is no pledge of the City's or the Housing Authority's faith, credit or taxing power and the bonds do not constitute general obligations of the issuer because the security for repayment of bonds is limited to project revenue and other sources specified in the documentation for each financing. Bonds for affordable housing projects are often effectively structured as real estate loans, and the obligation to repay the bonds is secured by a first deed of trust on the bond-financed property. The Program is completely self-supporting; developers must secure funding to pay for costs of issuance of the bonds and all other costs of each financing.
- 1.3 Bonds issued under the Program should generally be privately placed with a financial institution, or publicly issued with a minimum rating of "A", or its equivalent, by one or more of the nationally recognized rating agencies listed in Section 4.1. Proceeds of the bonds may be used for both costs of construction or rehabilitation and permanent financing. The effective mortgage rate is the aggregate of the applicable bond rate and the add-on fees charged under the program, such as lender, trustee, issuer's fee, etc. The bond rate, for fixed rate bonds, is determined at the time of a bond sale and the resulting mortgage rate is typically below conventional mortgage rates. The project loans generally have a 30-year amortization schedule although the bond maturity may be shorter.
- 1.4 The goals of the Program include: increase and preserve the supply of affordable rental housing; encourage economic integration within residential communities; maintain a quality living environment for residents of assisted projects and surrounding properties; and, in the event of provision of public funds towards the project, optimize the effectiveness of Housing Commission, or other public funding by maximizing the leveraging of private sector funds.
- 1.5 The bond issuance and related loan amount for individual projects is based upon project costs, interest rates, revenues available to pay debt service, and the appraised value of the project being financed. The Housing Authority will consider multiple properties as part of a single bond financing on a case by case basis. If a tax-exempt financing is involved, bond and related loan amounts will be subject to the procedures of the California Debt Limit Allocation Committee ("CDLAC"), as described in Section 2.3 below.

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- 1.6 Projects must consist of complete rental units, including kitchens and bathrooms. Bond proceeds may be used for costs of land acquisition (up to 25% of tax-exempt bond proceeds), construction, rehabilitation, improvements, architectural and engineering services, construction interest, loan fees and other capital costs of the project incurred after the date sixty days before the bond inducement date specified in Section 7.3. Tax-exempt bond proceeds cannot be used to acquire property from a party related to the buyer. No more than 2% of tax-exempt bond proceeds can be used to finance costs of issuance, such as the services of the financing team members, rating and printing of bonds, cost related to bond allocation, etc. Pursuant to federal tax-exempt bond requirements, if bonds are used for acquisition and rehabilitation, an amount equal to at least 15 percent of the portion of the acquisition cost of the building and related equipment financed with the proceeds of bonds must be used for rehabilitation of the project. The loans are assumable upon transfer of the project with the approval of the credit enhancement provider or bond purchaser, and the President and Chief Executive Officer of the Housing Commission ("CEO") or his designee.
- 1.7 The Housing Commission receives compensation for its services in preparing bond issuances by charging an up-front administrative fee payable at the bond closing. In addition, the Housing Commission also receives ongoing, annual fees for compliance monitoring of regulatory restrictions and administrative oversight of outstanding bond issues.
- A. The administrative fee due on the bond closing date, is an amount equal to 25 basis points (0.25%) of the initial principal amount of bonds issued (or in the case of draw-down bonds [a bond structure with multiple draws over time]) the initial maximum authorized principal amount of bonds), not to exceed for tax-exempt bonds the amount otherwise allowed by the Internal Revenue Service ("IRS").
- B. The annual ongoing administrative fee will be an amount equal to (a) prior to conversion to permanent financing, 0.125% of the maximum authorized principal amount of the bonds as of the closing date for the bonds, and (b) after conversion to permanent financing, if applicable, 0.125% of the outstanding principal amount of the bonds immediately after conversion to permanent financing; however, the annual ongoing fee in any event will not be less than \$10,000. The annual fee will be charged each year during the compliance period under the Bond Regulatory Agreement for the project (see Section 3.1), to recover administrative and monitoring costs of the Housing Commission, which will be charged to all projects for such compliance period, including projects where bonds are fully repaid prior to the end of the compliance period. The ongoing annual fee will be due and payable without the requirement for any invoice to be delivered to the project owner, on the first day of the month in which the anniversary of the bond closing occurs based on the facts in existence as of such first day of such month.
- C. The annual ongoing administrative fee will remain fixed based on using the principal amount of bonds outstanding at permanent financing conversion regardless of any later reductions of the outstanding principal of the bonds.
- D. Additional monitoring fees may be charged for monitoring affordable housing units governed by regulatory agreements in addition to the Bond Regulatory Agreement, or for projects with more than 50 units.

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- E. At the time of the application, the project proponent must pay a \$3,000 non-refundable application fee to the Housing Commission.
- 1.8 Due to IRS limitations applicable to fees charged by issuers of tax-exempt bonds where the bond purchaser and the tax credit investor are the same or related entities, the Housing Authority will not issue bonds for projects where the tax credit investor is also the same or a related entity to the bond purchaser. Exceptions may be granted on a case-by-case basis, in the discretion of the Housing Authority's Executive Director or his designee.
- 1.9 To the extent that contractors will be providing services on behalf of a project proponent or a project owner related to the requirements of these Policies, the project proponent or project owner, as applicable, shall provide the Housing Commission with a written statement describing their relationship with the contractor and any rights the contractor has to income and obligations generated from any proposed bond issuance activity.
- 2. TYPES OF BONDS**
- 2.1 The Housing Authority may issue either tax-exempt or taxable bonds (which include notes or other debt instruments), or both. Taxable bonds would generally be issued only in combination with tax-exempt bonds. Taxable bonds do not require an allocation of tax-exempt bond authority from CDLAC but still require compliance with State law requirements governing the Housing Authority's ability to issue bonds.
- 2.2 The interest paid on taxable bonds is not exempt from federal taxation. These bonds are not subject to federal volume "cap" limitations and therefore do not require allocation authority from CDLAC. Taxable bond issues must meet all applicable requirements of this Policy (including rating requirements), State law requirements and any additional regulations that may be promulgated, from time to time, by the Housing Commission.
- 2.3 Bond interest on which is tax-exempt under federal tax law (other than refunding bonds and 501(c)(3) bonds described below), require an allocation of bond authority from CDLAC. To obtain the allocation, the Housing Authority must submit an application to CDLAC on behalf of the project proponent. Submittal of the application is at the discretion of the Housing Authority, not the project proponent. The project proponent must provide all deposits and pay all fees required by CDLAC when due.
- 2.4 The Housing Authority may issue bonds described in section 145(c) of the federal tax code on behalf of qualified nonprofit organizations. The interest on these 501(c)(3) bonds is tax-exempt and these bonds do not require an allocation from CDLAC, but cannot be used with the Low Income Housing Tax Credit Program.
- 2.5 The Housing Authority will consider the issuance of bonds to refund outstanding bonds subject to the following conditions:
- A. The project proponent agrees to cover all costs of the issuer, including costs for the issuer's municipal advisor, bond counsel, and trustee (if applicable).

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- B. The affordability restrictions of the existing bond regulatory agreement are subject to extension. The Housing Commission reserves the right to impose additional requirements on a case by case basis. All specifics of refunding proposals must be approved by the Housing Authority.
  - C. The provisions of Section 52080(g) of the California Health and Safety Code shall apply to projects financed under the Program, which requires that low-income units remain affordable, except in certain circumstances, until thirty (30) years after the commencement of the qualified project period (as referred to therein).
  - D. Except in limited circumstances, the provisions of Sections 65863.10 and 65863.11 of the California Government Code shall apply to projects financed under the Program, and project proponents are advised to review the requirements of such Sections.
  - E. Default refunding applications require a default refunding analysis (to determine the eligibility for a default refunding). The Housing Commission shall choose the firm to conduct the analysis. The project applicant will deposit the cost for the study with the Housing Commission before the study begins.
- 2.6 Bonds for projects are intended to be non-recourse conduit financing in which none of the Housing Commission, the Housing Authority or the City will be responsible for the repayment of the debt. The Housing Authority's own capital improvement plans and budgets should not be impacted by the bond financing of projects

**3. AFFORDABILITY REQUIREMENTS**

- 3.1 Term of Rental and Affordability Restrictions – The project must remain as rental housing and continuously meet the affordability requirements as provided in Sections 3.2, 3.3 and 3.4 for the longer of (a) the Qualified Project Period (as defined in Internal Revenue Code of 1986), (b) as long as the bonds remain outstanding, (c) such period as may be required in the opinion of Bond Counsel to satisfy applicable federal or State law, or (d) such period as may be required by CDLAC (typically 55 years). Additional affordability may be required as described in 2.5(C) above. The rent of “in-place” tenants at the conclusion of the required affordability period will continue to be governed by the applicable affordability restriction, so long as those tenants continue to live in the development. The Housing Authority reserves the right to impose additional affordability restrictions.

