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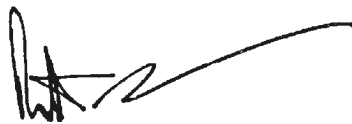
TO The City Council	DATE 7/11/22	COUNCIL FILE NO. 17-0090-S4
FROM The Proposition HHH Administrative Oversight Committee		COUNCIL DISTRICT 3, 12, 14, 15

At its meeting on July 7, 2022, the Proposition HHH (Prop HHH) Administrative Oversight Committee (AOC) considered the attached report from the Los Angeles Housing Department (LAHD) relative to a request to amend the terms of the Prop HHH allocation to Abode Communities, Mercy Housing, and Los Angeles Family Housing (“The Collaborative”), including waiving the revolving construction loan fund and the per unit maximum, which is hereby transmitted to the City Council for consideration.

RECOMMENDATIONS

The Proposition HHH AOC recommends that the Council, subject to the approval of the Mayor:

1. AUTHORIZE the Los Angeles Housing Department (LAHD) to waive the terms in Council File No. 17-0090-S4, which provides the collaborative development team of Mercy Housing, Los Angeles Family Housing (LAFH), and Abode Communities, (The Collaborative), and their proposed use of \$5,000,000 (out of the \$40 million funding award) as a short-term Revolving Construction Loan Fund (RCLF) including, but not limited to, entering into an inter-creditor agreement with a RCLF administrator;
2. AUTHORIZE the LAHD to waive the terms in Section 1.4 and Exhibit E/4a of the Memorandum of Understanding (MOU) and the Collaborative’s Request for Proposal (RFP) application and allow the use of \$5,000,000 (out of the \$40,000,000 Award) as a permanent source for remaining projects as outlined in Table 1 of the LAHD report; and
3. AUTHORIZE the LAHD to allow an increase in the Prop HHH subsidy per unit of \$97,522, per the Collaborative’s RFP application and the executed MOU, for the three remaining projects (refer to Table 1 of the LAHD Report) to \$103,126 HHH per unit (Western PSH) and \$105,126 (Devonshire PSH and Sherman Way PSH), consistent with the terms of the Prop HHH Housing Challenge Request for Proposal and Section 2.4 of the Prop HHH Regulations.



Matthew W. Szabo
City Administrative Officer
Chair, Proposition HHH Administrative Oversight Committee

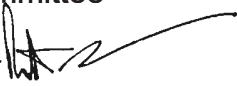
REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: June 27, 2022

CAO File No. 0220-05151-0351
Council File No. 17-0090-S4
Council District: 3, 12, 14, 15

To: Proposition HHH Administrative Oversight Committee

From: Matthew W. Szabo, City Administrative Officer 

Subject: **REPORT FROM THE LOS ANGELES HOUSING DEPARTMENT REQUESTING REMOVAL OF THE REVOLVING CONSTRUCTION LOAN FUND AND WAIVER OF PROPOSITION HHH PER UNIT MAXIMUM TO AWARDEES: ABODE COMMUNITIES, MERCY HOUSING, AND LA FAMILY HOUSING (“THE COLLABORATIVE”).**

SUMMARY

The Proposition HHH (Prop HHH) Citizens Oversight Committee (COC) meeting scheduled on June 17, 2022 was canceled due to a lack of quorum. Therefore, the Los Angeles Housing Department (LAHD), report dated June 17, 2022, is being forwarded directly to the Administrative Oversight Committee (AOC) to ensure Mayor and Council consideration and approval by August 9, 2022. This report requests the amendment of the terms of the Prop HHH allocation to Abode Communities, Mercy Housing, and LA Family Housing (“The Collaborative”), including waiving the revolving construction loan fund and the per unit maximum.

RECOMMENDATION

That the Proposition HHH (Prop HHH) Administrative Oversight Committee (AOC) recommend that the Council, subject to the approval of the Mayor:

1. AUTHORIZE the Los Angeles Housing Department (LAHD) to waive the terms in Council File No. 17-0090-S4, which provides the collaborative development team of Mercy Housing, Los Angeles Family Housing (LAFH), and Abode Communities, (The Collaborative), and their proposed use of \$5,000,000 (out of the \$40 million funding award) as a short-term Revolving Construction Loan Fund (RCLF) including, but not limited to, entering into an inter-creditor agreement with a RCLF administrator;
2. AUTHORIZE the LAHD to waive the terms in Section 1.4 and Exhibit E/4a of the Memorandum of Understanding (MOU) and the Collaborative’s Request for Proposal (RFP) application and allow the use of \$5,000,000 (out of the \$40,000,000 Award) as a permanent source for remaining projects as outlined in Table 1 of the LAHD report; and

3. AUTHORIZE the LAHD to allow an increase in the Prop HHH subsidy per unit of \$97,522, per the Collaborative's RFP application and the executed MOU, for the three remaining projects (refer to Table 1 of the LAHD Report) to \$103,126 HHH per unit (Western PSH) and \$105,126 (Devonshire PSH and Sherman Way PSH), consistent with the terms of the Prop HHH Housing Challenge Request for Proposal and Section 2.4 of the Prop HHH Regulations.

