

ATTACHMENT 5
PROPOSED LOAN NON-BINDING COMMITMENT TERMS
SUMMARY

Iris Trolley (Project)
1507 Howard Avenue
June 3, 2022

The San Diego Housing Commission ("Housing Commission") is pleased to submit this non-binding commitment term summary. The 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 Trolley I Investors, L.P., a California limited partnership ("Borrower") with respect to the proposed new construction and permanent financing of an 64-unit development (with 63 affordable units and one unrestricted manager's unit) to be located at 1507 Howard Avenue, San Diego. Closing must occur within twenty-four (24) months from the date of the San Diego Housing Commission's NOFA Award Letter, unless an extension is granted by the Interim 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 and shall prevail. Provided that 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 \$4,915,200 as a residual receipts loan. Loan funds to be used for the 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 50 percent of the project's residual cash. In addition to the 50 percent residual cash payment the Borrower shall also pay a fixed \$10,000 annual payment to the Housing Commission. 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 per year. "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. The Housing Commission Loan will be due and payable in full in 55 years.

5. Affordability-

- a. Restricted units must remain affordable for at least 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	Units
One Bedrooms	30%	11
One Bedrooms	40%	6
One Bedrooms	50%	13
Subtotal One Bedroom Units	--	30
Two Bedrooms	30%	6
Two Bedrooms	40%	3
Two Bedrooms	50%	8
Subtotal Two Bedroom Units	--	17
Three Bedrooms	30%	6
Three Bedrooms	40%	3
Three Bedrooms	50%	7
Subtotal Three Bedroom Units	--	16
Manager's Unit (Three Bedrooms)	--	1
TOTAL UNITS	--	64

- 6. **Purchase Option** – The developer has received additional points in the Notice of Funding Availability application for committing to provide the Housing Commission with the option to purchase the property at the end of the 15-year tax-credit compliance period.
- 7. **Alternate Funding-** Borrower shall also seek alternative funding, including but not limited to: Infill Infrastructure Grant Program funds, Housing and Community Development Program HCD - AHSC Funds and other necessary funding. 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.
- 8. **Site Value** – In the event that the developer, Trolley I Investors, L.P., 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. Borrower will submit an updated appraisal report with an effective date that is no more than 90 days before the closing.

9. **Closing Costs** - The Borrower shall pay all escrow, title and closing costs, including, without limitation, paying for an American Land Title Association (ALTA) Lenders Policy for the Housing Commission loan with endorsements, as acceptable to the Housing Commission's legal counsel.

10. **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.
 - a. **Contractor** – Cannon Constructors, Inc., is the proposed General Contractor. The General Contractor shall competitively bid the construction work to at least three qualified subcontractors for each major trade involved in the Project's construction and shall be awarded to the lowest qualified and responsive bidder for each trade.
 - b. Borrower will submit copies of three qualified bids received from subcontractors for each trade.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. 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.

g. 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 Certifications 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 16 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.
 - d. Excess funds will be applied first to pay down the accrued interest, and the remaining amount shall pay down the principal.
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 attached 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.

16. Developer Fee-

- a. Maximum Gross Developer Fee of \$2,285,000 to be paid from Development Sources.
 - There will be a \$318,700 Deferred Developer Fee to be paid from the gross developer fee amount of \$2,285,000.
 - There will be a Maximum Net Cash Developer Fee of \$1,966,300 to be paid from the gross developer fee amount of \$2,285,000.
- b. Additional developer fee provisions:
 1. If for any reason the Borrower does not collect the entire developer fee through the last equity installment, with the exception of negative tax credit adjusters, uncollected fee up to \$2,285,000 must comply with the following:
 - a. Borrower must receive Housing Commission prior written approval of any amount of Deferred Developer Fee;
 - b. Any Housing Commission-approved Deferred Developer Fee amount must be calculated as per TCAC and SDHC guidelines
 - c. Housing Commission-approved Deferred Developer Fee shall be given priority over Housing Commission residual receipt payments.
 2. 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, and a relocation plan for the commercial tenants in the existing buildings that will be demolished upon commencement of construction of the Project. The Borrower shall provide the Housing Commission with an updated appraisal within 90 days of the estimated escrow closing date or a Letter of Intent from the third-party lender.

18. **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 for each project as reimbursement of Housing Commission costs related to underwriting and issuing the loan. This must be included in the total development cost of a proposed 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: $\$150 \times 63$ (Project units to be affordability monitored) = **\$9,450** 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) **Environmental Noticing Fee**- publishing/filing costs are to be paid at close of escrow.
19. **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 (21(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 Interim President and CEO or his designee.
20. **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 \$4,915,200, will be provided for this project in any Housing Commission future Notices of Funds Available.