A Bond Regulatory Agreement containing the rental and affordability restrictions will be recorded against the project property and must be complied with by subsequent owners. The Bond Regulatory Agreement may be terminated upon expiration of restrictions or in the event of casualty loss or foreclosure, and the subsequent retirement of bonds as a result of foreclosure.

The Bond Regulatory Agreement will be drafted by the Housing Authority's bond counsel for the financing and must be in a form acceptable to and approved by the Housing Authority. The Bond Regulatory Agreement will set forth federal, state and Housing Authority requirements applicable to the operation of the project and pursuant to Section 5220(c)(1) of the CDLAC Regulations must

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incorporate by reference and as an attachment the CDLAC resolution allocating private activity bond authority to the Housing Authority for the project.

State law requires advance notice and other requirements upon termination of affordability requirements, some of which also place restrictions on the sale of previously affordable housing projects, pursuant to the provisions described in 2.5(D) above.

3.2 Income Restrictions – To be eligible for tax-exempt bond financing, federal law requires that the project meet one of the following conditions:

- A. A minimum of 20% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size; or
- B. A minimum of 40% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 60% of area median income, as adjusted by family size.

In any event, State law requires that a minimum of 10% of the units in the project be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, at specified rent levels.

Project owners must certify their tenant's eligibility semi-annually or as otherwise required by the Housing Commission in the applicable Bond Regulatory Agreement. If a tenant is no longer eligible, the next available unit in the project (if federal tax credits apply to the project, in the building in which the unit was located) must be rented to a new eligible tenant and the current tenant's rent can be raised to a market level. A unit occupied only by full time students does not count towards the very low and low income unit set-aside requirements.

Affordability definitions are based on the area median income for the County of San Diego as established by the US Department of Housing and Urban Development. The median income is subject to change annually. Household size is determined under Section 34312.3(c)(1)(B) and (c)(2)(B) of the California Health and Safety Code consistent with Section 42(g)(2)(C) of the Internal Revenue Code. Section 42(g)(2)(C) requires that, in calculating rents, occupancy of units is assumed to be one person per studio unit, and for each other unit with one or more separate bedrooms, 1.5 individuals for each separate bedroom.

3.3 Rent Restrictions – The maximum rent for the affordable set-aside units shall not exceed 30% of one-twelfth of 50% of area median income, or 30% of one-twelfth of 60% of area median income (as the case may be, depending on the selected set-aside). The maximum rent amounts are further reduced by a utility allowance for tenant-paid utilities in the amounts determined by the Housing Commission's CEO or his designee. In the event tax-exempt bonds are used with Low Income Housing Tax Credits, or any other public funds, the most restrictive rents of the applicable programs shall apply. The affordability of restricted units in relation to the project's market rents will be considered as part of the Housing Commission's approval of the financing. The maximum rent



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amounts will also apply if the set-aside units are occupied by Section 8 tenants (tenant based vouchers).

In calculating restricted rents, household size/occupancy shall be as described in the last paragraph of Section 3.2 above.

- 3.4 Unit Distribution – The set-aside units must proportionately reflect the mix of all units in the project, be distributed throughout the project and have the same floor area, amenities, and access to project facilities as market-rate units. The objective of the program is to provide a set-aside of units with lower rents, not to create special “low-income sections” within larger developments.
- 3.5 Additional Affordability Restrictions under Restructuring of Existing Bond Issues– Additional public benefit in the form of deeper income targeting; additional rent restrictions; extension of the term of restrictions; additional number of restricted units; or any combination thereof, will be negotiated in connection with refundings or debt restructurings of existing bond issues. The level of additional restrictions will be determined in the context of the overall financial feasibility of each financing. Should the bond restructuring result in an extension of the maturity of the bonds, a minimum of 10% of the units in the project will be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, with rents set at the corresponding affordability level, for the term of the restructured bond.

**4. CREDIT CONSIDERATIONS**

- 4.1 Required Rating on the Bonds – Any bonds issued under the Program that are sold to the public should generally be rated “A”, or its equivalent, or better from one or more of the following nationally recognized rating agencies: Moody's Investors Service, S&P Global Ratings, or Fitch Ratings. The same rating requirement applies in the case of a substitution of existing credit facility for bonds that are outstanding.
- 4.2 Credit Enhancement– A preferred way of obtaining the required rating on the bonds in accordance with Section 4.1 is through the provision of additional, outside credit support for the bond issue provided by rated, financially strong private institutions, such as government sponsored entities (including the Federal National Mortgage Association [Fannie Mae] or the Federal Home Loan Mortgage Corporation [Freddie Mac]), other government insured mortgage programs, or other qualified credit enhancement providers as long as the minimum bond rating is obtained. The rating on such bonds is determined based on the credit worthiness of the participating credit enhancement provider. The project proponent is required to identify and obtain any such credit enhancement. As the primary source of security for the repayment of bonds, the credit enhancement provider reviews and approves the borrower (credit, financial capability, experience, etc.) and the project and its feasibility, including the size of the loan and the terms of repayment, using their own underwriting criteria.
- 4.3 Rated Bonds Without Credit Enhancement– Fixed rate bonds can be issued without credit enhancement if the proposed financing structure results in the required minimum rating on the bonds by a rating agency as provided in Section 4.1. However, bonds issued without credit enhancement will only be sold to qualified institutional buyers (“QIBs”) as defined under Rule

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144A of the Securities Act of 1933 and in minimum \$100,000 denominations, unless waived by the CEO in his sole discretion.

4.4 Privately Placed Bonds – The rating requirement specified in Section 4.1 is waived under the following conditions:

- A. The bonds are privately placed with QIBs, or institutional “accredited investors,” as defined in Sections 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, or any entity in which all of the equity owners meet the requirements of at least one such subsection.
- B. The bonds must be sold in minimum \$100,000 denominations.
- C. All initial and subsequent purchasers (including purchasers of participation interests in the bonds) must sign a sophisticated investor letter (Investor Letter) in a form approved by the Housing Commission. While the bonds remain unrated, their transferability will be restricted to QIBs or institutional accredited investors who sign an Investor Letter.
- D. Unless otherwise approved by the Housing Commission Board, the bonds may not be held at any time by more than 15 investors.
- E. Upon terms acceptable to the Housing Commission, bonds may be placed in a trust or custodial arrangement with participations sold to investors.
- F. The Housing Authority as issuer reserves the right to require that a trustee or fiscal agent participate in privately placed bond transactions.

The purpose of these conditions is to assure that the bonds are placed with investors who are experienced in investing in unrated municipal securities and can conduct their own analysis or real estate credit underwriting. Bond funds and affordable lending financial institutions are the types of entities this condition anticipates.

- 4.5 Bonds with Hedges/SWAPs. The project proponent shall disclose to the Housing Commission at the time of application of its intention to purchase an interest rate cap, hedge or swap, and such instrument shall be obtained in an arm's length transaction. Under no circumstances shall the Housing Commission or Housing Authority be a party to such swaps or hedges.
- 4.6 Indemnification. The project owner shall agree to defend and indemnify the Housing Authority against liability related to the bond financing and the project, and agree to reimburse the Housing Authority for all expenses incurred by the Housing Authority in issuing the bonds and monitoring the project. The Housing Authority reserves the right to require a parent company or personal guaranty of such indemnification and expense reimbursement obligations.

**5. OTHER ISSUERS**

- 5.1 The Housing Authority, in very limited situations, will allow issuers other than the Housing Authority to issue bonds for multifamily housing projects located within the City of San Diego.

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Any project proponent considering the use of any issuer other than the Housing Authority should contact Housing Commission staff prior to proceeding with the project. The required City approvals of bond issuances by issuers other than the Housing Authority will be recommended only if the financing proposal is part of a pooled issuance involving projects located in multiple jurisdictions and the project proponent can demonstrate that a pooled issuance is required for the projects to be financial viable. All Housing Authority affordability requirements, procedures and requirements will apply to projects using "outside issuers," including an issuance fee of 0.25 percent of the bond issuance amount to be paid to the Housing Authority upon issuance of the bonds as described in Section 1.7 above. A TEFRA hearing and approval by the City Council of the City ("City Council"), as described in Section 7.4, on behalf of another issuer will include a provision that the owner, operator or manager of the project considered for financing by tax-exempt debt will not change without the prior approval of the Housing Commission's CEO or his designee. Units governed by the applicable Bond Regulatory Agreement using tax-exempt financing shall be monitored by Housing Commission staff for compliance with the terms and conditions of the applicable CDLAC resolution annually or as otherwise determined by the Housing Authority and are subject to annual Housing Commission monitoring fees in accordance with the existing Housing Commission fee schedule.