FISCAL IMPACT STATEMENT

There is no impact to the General Fund. The proposed waivers and Prop HHH per unit subsidy increase will be fully funded by proceeds from Prop HHH General Obligation Bonds.

FINANCIAL POLICIES STATEMENT

The recommendation in this report complies with the City's Financial Policies.

Attachment: Los Angeles Housing Department Report to the Proposition HHH Citizens Oversight Committee, Dated June 17, 2022

Ann Sewill, General Manager
Tricia Keane, Executive Officer

City of Los Angeles



LOS ANGELES HOUSING DEPARTMENT

1200 West 7th Street, 9th Floor

Los Angeles, CA 90017

Tel: 213.808.8808

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Daniel Huynh, Assistant General Manager
Anna E. Ortega, Assistant General Manager
Luz C. Santiago, Assistant General Manager

Eric Garcetti, Mayor

INTER-DEPARTMENTAL MEMORANDUM

TO: PROPOSITION HHH CITIZENS OVERSIGHT COMMITTEE

FROM: ANN SEWILL, GENERAL MANAGER *AS*
LOS ANGELES HOUSING DEPARTMENT, FORMERLY LOS ANGELES HOUSING + COMMUNITY INVESTMENT DEPARTMENT ("LAHD")

DATE: JUNE 17, 2022

REGARDING: REQUEST TO REMOVE THE REVOLVING CONSTRUCTION LOAN FUND AND WAIVER OF PROPOSITON HHH PER UNIT MAXIMUM TO AWARDEES: ABODE COMMUNITIES, MERCY HOUSING, AND LA FAMILY HOUSING ("THE COLLABORATIVE").

SUMMARY

The development team, Mercy Housing, Los Angeles Family Housing (LAFH), and Abode Communities, (together, the Collaborative), were approved for an allocation of \$40,000,000 of Proposition HHH proceeds under the Housing Challenge Request For Proposal. One of the proposed uses of the \$40 million in funding is a short term \$5,000,000 Revolving Construction Loan Fund (RCLF). The Abode Communities and LA Family of the Collaborative are now requesting to waive this requirement to use the \$5,000,000 and increase the HHH subsidy on the units for the remaining three projects (as outlined in this memo) to close a financing gap for each project.

RECOMMENDATIONS

- I. The General Manager of LAHD respectfully requests that the Proposition HHH Citizens Oversight Committee (COC) recommend to the Proposition HHH Administrative Oversight Committee (AOC), for further consideration by the City Council and the Mayor, to approve the following actions:
 - A. AUTHORIZE LAHD to waive the terms in the Council File 17-0090-S4 providing collaborative development team, Mercy Housing, Los Angeles Family Housing (LAFH), and Abode Communities, (together, the Collaborative), and their proposed use of \$5,000,000 (out of \$40 million funding award) as a short-term Revolving Construction Loan Fund (RCLF) including but not limited to entering into an inter-creditor agreement with a RCLF administrator.

- B. AUTHORIZE LAHD to waive the terms in Section 1.4 and Exhibit E/4a of the MOU and the Collaborative's RFP application and allow the use of \$5,000,000 (of \$40,000,000 Award) as a permanent source for remaining projects as outlined in Table 1.

- C. AUTHORIZE LAHD to allow an increase in the HHH subsidy per unit of \$97,522 per the Collaborative's RFP application and the executed MOU for the three remaining projects (refer to Table 1) to \$103,126 HHH per unit (Western PSH) and \$105,126 (Devonshire PSH and Sherman Way PSH), consistent with the terms of the Proposition HHH Housing Challenge Request for Proposal and Section 2.4 of the Proposition HHH Regulations.

BACKGROUND

Housing Challenge RFP

On May 9, 2019, the Mayor's Office and LAHD issued the Proposition HHH Housing Challenge Request for Proposals (RFP). On October 16, 2019, the Mayor and City Council authorized LAHD to enter into a Memorandum of Understanding (MOU) with each of the six development teams selected through the RFP. These Memoranda were executed by the development teams on January 10, 2020 (Contract No.C-134881).

The Collaborative "Streamlined Solutions"

Housing Challenge Awardee, the Collaborative, was awarded a Proposition HHH Reservation of \$40 million to build **354** permanent supportive housing units in 6 projects (59 units per project). The Collaborative's program standardizes modular design and reduces timing for securing entitlements. In terms of its financing plan, the Collaborative utilizes 4% Low Income Housing Tax Credits (LIHTC) and bonds. In consideration of the projects utilizing off-site modular construction, the Collaborative utilizes funding from their proposed Revolving Construction Loan Fund (RCLF) using \$5 million of the HHH award.