The Remainder of this page intentionally left blank

21. **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. In the event that the Housing Commission ultimately determines to fund (all or any part) of the Housing Commission Loan using any HOME funds, then Borrower should be familiar with the HOME program's rules and regulations, Federal Davis Bacon law and Section 3.
22. **HOME Investment Partnerships (HOME) Funds** - HOME funds may be utilized for this project. In the event that HOME funds are utilized:
- 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 a small portion of the HOME funds must remain in the IDIS system until the project is ready for occupancy.
23. **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, flood 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 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.
24. **Loan Disbursement Schedule** - Upon submittal and approval of eligible costs, the Housing Commission Loan (up to **\$4,915,200**) will be disbursed as follows:
- Up to 75 percent (**\$3,686,400**) at escrow closing.
 - Up to 10 percent (**\$491,520**) to be distributed at 50 percent construction completion,
 - Up to 10 percent (**\$491,520**) to be withheld until the issuance of a Certificate of Occupancy and all unconditional lien releases are forwarded to the Housing Commission.
 - Up to 5 percent (**\$245,760**) upon conversion to permanent financing.
- a. The Housing Commission's Interim President and Chief Executive Officer, or his designee, is authorized to modify the Housing Commission loan disbursement schedule in their sole reasonable discretion.

- b. In the event that the Housing Commission ultimately determines to fund (all or any part) of the Housing Commission loan using any HOME funds, then 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.

25. 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.

26. 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 one manager's unit.
- e. Marketing Plan – In the event the Housing Commission ultimately determines to fund (all or part) of the Housing Commission Loan using any HOME funds, then 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.

27. Maximum Resident Service Expenses & Case Management-

For the calculation of Housing Commission's residual receipts the attached pro forma's operating expense budget models an annual \$36,845 Social Services expenditure with a 3 percent annual escalator). Increasing this amount will require prior Housing Commission written approval.

28. **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.
29. **Permanent Supportive Housing** - This project will not have federal Project Based Vouchers (PBV) from the Housing Commission.
30. **Prevailing Wage** - Prevailing wages will not be triggered by the funds that the Housing Commission has identified for this loan.
31. **Recourse** - The Housing Commission's loan will be recourse until the timely completion of the construction, after which it will become non-recourse.
32. **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. **Transition Reserve** – This project will not have a transition reserve.
 - b. **Marketing/Lease-up Reserve** - The attached pro forma models a capitalized marketing/Lease-Up reserve amount of **\$19,200.**
 - c. **Operating Reserve** - The attached proforma models a three month operating reserve at **\$361,512** at conversion to permanent financing. The operating reserve is to be maintained for the entire term of the Housing Commission's Loan.
 - d. 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.
33. **Section 3-** In the event that the Housing Commission ultimately determines to fund (all or part) of the Housing Commission Loan using any HOME funds, then 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.
34. **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 Interim 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 HousingCommission 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 Interim President and Chief Executive Officer and General Counsel.
35. **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.
36. **Title (ALTA Lender's Policy)** -The Borrower shall acquire, at its sole cost and expense, an ALTA Lender's Policy for the Housing Commission Loan with endorsements acceptable to the Housing Commission.
37. **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.
38. **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 **May 27, 2022**, so that this letter of intent may be attached to the Housing Commission Board report.

The Remainder of this page intentionally left blank

ACKNOWLEDGED AND AGREED TO BY:

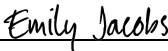
Trolley I Investors, L.P.
Eden Housing, Inc.

By:  _____
Andrea Osgood (May 27, 2022 10:18 PDT)

Print Name: Andrea Osgood

Title: Senior Vice President of Development

San Diego Housing Commission

DocuSigned by:
By:  _____
73FCC317B0464E3...

Print Name: Emily Jacobs

Title: EVP

Loan Terms Attachment:

Exhibit A - Developer's Proforma Dated May 22, 2022

Iris Trolley Loan Terms Attach 5 HC 05-17-2022 CM AC (002)

Final Audit Report

2022-05-27

Created:	2022-05-27
By:	Chris Arthur (Chris.Arthur@edenhousing.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZ5TWTt1cPQuYZP2OqT7ZxoclWBxbbEBH

"Iris Trolley Loan Terms Attach 5 HC 05-17-2022 CM AC (002)" History

-  Document created by Chris Arthur (Chris.Arthur@edenhousing.org)
2022-05-27 - 4:50:11 PM GMT- IP address: 68.15.15.87
-  Document emailed to Andrea Osgood (aosgood@edenhousing.org) for signature
2022-05-27 - 4:50:41 PM GMT
-  Email viewed by Andrea Osgood (aosgood@edenhousing.org)
2022-05-27 - 4:56:59 PM GMT- IP address: 23.118.48.255
-  Document e-signed by Andrea Osgood (aosgood@edenhousing.org)
Signature Date: 2022-05-27 - 5:18:18 PM GMT - Time Source: server- IP address: 23.118.48.255
-  Agreement completed.
2022-05-27 - 5:18:18 PM GMT