**6. SELECTION OF THE FINANCING TEAM**

- 6.1 Through separate Requests for Qualifications ("RFQ"), a pool of bond counsels, and a pool of municipal advisors, will be established to serve as financing team participants on individual bond transactions. The RFQ process is a fair and competitive process which includes advertising, a competitive selection process and interviewing, if necessary. Firms will be selected in accordance with the Housing Commission's applicable equal opportunity policies.
- 6.2 The establishment of each pool will be made by a selection committee with the approval of the Housing Commission Board. The selection committee will consist of Housing Commission staff and representatives from other City departments, such as the City Attorney's Office, City Auditor, and Debt Management. Generally, the selection will be made for a one -year period. The term may be extended for four additional one-year periods by the CEO or his designee.
- 6.3 The bond counsel and municipal advisor specifically represent the interests and concerns of the Housing Commission, the Housing Authority and the City in ensuring the integrity of the bond transaction. The project sponsor may, at its own expense, add additional members to the finance team to represent its interests.
- 6.4 The municipal advisor for each transaction will be designated by the CEO or his designee from the selected pool for approval by the Housing Commission Board based on past performance, experience with similar transactions, and capacity to meet the project deadlines. The municipal advisor will prepare a feasibility study on whether it is economically advisable to proceed with the financing, including: evaluation of the financial strength of the project; assumptions regarding income and expenses; sources of security for bonds in addition to a mortgage on the project; the borrower's financial situation and experience in operating and managing multifamily rental projects; marketability of the bonds; rights and resources of parties to the transaction in the event of default. The municipal advisor will provide financial advice on all relevant issues to best protect

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the interests of the City and the Housing Authority. The compensation for municipal advisory services to determine whether it is advisable to proceed with a financing will not be payable by the project proponent and will not be contingent on the sale of the bonds.

- 6.5 Bond counsel will be designated for each financing by the CEO or his designee from the selected pool based on past performance, experience with similar transactions, and capacity to meet the project deadlines, subject to approval by the Housing Commission Board. Bond counsel will prepare the necessary legal documentation for the bonds, including provisions regarding compliance with any applicable continuing disclosure requirements, provide an opinion regarding the validity of the bonds and their tax exempt status (if applicable), and provide legal advice on all relevant issues to best protect the interests of the Housing Commission, the City and the Housing Authority, including but not limited to the project monitoring requirements for federal tax State law and CDLAC purposes.
- 6.6 Bond Underwriter /Remarketing Agent/Private Placement Purchaser -The project proponent shall select the construction and permanent lender/bond purchaser and method of selling the bonds for a given transaction, subject to the requirements set forth herein and the approval of the Housing Commission. Except as provided in Section 1.8 above, the Housing Authority will not allow a bond transaction where the tax credit investor is also the bond purchaser or a related party thereto. The practice of allowing the project proponent to propose the lender and bond structure is intended to create an incentive for qualified financial firms to actively work with borrowers to structure and present feasible financing proposals that meet Program requirements.
- 6.7 In the event the project proponent has not identified a proposed financing structure for a given transaction, the Housing Commission will select an underwriter, lender, or private placement purchaser through a request for proposals process.
- 6.8 Any bond trustee or fiscal agent (a financial institution designated by the Housing Authority as the custodian of funds and official representative of bondholders), if required by the Housing Commission as the bond structure for the financing, will be approved by the CEO or his designee based upon a request for proposals process.

**7. THE FINANCING PROCESS**

- 7.1 Application – A project proponent interested in new-money financing must submit an application for bond financing, or in the case of an existing financing a request for bond refunding or restructuring, to the Housing Commission. Part of the required information is a disclosure statement, on each of the parties involved in the developer /ownership entity. Housing Commission staff will review the application for feasibility.
- 7.2 Deposit–At the time of the application, the project proponent must post a \$10,000 application deposit to cover the preliminary costs of the Housing Commission related to the proposed bond issuance, reissuance or restructuring. If the financing proceeds to closing, the deposit may be subject to return after the bond closing. If the bond issue does not proceed to closing, then the \$10,000 application deposit will become nonrefundable, and will be retained by the Housing

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Commission for payment toward the preliminary costs incurred by the Housing Commission and its consultants. The \$10,000 application deposit may be waived by the CEO or his designee.

- 7.3 Inducement/Reimbursement Resolution– In conjunction with the City Attorney's Office and bond counsel, a bond inducement/reimbursement resolution (hereafter an “inducement resolution”) will be drafted and adopted by the Housing Authority. All new money projects must be the subject of an inducement resolution. An inducement resolution is a conditional expression of the Housing Authority's “official intent “to issue bonds for a given project and is required for tax-exempt financing under Treasury Regulation Section 1.150-2(e).Adoption of the inducement resolution establishes, through the public record, the date from which project costs incurred may be determined to be eligible for financing under the Program with proceeds of tax-exempt bonds. Therefore, applicants are encouraged to induce their projects as soon as practicable to clearly identify the project, its location, maximum number of units, the maximum amount of financing, and the proposed ownership entity.
- A. Application to CDLAC– The inducement resolution also authorizes Housing Commission staff to submit an application to CDLAC, on behalf of the project proponent, for a private activity bond allocation if the bonds are to be tax-exempt.
- B. No Binding Financial Commitment – Adoption of the inducement resolution does not represent any commitment by the Housing Commission, Housing Authority, or the project proponent to proceed with the financing. The adoption by the Housing Authority of an inducement resolution, by itself, does not authorize any subordinate financing by the Housing Commission or any other entity of the City. The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a required resolution authorizing such issuance and approving related bond documents.
- C. No Land Use or Building Code Approval – Adoption of the inducement resolution shall not be construed to signify that the project complies with the planning, zoning, subdivision and building laws and ordinances of the City or suggest that the Housing Authority, the City, or any officer or agent of the Housing Authority or the City will grant any such approval, consent or permit that may be required in connection with the development of a given project.
- 7.4 TEFRA Hearing and Approval – In order for interest on the bonds to be tax-exempt and in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and Section 147(f) of the Internal Revenue Code of 1986, the issuance of bonds must be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located, after a public hearing for which a public notice (describing the proposed location of the project, the number of units, and proposed bond issuance amount)is given. As the legislative body for the City of San Diego, the issuance of any tax-exempt bonds by the Housing Authority must be approved by the City Council. The purpose of the public hearing is to provide an opportunity for interested persons to provide their views on the proposed bond issuance and on the nature and location of the project. The TEFRA hearing will be conducted by City Council at the date and time specified in the TEFRA notice. The TEFRA notice shall be published in a newspaper of general circulation within the City at least 14 days in advance of the TEFRA hearing.

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- 7.5 Bond Allocation – Prior to the issuance of tax exempt bonds (other than 501(c)(3) bonds), the Housing Authority must apply for, and receive an allocation of bond issuing authority from CDLAC. To receive such an allocation, the Housing Authority and the project proponent must document their readiness to proceed with the bond financing, and must comply with all applicable CDLAC regulations.
- 7.6 Performance Deposit – At the time of the application to CDLAC, the project proponent must deposit with the Housing Authority an amount equal to one half of one percent of the requested allocation amount (or such other amount as may be required by CDLAC) as a performance deposit. The deposit will be returned to the project proponent only in accordance with CDLAC procedures; and the deposit is subject to reversion to CDLAC if the financing does not close under applicable CDLAC regulations.
- 7.7 Local Review– All projects must be in compliance with the City's zoning requirements and adopted community plans. Prior to requesting the Housing Authority approval of a new-money bond issuance, the project must undergo all planning procedures and land use approvals, including discretionary review, community planning group review, and environmental analysis, as required. All projects must be reviewed by the applicable community planning group(s) prior to final bond authorization recommendation by the Housing Commission Board of Commissioners.
- 7.8 Coordination with City Finance Representatives– Housing Commission staff will work with the City Attorney's Office, the City's Debt Management Department, and other City departments, as necessary, in preparing bond issuances for affordable housing projects.
- 7.9 Compliance with City's Disclosure Ordinance – As a related entity of the City, the Housing Commission will adhere to the City disclosure ordinance (0-19320) as it may be amended from time to time, which applies to publicly offered bonds. The Housing Commission will present offering statements and disclosure documents for review and approval, as appropriate, by the City's Disclosure Practices Working Group.
- 7.10 Housing Commission/Housing Authority – Final Approval- Housing Commission staff recommendations to proceed with a proposed bond issuance, reissuance, or bond restructuring will be presented for approval by the Housing Commission. If approved, staff will work with the approved financing team to structure the financing and to prepare the necessary bond documents. The resulting bond documents, authorizing resolution, staff report, and other relevant docket materials will be submitted for final approval by the Housing Authority, a minimum of four weeks prior to the Housing Authority meeting date, at which the adoption by the Housing Authority of a resolution authorizing the issuance of the bonds is to be considered.
- 8. TENANT RELOCATION**
- 8.1 As required by CDLAC regulations (Section 5211 "Tenant Relocation") if low-income tenants will receive a rent increase exceeding five percent (5%) of their current rent, then a relocation plan is required to address economic displacement. Where applicable, the project proponent shall provide

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evidence that there location plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act (42 U.S.C.61).