The Collaborative is on track to build more than the proposed 354 units in five projects. Two sites from the Collaborative, Beacon Landing and Whittier PSH (please refer to Table 1) were approved under the program RFP on September 2, 2020 (C.F. No. 20-0388). Beacon Landing closed financing and Whittier is expected to close financing the week of June 13. On May 26, 2021, (C.F. No. 17-0090-S4) three additional sites representing 239 permanent supportive housing units were approved under the RFP program. These three sites are the subject of this memo and requested authorizations herein: 25820 Western Avenue; 18722 Sherman Way; and 21300 Devonshire Street. (Please refer to Table 1).

These projects are still pending LAHD underwriting. Once reviewed and approved, these projects will be presented for consideration for admission to a Project Expenditure Plan, pursuant to Council File 20-0388.

Requests for Amendments to the MOU

The Collaborative is requesting the aforesaid waiver of Council File 17-0090-S4, and Section 1.4 and Exhibit E/4a of the Council-approved MOU, "Terms Related to Modular Construction" (C.F. No. 17-0090-S8) and terms submitted in the Collaborative's original application submission for the Housing Challenge RFP. Section 1.4 of the MOU states that the \$5 million of the Collaborative's \$40 million award will be used in a Revolving Construction Loan Fund ("RCLF"). This \$5 million was to be repaid to the city within 24 months. The developer is requesting a change in the use of the \$5 million for the RCLF to a capital

use/ permanent use in which the \$5 million would be used as a residual receipt loan, like the remainder of its allocation.

As a result of the use of the \$5 million being used as capital, the developer is also requesting that the original estimate of \$97,122 HHH subsidy per unit (per Exhibit E/Section 4a of the MOU) be increased to \$105,126 HHH subsidy per unit for the three remaining HHH projects. Beacon Landing and Whittier PSH remain at the \$97,122 HHH subsidy per unit figure.

Rationale for Requested Changes

The amendment requests will result in an additional 38 Permanent Supportive Housing units above the Collaborative's original application of 354 PSH units.

The RCLF innovation from the Collaborative's application is still in process despite not utilizing the city portion of \$5 million and was applied to Beacon Landing and Whittier PSH (both HHH financed projects under the RFP). Through the Collaborative's outreach to its funding partners, the Collaborative was able to reduce the amount of predevelopment funding needed for modular deposits, which greatly scaled back the targeted size of the RCLF. As a result, the Collaborative was able to fully fund the RCLF through participation from Community Development Financial Institution (CDFI)/foundation partners without using the HHH proceeds for the RCLF. The RCLF currently has approximately \$6.68 million in funding and has already paid for the upfront modular deposits for the Whittier and Beacon Landing projects, which were repaid at each project's construction closing.

If recommendations in this report are approved, the average of all PSH units over the Collaborative's entire \$40 million award, including these remaining projects as well as the two projects that have already closed, would now be \$101,662 HHH per subsidy per unit (up from \$97,522 after the requested amendment to the MOU).

There is a need for an increased HHH subsidy per unit (from \$97,122) for the last three projects to \$103,126 and \$105,126 due to increase in construction costs, volatile market conditions, and less supplemental subsidy funding sources in a complex and competitive public subsidy funding environment. In addition to helping fund this increase in units, the \$5 million would help to offset, smaller permanent loans due to rising interest rates, and limited availability of No Place Like Home financing, which was originally contemplated in the RFP as a primary gap funding.

The request to amend the HHH per subsidy per unit in the MOU and the Collaborative's application is well within HHH regulations of a maximum \$140,000 HHH subsidy per unit.

TABLE 1

Lead Developer	Project Address	Council District	Total PSH Units (based on 6 projects at Application)	Based on 6 projects (at Application)	HHH Subsidy per PSH Unit (at Application)	Final Unit Mix (based on 5 projects)	Total Units (based on 5 projects)	HHH Contribution (based on 5 projects)	Difference	HHH Subsidy per PSH Unit (REQUEST)	TDC	TDC per Unit
Mercy Housing	3554 E Whittier Blvd**	14	59	\$5,833,333	\$97,222	63 studios 2-br (mgr)	63	\$6,125,000	\$291,667	\$97,222	\$35,875,643	\$569,455
Adobe Communities	319 N Beacon St*	15	59	\$5,833,334	\$97,222	88 studios 2-br (mgr)	88	\$8,555,556	\$2,722,222	\$97,222	\$46,424,749	\$527,554
Adobe Communities	25820 Western Ave.	15	59	\$5,833,320	\$97,222	59 studios 2-br (mgr)	80	\$8,289,109	\$2,455,789	\$103,614	\$36,679,381	\$458,492
LA Family Housing	21300 Devonshire St	12	59	\$5,833,320	\$97,222	84 studios 1-br (mgr)	99	\$10,407,427	\$4,574,107	\$105,126	\$43,716,261	\$441,578
LA Family Housing	18722 Sherman Way	3	59	\$5,833,320	\$97,222	59 studio 1-br (mgr)	63	\$6,622,908	\$789,588	\$105,126	\$29,290,120	\$464,923
6th Project (No longer a project)	NA	NA	59	\$5,833,320	\$97,222	NA	NA	\$0	-\$5,833,320	NA	NA	NA
Total/Average			384	\$34,999,947	\$97,222	NA	393	\$40,000,000	\$5,000,053	\$101,662	\$38,397,231	\$492,400