**9. PROHIBITION OF CERTAIN “SUBSTANTIAL USERS”**

9.1 The Housing Commission and Housing Authority, each in its sole and absolute discretion, reserves the right to reject and not issue bonds for proposed projects where, in the proposed financial structure, the proposed bond purchaser is the same entity or a related entity as the project owner(including, but not limited to, tax credit investor limited partners) or involves any other arrangement which may limit the Housing Commission or Housing Authority's ability to charge administrative fees in the amounts detailed in Section 1.7 above, including but not limited to the circumstances described in Section 1.8 above.

**10. POST ISSUANCE COMPLIANCE**

10.1 Use of Bond Proceeds and Bond-Financed or Refinanced Assets. It is the Housing Commission's policy that the project owner shall be responsible for:

- A. Monitoring the use of bond proceeds and the use of bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the bonds to ensure compliance with covenants and restrictions set forth in the documents relating to the bonds;
- B. Maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of bonds, including a final allocation of bond proceeds;
- C. Consulting with bond counsel and other legal counsel and advisers in the review of any contracts or arrangements involving use of bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the documents relating to the bonds;
- D. Maintaining records for any contracts or arrangements involving the use of bond-financed or refinanced assets as described in 10.2 below;
- E. Conferring at least annually with personnel responsible for bond-financed or refinanced assets to identify and discuss any existing or planned use of bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the bond documents; and
- F. To the extent that the project owner discovers that any applicable tax restrictions regarding use of bond proceeds and bond-financed or refinanced assets will or may be violated, consult promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.

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10.2. Record Keeping Requirement. It is the Housing Commission's policy that the project owner shall be responsible for maintaining the following documents for the term of each issue of bonds (including refunding bonds, if any), plus at least three years:

- A. A copy of the bond closing transcript(s) and other relevant documentation delivered to the project owner at or in connection with closing of the bond issue;
- B. A copy of all material documents relating to capital expenditures financed or refinanced by bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for bond proceeds and evidence as to the amount and date for each expenditure of bond proceeds, as well as documents relating to costs paid or reimbursed with bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with bond proceeds, including a final allocation of bond proceeds;
- C. A copy of all contracts and arrangements involving the use of bond-financed or refinanced assets; and
- D. In respect of any investment of bond proceeds or collateral securing the repayment of the bonds, a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee or fiscal agent statements, in connection with any investment agreements, and copies of all bidding documents, if any.

For housing bond financings subject to the requirements of Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), it is the Housing Commission's policy that the project owner shall be responsible for maintaining until the end of the "qualified project period" within the meaning of Section 142(d)(2)(A) of the Code, plus at least three years, a copy of all records evidencing compliance with the requirement of Section 142(d) of the Code, including tenant income verifications, leases and tenant records.

The project owner, in the documents relating to the bonds and/or other documents finalized at or before the issuance of the bonds, shall agree to the foregoing records retention requirements and procedures.

10.3 At completion of the new construction or rehabilitation work, the project owner shall provide to the Housing Commission staff a certification from the project's architect that the project includes all design elements that formed the basis for CDLAC's award of bond allocation points (including but not limited to sustainable building methods and/or energy efficiency elements). Additionally, at or before completion of the new construction or rehabilitation of the project, and in any event prior to conversion of bonds to permanent financing, the project owner shall provide the Housing Commission with the final actual sources and uses of funds in the form of an independent cost certification and shall confirm to the Housing Commission staff that such sources and expenditures comply with all state and federal legal requirements, including the requirements set forth in the tax or arbitrage certificate with respect to tax-exempt bonds.



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- 10.4 Annual Certification of Public Benefits and On-going Compliance – As required by CDLAC regulations, all projects that receive a CDLAC bond allocation and are within an existing regulatory period and/or compliance period, shall be monitored by the Housing Commission staff for compliance with the terms and conditions of the CDLAC allocation resolution. The Housing Commission may choose to hire an outside compliance monitoring firm to assist with such requirements. It is acknowledged that the Housing Authority is required to collect, from the project owner the Certification of Compliance I, Certification of Compliance II, and CDLAC Completion Certificate, for each issuance of bonds, when applicable. The Housing Authority will rely on the information in the Certifications of Compliance I and Certificates of II in completing Applicant Public Benefit forms to CDLAC; however CDLAC may request copies of those forms be submitted to in on a case by case basis.
- A. Annually, on or before February 1 of each year until the expiration of the later of the qualified project period or compliance period under the applicable CDLAC Resolution and Bond Regulatory Agreement, the project owner shall provide a written certification of compliance to the Housing Commission, to confirm that the completed project meets the terms and conditions stated in the CDLAC Resolution.
  - B. The Housing Commission shall review the project owner's certification of compliance and may request supporting documents that evidence compliance as necessary in the sole reasonable discretion of the Housing Commission.
  - C. Annually, no later than March 1 of each year until the expiration of the qualified project period or compliance period under the CDLAC Resolution and Bond Regulatory Agreement, the Housing Commission shall complete and submit to CDLAC the Certification of Compliance II For Qualified Residential Rental Projects in such format as required by CDLAC, indicating that the completed project meets the terms and conditions stated in the applicable CDLAC Resolution.
  - D. The project owner is also required to submit IRS Form 8703 annually to the IRS on or before each March 31 as long as the bond are outstanding. Form 8703 provides annual information to the IRS to help them determine whether a project continues to be a qualified residential rental project under section 142(d) of the Internal Revenue Code of 1986, as amended.
  - E. For projects receiving allocation of bond authority from CDLAC after December 31, 2016, CDLAC requires that a review of 20% of all management files associated with federally bond-restricted units either on site or electronically be performed upon project completion and every 3 years thereafter.
  - F. For projects which are not satisfying the terms and conditions stated in the CDLAC Resolution, the Housing Commission will work with CDLAC staff and Housing Commission legal counsel to institute remedial action, as necessary, including an action for specific performance or other available remedy. The Housing Commission may disqualify a bond application from any project owner or member of the development

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partnership who is not in compliance with CDLAC's Post Issuance Compliance requirements, as determined by the Housing Commission and/or by CDLAC.

- 10.5 Transfer of Ownership. The Housing Commission reserves the right to approve any voluntary change in ownership of a bond-financed project (i) to another owner, (ii) that results in a transfer of 50% or more of the total equity interests in a project owner, or (iii) that results in a transfer of any general partner or managing member interest in the project owner. Such approval of transfer ownership shall be at the discretion of the Housing Commission subject to any additional requirements set forth in the applicable tax certificate or Bond Regulatory Agreement. The Housing Commission shall review management practices of the proposed transferee's current and previously owned multifamily housing rental properties. Any proposed transferee (including individuals within an ownership) whose currently-owned multifamily housing rental properties have been found by the Housing Commission to have deficiencies that have not been resolved within the time frame prescribed by the City, Housing Authority or Housing Commission or other local government authority, may not assume ownership of, or an ownership interest in, any bond financed project. The Housing Commission may initiate additional inspections to verify findings.
- 10.6 Carryforward Election. With respect to each allocation of tax-exempt private activity bond issue authority to the Housing Authority in a given calendar year for which less than all of the allocation of volume cap was used, the Housing Commission staff shall contact CDLAC requesting confirmation of the amount, if any, of carryforward election the Housing Authority shall make under section 146(f) of the Internal Revenue Code and the Housing Authority will timely file a Form 8328 with the IRS.
- 10.7 Arbitrage Rebate Compliance. The project owner shall comply with all applicable federal tax laws set forth in the tax or arbitrage certificate and bond documents, including arbitrage rebate compliance. Upon request, the project owner shall provide the Housing Commission with documentation that verifies compliance with federal tax laws set forth in the tax or arbitrage certificate and bond documents, including rebate compliance reports.
- 10.8 Other Required Disclosures. The project owner shall be solely responsible for any and all continuing disclosures under any applicable Securities and Exchange Commission and any Municipal Securities Rulemaking Board (MSRB) rules, requirements and regulations (including but not limited to fixed rate bond issuances with Fannie Mae and/or Freddie Mac involvement).