*Closed Transaction

**Pending Closing

LAHD recommends that the MOU be amended and allow for the \$5M of the Collaborative's Challenge Award to be used as a permanent source. LAHD also recommends that the MOU be amended to allow for an increase in the HHH per unit subsidy based on rationale outlined in this memo.

FISCAL IMPACT

There is no fiscal impact.

ATTACHMENTS:

Memorandum of Understanding (MOU)

CONTRACT SUMMARY SHEET

TO: THE OFFICE OF THE CITY CLERK,
COUNCIL/PUBLIC SERVICES DIVISION
ROOM 395, CITY HALL

DATE: 1/13/20

FROM (DEPARTMENT): Los Angeles Housing + Community Investment Department

CONTACT PERSON: Frederick White PHONE: 213-448-5164

CONTRACT NO.: C-134881 COUNCIL FILE NO.: 17-0090-S4

ADOPTED BY COUNCIL: 10/15/19

DATE

APPROVED BY BPW: _____

DATE

- NEW CONTRACT
- AMENDMENT NO. _____
- ADDENDUM NO. _____
- SUPPLEMENTAL NO. _____
- CHANGE ORDER NO. _____

CONTRACTOR NAME: Mercy Housing California, Abode Communities, LA Family Housing

TERM OF CONTRACT: 1/10/2020 THROUGH: 12/31/2022

TOTAL AMOUNT: \$40,000,000

PURPOSE OF CONTRACT:

For the construction of approximately 360 permanent supportive housing units.

**PROPOSITION HHH MAYOR'S HOUSING CHALLENGE
MEMORANDUM OF UNDERSTANDING**

between

THE CITY OF LOS ANGELES

and

**Mercy Housing California
Abode Communities
L.A. Family Housing Corporation**

Sponsor: **Mercy Housing California, Abode Communities, L.A. Family
Housing Corporation**

Program: **Streamlining Housing Solutions**

Maximum Loan Amount: **\$40,000,000**

Funding Source: **Prop. HHH General Obligation Bond Proceeds**

Los Angeles City Council File Number: 17-0090-S4

Said Agreement is Number 0-134881 **Of City Contracts**

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EXHIBIT LIST

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EXHIBIT LIST CONT'D

EXHIBIT M	FORM OF SCHEDULE OF PERFORMANCE
EXHIBIT N	FORM OF AFFORDABILITY RESTRICTIONS AND MAXIMUM RENTS
EXHIBIT O	SECTION 3
EXHIBIT P	MAYOR'S EXECUTIVE DIRECTIVE NO. 2001-26

**PROPOSITION HHH MEMORANDUM OF UNDERSTANDING
(Mercy, Abode, LA Family Housing)
(MAXIMUM OF \$40,000,000)**

This Proposition HHH Memorandum of Understanding (“MOU”) is made and entered into by and between the City of Los Angeles, a municipal corporation (“City”), and Mercy Housing California, Abode Communities, and L.A. Family Housing Corporation, on a joint and several basis (each a “Program Sponsor”, and collectively, the “Collaborative”).

RECITALS

A. WHEREAS, on or about June 29, 2016, the Los Angeles City Council adopted a Resolution proposing the issuance of general obligation bonds to be submitted for approval by a two-thirds vote of the qualified voters of the City, in accordance with California Constitution Article XIII A, Section 1(b)(2), in order to finance the acquisition or improvement of real property to provide: (a) supportive housing for extremely low income or very low income individuals and families who are Homeless or Chronically Homeless, which includes facilities from which assistance and services, such as mental health treatment, health care, drug and alcohol treatment, education and job training, may be provided; (b) temporary shelter facilities, storage facilities, shower facilities and other facilities to be used to provide supportive services or goods to, or otherwise benefit, those who are Homeless, Chronically Homeless or at risk of homelessness; (c) affordable housing, including veterans housing, for extremely low income, very low income and/or low income individuals and families, including those who are at risk of homelessness; and (d) associated infrastructure and landscaping, including utilities, sidewalks and streets to be used in connection with the aforementioned housing units and other facilities; any of which may be operated, managed, owned or used by the City, other public entities, nonprofit entities or private entities, as permitted by law (the “Resolution”); and