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Authorized:

\_\_\_\_\_  
Deborah N. Ruane  
Executive Vice President, Chief Strategy Officer  
San Diego Housing Commission

\_\_\_\_\_  
Real Estate Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

History:

Adopted: 10/16/1989  
Revised: 6/23/1992  
Revised: 6/28/1994  
Revised: 5/28/1996  
Revised: 6/04/1999  
Revised: 9/23/2008  
Revised: 07/30/2013  
Revised: 12/11/2017  
Revised: 06/26/2018



DEVELOPERS/CONSULTANTS/SELLERS/CONTRACTORS/  
ENTITY SEEKING GRANT/BORROWERS  
(Collectively referred to as "CONTRACTOR" herein)  
Statement for Public Disclosure

1. Name of CONTRACTOR: Affirmed Housing Group, Inc.
  2. Address and ZIP Code: 13520 Evening Creek Dr. N. Ste. 160, San Diego, CA 92128
  3. Telephone Number: (858) 679-2828
  4. Name of Principal Contact for CONTRACTOR: Jonathan Taylor
  5. Federal Identification Number or Social Security Number of CONTRACTOR: 26-0812994
  6. If the CONTRACTOR is not an individual doing business under his own name, the CONTRACTOR has the status indicated below and is organized or operating under the laws of California as:
    - A corporation (Attach Articles of Incorporation)
    - A nonprofit or charitable institution or corporation. (Attach copy of Articles of Incorporation and documentary evidence verifying current valid nonprofit or charitable status)
    - A partnership known as: \_\_\_\_\_  
(Name)
- Check one:
- General Partnership (Attach Statement of General Partnership)
  - Limited Partnership (Attach Certificate of Limited Partnership)
  - A business association or a joint venture known as: \_\_\_\_\_  
(Attach joint venture or business association agreement)
  - A Federal, State or local government or instrumentality thereof.
  - Other (explain)
7. If the CONTRACTOR is not an individual or a government agency or instrumentality, give date of organization:  
August 7, 2007
  8. Provide names, addresses, telephone numbers, title of position (if any) and nature and extent of the interest of the current officers, principal members, shareholders, and investors of the CONTRACTOR, other than a government agency or instrumentality, as set forth below:
    - a. If the CONTRACTOR is a corporation, the officers, directors or trustees, and each stockholder owning more than 10 percent of any class of stock.
    - b. If the CONTRACTOR is a nonprofit or charitable institution or corporation, the members who constitute the board of trustees or board of directors or similar governing body.

- c. If the CONTRACTOR is a partnership, each partner, whether a general or limited, and either the percent of interest or a description of the character and extent of interest.
- d. If the CONTRACTOR is a business association or a joint venture, each participant and either the percent of interest or a description of the character and extent of interest.
- e. If the CONTRACTOR is some other entity, the officers, the members of the governing body, and each person having an interest of more than 10 percent.(Attach extra sheet if necessary)

Name and Address	Position Title (if any) and percent of interest or description of character and extent of interest
Name: James Silverwood	President/CEO, 100% interest
Address: 13520 Evening Creek Dr. N. Ste. 160 San Diego, CA 92128	
Phone: (858) 386-5175	
Name:	
Address:	
Name:	
Address:	

9. Has the makeup as set forth in Item 8(a) through 8(e) changed within the last twelve (12) months? If yes, please explain in detail.

No

10. Is it *anticipated* that the makeup as set forth in Item 8(a) through 8(e) will change within the next twelve (12) months? If yes, please explain in detail.

No

11. Provide name, address, telephone number, and nature and extent of interest of each person or entity (not named in response to Item 8) who has a beneficial interest in any of the shareholders or investors named in response to Item 8, which gives such person or entity more than a computed 10 percent interest in the CONTRACTOR (for example, more than 20 percent of the stock in a corporation that holds 50 percent of the stock of the CONTRACTOR, or more than 50 percent of the stock in the corporation that holds 20 percent of the stock of the CONTRACTOR):

Name and Address	Position Title (if any) and percent of interest or description of character and extent of interest
Name: N/A (see 8)	
Address:	
Name:	
Address:	
Name:	
Address:	

12. Names, addresses and telephone numbers (if not given above) of officers and directors or trustees of any corporation or firm listed under Item 8 or Item 11 above:

Name and Address	Position Title (if any) and percent of interest or description of character and extent of interest
Name: N/A (see 8)	
Address:	
Name:	
Address:	
Name:	
Address:	

13. Is the CONTRACTOR a subsidiary of or affiliated with any other corporation or corporations, any other firm or any other business entity or entities of any nature? If yes, list each such corporation, firm or business entity by name and address, specify its relationship to the CONTRACTOR, and identify the officers and directors or trustees common to the CONTRACTOR and such other corporation, firm or business entity.

Name and Address	Relationship to CONTRACTOR
Name: Affirmed Housing Group, a CA Corp.	Sister Company (combined group for reporting financials)
Address: 13520 Evening Creek Dr. N. Ste. 160	
San Diego, CA 92128	
Name:	
Address:	
Name:	
Address:	

14. Provide the financial condition of the CONTRACTOR as of the date of the statement and for a period of twenty-four (24) months prior to the date of its statement, as reflected in the **attached** financial statements, including, but not necessarily limited to, profit and loss statements and statements of financial position.
15. If funds for the development/project are to be obtained from sources other than the CONTRACTOR's own funds, provide a statement of the CONTRACTOR's plan for financing the development/project:  
 TCAC, Civic San Diego Land + Capital, San Diego Housing Commission Capital
16. Provide sources and amount of cash available to CONTRACTOR to meet equity requirements of the proposed undertaking:
- a. In banks/savings and loans:  
 Name: US Bank, Citi, Fidelity  
 Address: (Provided upon request – see financials)  
 Amount: \$ 2 million

b. By loans from affiliated or associated corporations or firms:

Name: US Bank

Address: 4747 Executive Dr., 3<sup>rd</sup> Fl., San Diego, CA 92121

Amount: \$ 750,000 to \$1,500,000

c. By sale of readily salable assets/including marketable securities:

Description	Market Value (\$)	Mortgages or Liens (\$)
N/A		

17. Names and addresses of bank references, and name of contact at each reference:

Name and Address	Contact Name
Name: US Bank	John Petersen
Address: 4747 Executive Dr., 3 <sup>rd</sup> Fl	
San Diego, CA 92121	
Name: Citibank	
Address: 740 Lomas Santa Fe Dr., Suite 210	Christopher D Meyers
Solana Beach, CA 92075	
Name:	
Address:	

18. Has the CONTRACTOR or any of the CONTRACTOR's officers or principal members, shareholders or investors, or other interested parties been adjudged bankrupt, either voluntary or involuntary, within the past 10 years?

Yes  No

If yes, give date, place, and under what name.

N/A

19. Has the CONTRACTOR or anyone referred to above as "principals of the CONTRACTOR" been convicted of any felony within the past 10 years?

Yes  No

If yes, give for each case (1) date, (2) charge, (3) place, (4) court, and (5) action taken. Attach any explanation deemed necessary.

N/A

20. List undertakings (including, but not limited to, bid bonds, performance bonds, payment bonds and/or improvement bonds) comparable to size of the proposed project which have been completed by the CONTRACTOR, including identification and brief description of each project, date of completion, and amount of bond, whether any legal action has been taken on the bond:

Type of Bond	Project Description	Date of Completion	Amount of Bond	Action on Bond
	(Please see attached bond list)			No legal action on any of the bonds

21. If the CONTRACTOR, or a parent corporation, a subsidiary, an affiliate, or a principal of the CONTRACTOR is to participate in the development as a construction contractor or builder, provide the following information:

- a. Name and addresses of such contractor or builder:

Name and Address	Affiliation
Name: N/A	
Address:	
Name:	
Address:	
Name:	
Address:	

- b. Has such contractor or builder within the last 10 years ever failed to qualify as a responsible bidder, refused to enter into a contract after an award has been made, or failed to complete a construction or development contract?

Yes       No

If yes, please explain, in detail, each such instance:

N/A

- c. Total amount of construction or development work performed by such contractor or builder during the last three (3) years: \$ N/A

General description of such work:

N/A



List each project, including location, nature of work performed, name, address of the owner of the project, bonding companies involved, amount of contract, date of commencement of project, date of completion, state whether any change orders were sought, amount of change orders, was litigation commenced concerning the project, including a designation of where, when and the outcome of the litigation. (Attach extra sheet if necessary)

<b>Project Name</b>	N/A	
<b>Project Owner Contact Information</b>		
	Name	Address
<b>Project Location</b>		
<b>Project Details</b>		
<b>Bonding Company Involved</b>		
	Name	Amount of Contract
<b>Change Order Details</b>		
<b>Change Order Cost</b>		
<b>Litigation Details</b>		
	Location/Date	Outcome Details

d. Construction contracts or developments now being performed by such contractor or builder:

<b>Identification of Contract or Development</b>	<b>Location</b>	<b>Amount</b>	<b>Date to be Completed</b>
N/A			

e. Outstanding construction-contract bids of such contractor or builder:

<b>Awarding Agency</b>	<b>Amount</b>	<b>Date Opened</b>
N/A		

22. Provide a detailed and complete statement regarding equipment, experience, financial capacity, and other resources available to such contractor or builder for the performance of the work involved in the proposed project, specifying particularly the qualifications of the personnel, the nature of the equipment, and the general experience of the contractor:

N/A

23. Does any member of the governing body of SDHC, Housing Authority of the City of San Diego ("AUTHORITY") or City of San Diego ("CITY"), to which the accompanying proposal is being made or any officer or employee of SDHC, the AUTHORITY or the CITY who exercises any functions or responsibilities in connection with the carrying out of the project covered by the CONTRACTOR's proposal, have any direct or indirect personal financial interest in the CONTRACTOR or in the proposed contractor?

Yes                       No

If yes, explain:

N/A

24. Statements and other evidence of the CONTRACTOR's qualifications and financial responsibility (other than the financial statement referred to in Item 8) are attached hereto and hereby made a part hereof as follows:

N/A

25. Is the proposed CONTRACTOR, and/or are any of the proposed subcontractors, currently involved in any construction-related litigation?

Yes                       No

If yes, explain:

N/A

26. State the name, address and telephone numbers of CONTRACTOR's insurance agent(s) and/or companies for the following coverage's. List the amount of coverage (limits) currently existing in each category:

a. General Liability, including Bodily Injury and Property Damage Insurance [Attach certificate of insurance showing the amount of coverage and coverage period(s)] (see attached certificates)

Check coverage(s) carried:

- Comprehensive Form
- Premises - Operations
- Explosion and Collapse Hazard
- Underground Hazard
- Products/Completed Operations Hazard
- Contractual Insurance
- Broad Form Property Damage
- Independent Contractors
- Personal Injury

- b. Automobile Public Liability/Property Damage [Attach certificate of insurance showing the amount of coverage and coverage period(s)]

Check coverage(s) carried:

- Comprehensive Form
- Owned
- Hired
- Non-Owned

- c. Workers Compensation [Attach certificate of insurance showing the amount of coverage and coverage period(s)]
- d. Professional Liability (Errors and Omissions) [Attach certificate of insurance showing the amount of coverage and coverage period(s)]
- e. Excess Liability [Attach certificate(s) of insurance showing the amount of coverage and coverage period(s)]
- f. Other (Specify) [Attach certificate(s) of insurance showing the amount of coverage and coverage period(s)]

- 27. CONTRACTOR warrants and certifies that it will not during the term of the PROJECT, GRANT, LOAN, CONTRACT, DEVELOPMENT and/or RENDITIONS OF SERVICES discriminate against any employee, person, or applicant for employment because of race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by SDHC setting forth the provisions of this nondiscrimination clause.
- 28. The CONTRACTOR warrants and certifies that it will not, without prior written consent of SDHC, engage in any business pursuits that are adverse, hostile or take incompatible positions to the interests of SDHC, during the term of the PROJECT, DEVELOPMENT, LOAN, GRANT, CONTRACT and/or RENDITION OF SERVICES.
- 29. CONTRACTOR warrants and certifies that no member, Commissioner, Councilperson, officer, or employee of SDHC, the AUTHORITY and/or the CITY, and no member of the governing body of the locality in which the PROJECT is situated, no member of the governing body in which SDHC was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of work, has, during his or her tenure, or will for one (1) year thereafter, have any interest, direct or indirect, in this PROJECT or the proceeds thereof.

30. List all citations, orders to cease and desist, stop work orders, complaints, judgments, fines, and penalties received by or imposed upon CONTRACTOR for safety violations from any and all government entities including but not limited to, the City of San Diego, County of San Diego, the State of California, the United States of America and any and all divisions and departments of said government entities for a period of five (5) years prior to the date of this statement. If none, please state:

Government Complaint	Entity	Making	Date	Resolution
N/A				

31. Has the CONTRACTOR ever been disqualified, removed from or otherwise prevented from bidding on or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes                       No

If yes, please explain, in detail,  
N/A

32. Please list all licenses obtained by the CONTRACTOR through the State of California and/or the United States of America, which are required and/or will be utilized by the CONTRACTOR and/or are convenient to the performance of the PROJECT, DEVELOPMENT, LOAN, GRANT, CONTRACT, or RENDITION OF SERVICES. State the name of the governmental agency granting the license, type of license, date of grant, and the status of the license, together with a statement as to whether the license has ever been revoked:

Government Agency	License Description	License Number	Date Issued (Original)	Status (Current)	Revocation (Yes/No)
N/A					

33. Describe in detail any and all other facts, factors or conditions that may adversely affect CONTRACTOR's ability to perform or complete, in a timely manner, or at all, the PROJECT, CONTRACT, SALES of Real Property to, DEVELOPMENT, repayment of the LOAN, adherence to the conditions of the GRANT, or performance of consulting or other services under CONTRACT with SDHC.

N/A

34. Describe in detail, any and all other facts, factors or conditions that may favorably affect CONTRACTOR's ability to perform or complete, in a timely manner, or at all, the PROJECT, CONTRACT, DEVELOPMENT, repayment of the LOAN, adherence to the conditions of the GRANT, or performance of consulting or other services under CONTRACT with SDHC.

Over 20 years of experience in affordable housing and 3,500+ units built to date; strong financials and strong relationships with lenders, investors, cities and localities

35. List all CONTRACTS with, DEVELOPMENTS for or with, LOANS with, PROJECTS with, GRANTS from, and SALES of Real Property to SDHC, AUTHORITY and/or the CITY within the last five (5) years:

Date	Entity Involved (i.e. City SDHC, etc)	Status (Current, delinquent, repaid, etc.)	Dollar Amount
11/15/2017	Grantville Veteran Housing, LP – Zephyr (ENTITY - SDHC)	Current	\$3,000,000
12/14/2017	Twain Housing, LP – Stella (ENTITY - SDHC)	Current	\$7,500,000
12/22/2017	Fairmount Family Housing, LP – Bluewater (ENTITY - SDHC)	Current	\$9,468,500
12/3/2015	Imperial Urban Housing, LP – Cypress (ENTITY - SDHC)	Current	\$3,450,000

36. Within the last five years, has the proposed CONTRACTOR, and/or have any of the proposed subcontractors, been the subject of a complaint filed with the Contractor's State License Board (CSLB)?

Yes                       No

If yes, explain:

N/A

37. Within the last five years, has the proposed CONTRACTOR, and/or have any of the proposed subcontractors, had a revocation or suspension of a CONTRACTOR's License?

Yes                       No

If yes, explain:

N/A

38. List three local references that would be familiar with your previous construction projects:

1. Name: Timothy Elliot, City of Los Angeles Development and Finance Department  
Address: 1200 West 7th Street, Los Angeles CA 90017  
Phone: (213) 808-8596  
Project Name and Description: Vermont Villas – 79 units PSH Veterans & Seniors
2. Name: Brad Richter, Assistant Vice President, Planning, Civic San Diego  
Address: 401 B Street, 4th Floor, San Diego, CA 92101  
Phone: (619) 533-7115  
Project Name and Description: Ten Fifty B – high rise with 229 units between two phases
3. Name: Harry Williams, City of San Marcos

Address: 1 Civic Center Drive, San Marcos, CA 92069

Phone: (760) 744-1050 ext 3238

Project Name and Description: Eastgate – 40 units, mixed use, new construction project

39. Give a brief statement regarding equipment, experience, financial capacity and other resources available to the CONTRACTOR for the performance of the work involved in the proposed project, specifying particularly the qualifications of the personnel, the nature of the equipment and the general experience of the CONTRACTOR.