B. WHEREAS, the Resolution was supported by findings, including that (1) the Los Angeles Homeless Services Authority identified approximately 26,000 Homeless persons within the City, (2) the Homeless population represented all segments of society, including all ethnicities and ages, and affected areas throughout the City, (3) the homelessness situation has created a public health and safety crisis, which has been exacerbated by the underbuilding of housing in the City, which has created a shortage of housing for all residents, including the Homeless population, and (4) low-income individuals and households face a greater risk and danger of homelessness because of the shortage of housing and affordable housing in the City of Los Angeles and resulting high rents; and

C. WHEREAS, pursuant to the Resolution, the Office of the Los Angeles City Attorney presented the proposed general obligation bond proposition to the public as the “HOMELESSNESS REDUCTION AND PREVENTION, HOUSING, AND FACILITIES BOND. PROPOSITION HHH”, referred to hereinafter as “Prop HHH”; and

D. WHEREAS, during the general election in November 2016, voters in the City passed Prop HHH by the requisite two-thirds margin, thereby authorizing the City to issue up to \$1.2 billion in General Obligation bonds over a ten-year period for the purposes outlined in the Resolution; and

E. WHEREAS, the City designated the Housing and Community Investment Department of the City of Los Angeles (“HCIDLA”) as the department sponsor for the Prop HHH Permanent Supportive Housing Program in order to fund the acquisition and/or improvement of real property for the construction of permanent supportive housing units for those who are Homeless or at risk of homelessness; and

F. WHEREAS, on October 15, 2019, City Council authorized issuance of a commitment to the Collaborative of up to \$40,000,000 based on the Program Sponsor’s selection as a recommended program for funding pursuant to the Proposition HHH Housing Challenge Request for Proposals (Council File No. 17-0090-S4); and

G. WHEREAS, as part of its Proposition HHH Housing Challenge application, the Collaborative proposes the new construction of 100% permanent supportive housing projects for a total of no less than 360 units and no less than one manager’s unit per Project. The Streamlining Solutions strategy works to develop supportive housing faster and at a lower cost by standardizing modular design, cutting entitlement time, utilizing a financing plan with modular construction in mind, and demonstrating cost savings with replicable modular construction (the “Program”, as more particularly described in Exhibit A); and

H. WHEREAS, City Council’s authorization of the commitment for up to Forty Million Dollars (\$40,000,000) in funding remains subject to conditions, including but not limited to:

- a. A Program Sponsor (or its designated affiliate) obtaining site control for any Property where a Project under the Program is to be located within four (4) months from the date of execution of this MOU; and
- b. Final approval by City Council with respect to the details of any particular Project to be funded under the Program, including but not limited to site location, budget, loan amount, and the size and terms of affordability restrictions for the Project (“Council Project Approval”); and

c. A Program Sponsor's and the City's agreement on Project-level documentation; and

I. WHEREAS, as a condition of disbursement of any funds committed under this MOU, for any given Project funded under the Program, a Program Sponsor shall cause its affiliated Borrower to execute, among other things, a Project Loan Agreement, a City Note, a City Deed of Trust, and a City Regulatory Agreement, with each Deed of Trust and the City Regulatory Agreement to be recorded against the corresponding Property in the Official Records of the County of Los Angeles (with forms of such documents attached as exhibits hereto), prior to the City's distribution of any loan proceeds for such Project pursuant to this MOU and the corresponding Project Loan Agreement; and

J. WHEREAS, these instruments are intended to secure City's continuing interest in the affordability and habitability of all Projects constructed and operated under the Program, as well as to secure performance of other covenants contained in this MOU.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of this MOU, each Program Sponsor and City hereby agree as follows:

The definitions of this MOU are attached as Exhibit B, Definitions. Exhibit B is hereby incorporated into this MOU by this reference.

ARTICLE 1. TERMS

1.1 LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE. Each Program Sponsor represents, on its own behalf, that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Section 21.00 *et seq.* of the Los Angeles Municipal Code). For the term covered by this MOU, each Program Sponsor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance and shall not allow any such Business Tax Registration Certificate to be revoked or suspended.

1.2 FUNDING COMMITMENT. City hereby commits to the Collaborative that it will fund any Project under the Program pursuant to the terms and conditions of this MOU, as well as the Project Loan Agreements and other Project Loan Documents, each of which shall be executed (and where applicable, recorded) prior to any distribution of funds for a particular Project.

On and subject to the terms and conditions of this MOU and the Project Loan Documents, City agrees to make funds available to the Collaborative (via each of the Program Sponsors' affiliated Borrowers) in an amount not to exceed Forty Million Dollars (\$40,000,000), which shall be evidenced by Project Loan Agreement(s), City Note(s), and secured by City Deed(s) of Trust,

and City Regulatory Agreement(s) recorded against each Property where a Project funded under the Program is located. A form of City Note is attached as Exhibit C. A form of City Deed of Trust is attached as Exhibit D. The terms of Exhibit C and Exhibit D are hereby incorporated into this MOU by this reference. The Program is further described in Exhibit A and in the Program Term Sheet attached as Exhibit E, both of which are hereby incorporated into this MOU by this reference.

Upon the date of closing of construction financing for each Project under the Program, Escrow Holder shall record the City Regulatory Agreement and City Deed of Trust with the Recorder for the County of Los Angeles, and shall deliver conformed copies of the recorded documents to the City and the Borrower.

1.3 TERM OF MOU. This MOU shall commence on the date of execution and remain in full force and effect until the earlier of (i) December 31, 2022; (ii) expiration of the timelines for site control selection pursuant to Section 1.5 herein without a designated Program Sponsor obtaining site control for a Project under the Program; or (iii) issuance of the Certificate of Occupancy for the final Project to be funded under the Program.

Notwithstanding the foregoing, any terms of this MOU which are incorporated by reference into a Project Loan Agreement, and assumed by a Borrower through execution of a Project Loan Agreement, shall (i) survive the term of this MOU, (ii) continue to bind the Borrower as signatory to any particular Project Loan Agreement, and (iii) only expire upon termination of the applicable Project Loan Agreement. Upon a Borrower's execution of a Project Loan Agreement, Program Sponsor shall be released from any obligations herein which are assumed by the applicable Borrower under the terms of the Project Loan Agreement.

1.4 TERMS RELATED TO MODULAR CONSTRUCTION.

- A. City and the Collaborative acknowledge and agree that modular construction is an essential component of the Program. As of the date of this MOU, the Mayor's Office is working diligently with the Collaborative and other City stakeholders to create a planning, permitting, inspection process, and timeline applicable to the City's review of modular construction for this Program. The parties are working in good faith to outline this process by the end of February 2020.
- B. Because of the lack of ample construction loan funds for in-factory modular work not yet delivered to a site that secures each applicable Project Loan, the Collaborative proposes a portion of the funding available pursuant to this MOU be used as a Revolving Construction Loan Fund ("RCLF") to be administered by a to-be-determined Community Development Financial Institution ("CDFI"). The

CDFI will fund additional proceeds into the RCLF and also will serve as the administrator of the RCLF. The City acknowledges and agrees that, subject to terms of this MOU, each applicable set of Project Loan Documents, and further conditions, including but not limited to (i) providing City with a sufficient security interest in one or more parcels of real property to be developed as part of the Program (or such replacement security agreeable to City) prior to any disbursements, and (ii) legal clearance by the City's bond counsel for such use of Prop. HHH funding, the City shall disburse funds under the RCLF committed under this MOU with respect to a particular Project prior to the closing of construction loan financing for such Project. The City will enter into an intercreditor agreement with the CDFI and the designated Borrower for the disbursements of funds out of the RCLF.

1.5 PROJECT SITE CONTROL. Under the terms of the Proposition HHH Housing Challenge RFP, and pursuant to modifications made to RFP conditions by City Council [Council File No. 17-0090-S4], each Program Sponsor must obtain documentation of site control acceptable to the City for any Project funded under the Program no later than four (4) months from the date of execution of this MOU. Failure to secure site control for one or more Projects funded under the Program within this timeframe shall result in a commensurate reduction in the total funding commitment by City under this MOU, but in no event will such reduction affect or reduce any Project-specific conditional funding commitment described in Section 1.6 below and in Section 2 of Exhibit E hereto, nor any amount committed under executed Project Loan Documents.

1.6 PROJECT-LEVEL FUNDING COMMITMENTS. For all Projects for which the City receives evidence of site control pursuant to Section 1.5 herein, the City shall promptly issue a conditional commitment for project-level funding consistent with per-unit funding requirements set forth in the Proposition HHH Housing Challenge RFP, Program and Project-level construction budgets, and other City requirements. Project-level funding commitments shall be for a the period outlined in Exhibit E (Program Term Sheet) hereto, at which time the designated Program Sponsor must close on construction financing for the Project, including the execution of all Project Loan Documents (and as applicable, their recordation). Failure to close on construction financing for a Project obtaining a conditional commitment under the Program within this timeframe shall result in a termination of that Project's conditional commitment.