N/A

40. Give the name and experience of the proposed Construction Superintendent.

<b>Name</b>	<b>Experience</b>
TBD	

**CONSENT TO PUBLIC DISCLOSURE BY CONTRACTOR**

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By providing the "Personal Information", (if any) as defined in Section 1798.3(a) of the Civil Code of the State of California (to the extent that it is applicable, if at all), requested herein and by seeking a loan from, a grant from, a contract with, the sale of real estate to, the right to develop from, and/or any and all other entitlements from the SAN DIEGO HOUSING COMMISSION ("SDHC"), the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO ("AUTHORITY") and/or the CITY OF SAN DIEGO ("CITY"), the CONTRACTOR consents to the disclosure of any and all "Personal Information" and of any and all other information contained in this Public Disclosure Statement. CONTRACTOR specifically, knowingly and intentionally waives any and all privileges and rights that may exist under State and/or Federal Law relating to the public disclosure of the information contained herein. With respect to "Personal Information," if any, contained herein, the CONTRACTOR, by executing this disclosure statement and providing the information requested, consents to its disclosure pursuant to the provisions of the Information Practices Act of 1977, Civil Code Section 1798.24(b). CONTRACTOR is aware that a disclosure of information contained herein will be made at a public meeting or meetings of SDHC, the AUTHORITY, and/or the CITY at such times as the meetings may be scheduled. CONTRACTOR hereby consents to the disclosure of said "Personal Information," if any, more than thirty (30) days from the date of this statement at the duly scheduled meeting(s) of SDHC, the AUTHORITY and/or the CITY. CONTRACTOR acknowledges that public disclosure of the information contained herein may be made pursuant to the provisions of Civil Code Section 1798.24(d).

CONTRACTOR represents and warrants to SDHC, the AUTHORITY and the CITY that by providing the information requested herein and waiving any and all privileges available under the Evidence Code of the State of California, State and Federal Law, (to the extent of this disclosure that the information being submitted herein), the information constitutes a "Public Record" subject to disclosure to members of the public in accordance with the provisions of California Government Section 6250 et seq.

CONTRACTOR specifically waives, by the production of the information disclosed herein, any and all rights that CONTRACTOR may have with respect to the information under the provisions of Government Code Section 6254 including its applicable subparagraphs, to the extent of the disclosure herein, as well as all rights of privacy, if any, under the State and Federal Law.

Executed this 22 day of November, 20 19, at San Diego, California.

CONTRACTOR

By:   
Signature  
President  
Title

**CERTIFICATION**

The CONTRACTOR, Affirmed Housing Group, Inc., hereby certifies that this CONTRACTOR's Statement for Public Disclosure and the attached information/evidence of the CONTRACTOR's qualifications and financial responsibility, including financial statements, are true and correct to the best of CONTRACTOR's knowledge and belief.

By: [Signature]  
Title: President  
Dated: 9/22/2019

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

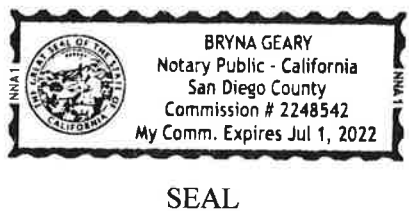
**WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction or any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.**

**JURAT**

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

State of California  
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 22 day of November, 2019  
by James Silverwood \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



[Signature]  
Signature of Notary

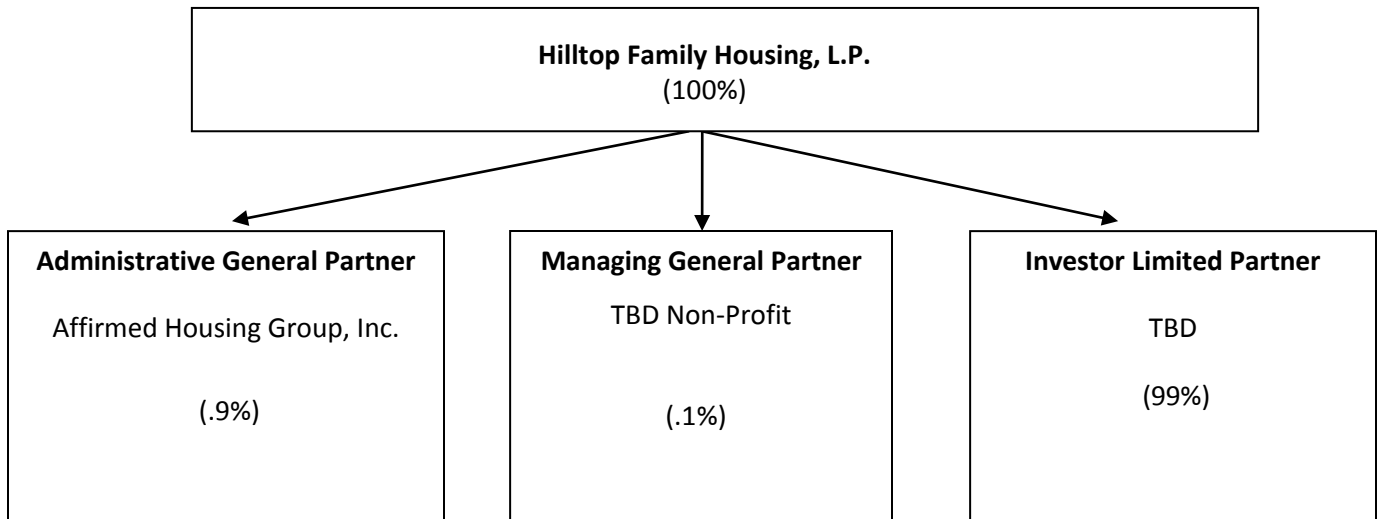


**Hilltop Family Housing, LP**

**OWNERSHIP STRUCTURE:**

**Limited Partnership**

Affirmed Housing Group, Inc., a Delaware for-profit corporation, has formed a Limited Partnership that will be the 100% ownership entity of the affordable housing project. Affirmed Housing Group will own .9% interest, the Investor Limited Partner will have 99% interest in the limited partnership, and the Managing General Partner will own .1% of the limited partnership.



**OFFICERS AND/OR MANAGERS RESPONSIBLE FOR THE PROJECT:**

1. James Silverwood  
President  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128
2. Jimmy Silverwood  
Vice President of Acquisitions & Development  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128
3. Jonathan Taylor  
Senior Project Manager  
Affirmed Housing Group, Inc.  
13520 Evening Creek Dr. N, #160  
San Diego, CA 92128
4. Michelle Muniz  
Application Manager  
Affirmed Housing Group, Inc.  
13520 Evening Creek Drive N. Suite 160  
San Diego, CA 92128

Affirmed Housing Group, Inc. will act as the General Partner in the development of the affordable housing project. Affirmed Housing Group's role in the development will be to obtain all the necessary funding to develop and operate the project, process entitlements, select consultants, General Contractor and property management company, oversee architectural design, construction management and other aspects of the development process as well as manage the limited partnership for the life of the project.

HOUSING AUTHORITY OF  
THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO SETTING FORTH ITS OFFICIAL INTENT TO ISSUE MULTIFAMILY HOUSING REVENUE BONDS TO FINANCE HILLTOP & EUCLID FAMILY HOUSING AND AUTHORIZING RELATED ACTIONS.

WHEREAS, pursuant to Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California, as amended (Act), the Housing Authority of the City of San Diego (Authority) is authorized to issue revenue bonds for the purpose of financing the acquisition, construction, rehabilitation and development of multifamily rental housing and for the provision of capital improvements in connection with and determined necessary to the multifamily rental housing; and

WHEREAS, Affirmed Housing Group, Inc., as sponsor (Affirmed), has requested that the Authority issue and sell multifamily housing revenue bonds (Bonds) pursuant to the Act for the purpose of making a loan to Hilltop Family Housing, L.P., or another limited partnership to be formed by Affirmed, or an affiliate thereof (Borrower), to be used by the Borrower to finance the acquisition, construction and development of a multifamily rental housing development located at 922-944 Euclid Avenue in San Diego, California, as more fully identified in Exhibit A hereto (Project); and

WHEREAS, as a part of financing the Project, the Authority desires to reimburse the Borrower, but only from Bond proceeds, for expenditures (Reimbursement Expenditures) made in

connection with the Project within the period from the date sixty (60) days prior to the date of the adoption of this Resolution to the date of issuance of the Bonds; and

WHEREAS, sections 1.103-8(a)(5) and 1.150-2 of the United States Treasury Regulations require the Authority to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent tax-exempt borrowing; and

WHEREAS, the Authority wishes to declare its intention to authorize the issuance of the Bonds for the purpose of financing the costs of the Project (including reimbursement of the Reimbursement Expenditures, when so requested by the Borrower upon such terms and conditions as may then be agreed upon by the Authority, the Borrower and the purchaser of the Bonds) in an aggregate principal amount not to exceed \$29,000,000, as set forth in Exhibit A; and

WHEREAS, section 146 of the Internal Revenue Code of 1986 limits the amount of multifamily housing revenue bonds that may be issued in any calendar year by entities within a state and authorizes the governor or the legislature of a state to provide the method of allocation within the state; and

WHEREAS, Chapter 11.8 of Division 1 of Title 2 of the California Government Code governs the allocation of the state ceiling among governmental units in the State of California having the authority to issue private activity bonds; and

WHEREAS, section 8869.85 of the California Government Code requires a local agency desiring an allocation of the state ceiling to file an application with the California Debt Limit Allocation Committee (CDLAC) for such allocation, and CDLAC has certain policies that are to be satisfied in connection with any such allocation; NOW, THEREFORE,

BE IT RESOLVED, by the Housing Authority of the City of San Diego, as follows:

Section 1. Findings and Determinations.