1.7 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between each Program Sponsor and City shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of each Program Sponsor and City as follows:

CITY: City of Los Angeles
Housing and Community Investment Department
P.O. Box # 532729
Los Angeles, CA 90053-2729
Attention: Portfolio Management Unit

Copy to:
Director of Finance and Development Division

PROGRAM

SPONSOR: Mercy Housing California
1500 S. Grand Ave, Ste. 100
Los Angeles, CA 90015
Attention: Ed Holder

Abode Communities
1149 S. Hill St., Ste. 700
Los Angeles, CA 90015
Attention: Lara Regus

LA Family Housing Corporation
7843 Lankershim Blvd.
North Hollywood, CA 91605
Attention: Stephanie Klasky-Gamer

1.8 SOURCES OF FUNDS AND COMPLIANCE WITH FUNDING REQUIREMENTS. The funds committed under this MOU are from the City's issuance of Prop HHH general obligation bonds. The issuance of such bonds was authorized by a voter-approved ballot measure in November 2016 (pursuant to a City Council resolution dated June 29, 2016, Los Angeles Council File 16-1800) and subsequent actions of the Los Angeles City Council, including the adoption of Los Angeles Ordinance 184671 on or about December 14, 2016 and outlining details of the City's Prop HHH program, Los Angeles Council File 16-1060; Los Angeles Ordinance 185013, adopted on or about June 20, 2017 and authorizing the issuance of bonds, Los Angeles Council File 17-0622; and Los Angeles Ordinance 185124, adopted on or about August 18, 2017 in order to levy a property tax to pay for the bonds, Los Angeles Council File 17-0912. The Collaborative must comply with all Prop HHH requirements as well as all requirements imposed on Projects assisted under the applicable sources of funds and any other implementing rules and regulations. In the event of any conflict between this MOU and the regulations of the applicable sources of funds, the most restrictive requirements shall govern.

1.9 USE OF FUNDS. The provisions of this Section 1.8 shall apply on a Project-by-Project basis. Following execution of the Project Loan Documents, the applicable Borrower shall use and/or show proof that it used proceeds of the funding commitment only for the Eligible Costs and in the amount specified in the Budget as well as any revisions to the Budget or Eligible Costs authorized by this MOU, any Project Loan Agreement, or as otherwise approved in writing by City. In its sole discretion, HCIDLA may approve changes in the budget by the execution of an approval letter stating the reasons for the changes which shall include an attached modified budget. Borrower shall adhere to the modified budget. Any line item increases are to be first funded from the contingency line item, then from any costs savings in any one line item. The Eligible Costs are specified in Exhibit E to the applicable Project Loan Agreement, which is hereby incorporated into this MOU by this reference. The Program Budget and Method of Financing are attached hereto as Exhibit E, which is hereby incorporated into this MOU by this reference.

1.10 LOAN DISBURSEMENT. The provisions of this Section 1.9 shall apply on a Project-by-Project basis. Except as may be otherwise permitted in documents related to the RCLF and as approved by City, City shall not be obligated to disburse any of the funds committed under this MOU, or take any other action under the Project Loan Documents, unless all of the conditions precedent contained in Exhibit G to the applicable Project Loan Agreement are satisfied. Borrower may only request disbursement of funds when the funds are needed to pay Eligible Costs as contained in Exhibit E to the applicable Project Loan Agreement, Budget and Eligible Costs. The required environmental review and clearance for a Project must be completed before the applicable Borrower incurs costs. Exhibit G, as applicable to each Project, is hereby incorporated into this MOU by this reference.

Prior to any disbursements, the applicable Borrower shall submit a fully executed Certification and Disclosure Regarding Lobbying, as required by 24 CFR 87.110, attached as Exhibit H to each Project Loan Agreement, which is hereby incorporated into this MOU by this reference. The Borrower shall comply with all provisions of 31 USC §1352 *et seq.*, 29 CFR Part 93, and all City lobbying policies. The Borrower shall also submit an executed Certification Regarding Ineligibility, Suspension and Debarment, as required by Executive Order 12549, attached as Exhibit I to each Project Loan Agreement, which is hereby incorporated into this MOU by this reference.

Prior to any disbursements, a Program Sponsor or its affiliate Borrower shall identify a particular property for acquisition and provide cost, organizational, and other financial documentation reasonably requested by HCIDLA to justify the requested disbursement of loan funds associated with the particular property. Prior to or in conjunction with disbursement, and pursuant to escrow instructions in a form acceptable to HCIDLA, Borrower shall sign a Project Loan Agreement and a City Note in a form acceptable to HCIDLA, and shall further cause the recordation of a City Deed of Trust and City Regulatory Agreement on the property in the Official

Records of Los Angeles County. Any such disbursements made shall be in accordance with the terms of this MOU as well as the Project Loan Agreement for the particular property associated with the disbursement request.

1.11 COLLATERAL. As collateral for each Project Loan Agreement, the Borrower shall provide the City an executed City Deed of Trust in the form attached as Exhibit D (to be executed by the applicable Borrower which shall be the owner or lessee of the property at closing) granting the City a security interest on fee parcels (or approved leasehold parcels) for the Project funded under the Loan. The Borrower shall deliver concurrently with the execution of the City Deed of Trust, the original executed City Note in the form attached as Exhibit C, which City shall hold until the City Note is paid in full.