(a) The above recitals, and each of them, are true and correct. The Authority hereby determines that it is necessary and desirable to provide financing to the Borrower for the Project (including reimbursement of the Reimbursement Expenditures) by the issuance and sale of the Bonds pursuant to the Act in an aggregate principal amount not to exceed \$29,000,000, as set forth in Exhibit A, subject to authorization of the issuance of the Bonds by resolution of the Authority at a meeting to be held for such purpose. The expected date of issue of the Bonds is within eighteen (18) months of the later of the date the first Reimbursement Expenditure was made and the first date the Project is placed in service and, in no event, later than three years after the date of the first Reimbursement Expenditure.

(b) Proceeds of the Bonds to be used to reimburse for Project costs are not expected to be used directly or indirectly to pay debt service with respect to any obligation or to be held as a reasonably required reserve or replacement fund with respect to an obligation of the Authority or any entity related in any manner to the Authority, or to reimburse any expenditure that was originally paid with the proceeds of any such obligation, or to replace funds that are or will be used in such manner.

(c) As of the date hereof, the Authority has a reasonable expectation that the Bonds will be issued to reimburse Project costs. This Resolution is consistent with the budgetary and financial circumstances of the Authority, as of the date hereof. The Bonds will be repaid solely from proceeds of the Bonds and amounts paid by the Borrower. No other moneys are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the Authority (or any related party) pursuant to its budget or financial policies to repay the Bonds.

Section 2. Declaration of Official Intent. This Resolution is being adopted by the Authority for purposes of establishing compliance with the requirements of sections 1.103-8(a)(5) and 1.150-2 of the Treasury Regulations. In such regard, the Authority hereby declares its official intent to use proceeds of indebtedness to reimburse the Reimbursement Expenditures. This action is taken expressly for the purpose of inducing the Borrower to undertake the Project, and nothing contained herein shall be construed to signify that the Project complies with the planning, zoning, subdivision and building laws and ordinances applicable thereto or to suggest that the Authority, the City of San Diego (City) or any officer or agent of the City will grant any such approval, consent or permit that may be required in connection with the acquisition, construction and development of the Project, or that either the Authority or the City will make any expenditure, incur any indebtedness, or proceed with the financing of the Project.

Section 3. Applications to CDLAC. The officers and/or the program managers of the Authority are hereby authorized and directed to apply to CDLAC for an allocation from the state ceiling of private activity bonds to be issued by the Authority for the Project in an amount not to exceed \$29,000,000, and to take any and all other actions as may be necessary or appropriate in connection with such application, including but not limited to the payment of fees, the posting of deposits and the provision of certificates, additional applications to CDLAC (if necessary), and any such actions heretofore taken by such officers and program managers are hereby ratified, approved and confirmed.

Section 4. Effective Date. This Resolution shall take effect immediately upon its adoption.

Section 5. Approval of Bond Counsel and Financial Advisor. The financing team of Jones Hall, A Professional Law Corporation, as bond counsel and CSG Advisors Incorporated, as financial advisor, is approved for the Project.

Section 6. Authority of President & Chief Executive Officer of Housing Commission. The President & Chief Executive Officer of the Housing Commission, or designee, is hereby authorized to execute all necessary documents, in a form approved by its General Counsel and/or Bond Counsel, and to perform such acts as are necessary to implement the approvals provided for in this Resolution.

APPROVED: MARA W. ELLIOTT, General Counsel

By \_\_\_\_\_  
Marguerite E. Middaugh  
Deputy General Counsel

MEM:jdf  
01/03/20  
Or. Dept.: SDHC  
Doc. No.: 2278288

EXHIBIT A

DESCRIPTION OF PROJECT

Name:	Hilltop & Euclid Family Housing
Location:	922-944 Euclid Avenue, San Diego, CA 92114
Number of Units:	113 units
Maximum Bond Amount:	\$29,000,000

HOUSING AUTHORITY OF  
THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO APPROVING A RESIDUAL RECEIPTS LOAN TO HILLTOP FAMILY HOUSING, L.P., A CALIFORNIA LIMITED PARTNERSHIP, TO FINANCE THE ACQUISITION AND CONSTRUCTION OF THE HILLTOP & EUCLID FAMILY HOUSING DEVELOPMENT.

WHEREAS, the San Diego Housing Commission (Housing Commission) issued a “Notice of Funding Availability” dated November 25, 2018, for proposals from qualified developers for the development of affordable rental housing; and

WHEREAS, Hilltop Family Housing, L.P. (Borrower), has proposed and requested that the Housing Commission provide financial assistance in an amount not to exceed \$8,550,000.00, for the acquisition and construction of the 113-unit “Hilltop & Euclid Family Housing” rental development (Project), located at 922-944 Euclid Avenue, San Diego, California, which will include two unrestricted managers’ units and 111 units of rental housing restricted to extremely low, very-low income and low-income persons (ranging from 30 percent to 60 percent of Area Median Income); and

WHEREAS, on December 3, 2018, the Council of the City of San Diego adopted Resolution Number R-312078, finding that there were no substantial changes proposed to the Project and no substantial changes with respect to the circumstances under which the Project is to be undertaken that would require major revisions in the Program Environmental Impact



Report No. 386029/SCH No. 2014051075 (Report) for the Project, and adopting the Addendum to the Report with respect to the Project; and

WHEREAS, the HOME Investment Partnerships Program (HOME) funds will provide a part of the funding for the Project and a final reservation of HOME funds will occur only upon satisfactory completion of the environmental review and receipt by the City of a release of funds from the U.S. Department of Housing and Urban Development under 24 C.F.R. Part 58 of the National Environmental Policy Act (NEPA). The parties agree that the provision of any HOME funds to the Project is conditioned on the City's determination to proceed with, modify, or cancel the Project based on the results of the subsequent environmental review under NEPA; NOW THEREFORE,

BE IT RESOLVED, by the Housing Authority of the City of San Diego as follows:

1. The Housing Commission is authorized to fund a loan of up to \$8,550,000.00 to the Borrower.
2. The President and Chief Executive Officer of the Housing Commission (President & CEO), or designee, is authorized to take all actions necessary to effectuate the transaction, including executing any and all documents approved by the Housing Commission's general counsel as necessary or appropriate to implement the transaction and to adjust financing terms and conditions as are necessary for consistency with the requirements of other funding sources or to accommodate market changes that may occur after the adoption of this Resolution, provided that the Housing Commission loan in the amount of \$8,550,000.00 may not increase.
3. The President & CEO, or designee, is authorized to substitute approved funding sources with any other available funds deemed appropriate, without further action by the Housing Authority or the Board of Commissioners of the Housing Commission Board (Housing

Commission Board), but only if and to the extent the total Project budget amount after substitution does not exceed the approved total budget.

APPROVED: MARA W, ELLIOTT, General Counsel

By: \_\_\_\_\_  
Marguerite E. Middaugh  
Deputy General Counsel

MEM:jdf  
01/03/20  
Or. Dept.: SDHC  
Doc. No.: 2278287



The City of San Diego  
**Item Approvals**

**Item Subject:** Preliminary Bond Authorization and Loan Recommendation for Hilltop & Euclid Family Housing.

<b>Contributing Department</b>	<b>Approval Date</b>
DOCKET OFFICE	12/26/2019

<b>Approving Authority</b>	<b>Approver</b>	<b>Approval Date</b>
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	MARSHALL, SCOTT	12/24/2019
EXECUTIVE VICE PRESIDENT	DAVIS, JEFF	12/27/2019
CITY ATTORNEY	MIDDAUGH, MARGUERITE	01/08/2020