City shall file a UCC-1 with the California Secretary of State, a form of which is attached as Exhibit J, giving City a security interest in the Improvements, personal property, and Plans and Specifications for each particular Property. Exhibit J is hereby incorporated into this MOU by this reference.

Concurrent with the recordation of each Project's City Deed of Trust and City Regulatory Agreement, and unless the City consents to specific existing liens and encumbrances prior to closing of any respective Project Loan Agreement, all previous deeds of trust for the Project shall be respectively reconveyed, all previous promissory notes for the Project shall be canceled and returned to the Borrower, and all of the previous UCC-1's for the Project shall be terminated.. The form of City Regulatory Agreement is attached hereto as Exhibit K, which is hereby incorporated into this MOU by this reference.

As further security, the designated Program Sponsor (or the applicable Borrower) agrees to assign and transfer to the City, subject to the rights of prior lien holders, its successors or assigns, all of (1) Program Sponsor's (or Borrower's) rights in and to the Plans and Specifications, together with all amendments, modifications, supplements, general conditions and addenda thereto relating to each applicable Project, and (2) Program Sponsor's (or Borrower's) right, title and interest in the agreement between the Program Sponsor and the Architect relating to the development of the Project, in the form attached as Exhibit L, which is hereby incorporated into this MOU by this reference.

1.12 REPAYMENT OF FUNDS. Repayment of any disbursed Loan funds shall be made in accordance with the RCLF, and the terms of each respective Project Loan Agreement and City Note.

1.13 MAINTENANCE OF RECORDS, RIGHT TO INSPECT AND COPY.

- A. Program Sponsor (and for each particular Project, the applicable Borrower) agrees to keep and maintain books, accounts, reports, files, records (including records pertaining to race, color, creed, sex and national origin of tenants and applicants; and books of original entry, source documents supporting accounting transactions, service records, general ledger, and canceled checks), and other documents relating to the receipt and disbursement of all funds and performance under this MOU and in accordance with any other implementing laws, rules and regulations, in paper and/or electronic form. Program Sponsor (or the applicable Borrower) shall maintain copies of such books and records in a location that is within twenty-five (25) miles of the Site. The applicable Borrower shall retain all records evidencing construction of the Project, including architectural plans and specifications and CASp reports.
- B. For each Project, the applicable Borrower's duty to keep and maintain documents include the following forms and reports:
1. Property Management Plans
 2. Affirmative Marketing Documentation
 3. Vacancy Notifications Logs
 4. Applicant Demographics Logs
 5. Proposed Media Ads
 6. Lease Rental Agreement Addenda
 7. Lease/Rental Agreements
 8. Management Company Agreements
 9. House Rules
 10. Tenant Incomes
 11. Rent Certifications
 12. Tenant Income Source Documents
 13. Occupancy Summary (including the race, national origin or ethnicity and disability status of applicants, households on a project waiting list and occupants)
 14. Certificate of Continuing Program Compliance
 15. Log of Reasonable Accommodation/Modification Requests
 16. Accessible Unit Transfer List
 17. Accessible Unit Waiting List
 18. Log of Grievances and Resolution
- C. At all times following reasonable written notice to the Program Sponsor or the

applicable Borrower, any duly authorized representative of the City, the California State Auditor, or applicable federal regulatory agencies shall have access to and the right to inspect, copy, audit, and examine all such books, records, accounts, reports, files, and other documents of the Program Sponsor or Borrower until completion of all close-out procedures and final settlement and conclusion of all issues.

- D. The Program Sponsor or applicable Borrower shall furnish such statements, records, reports, including litigation reports, data and other information, within ten (10) business days, as the City may from time to time reasonably request.
- E. The Collaborative, each Program Sponsor, and each Borrower under the Program shall maintain all records, including records of financial transactions, pertaining to the respective entity's performance of this MOU, in their original form in accordance with requirements prescribed by the City. These records shall be retained for a period of no less than five (5) years following termination of this MOU and after final disposition of all pending matters. "Pending matters" include, but are not limited to, an audit, litigation or other actions involving records. The City may, at its discretion, take possession of, retain and audit said records. Said records shall be subject to examination and audit by authorized City personnel or by the City's representative at any time during the term of this MOU or within the period following termination of this MOU and final disposition of all pending matters. The Collaborative, each Program Sponsor, and each Borrower shall provide any reports requested by the City regarding performance of this MOU. Any contract or subcontract entered into by a Program Sponsor, a Borrower, contractors or any subcontractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this MOU or any Project Loan Agreement.
- F. The Collaborative's and each Program Sponsor's duties hereunder further also apply to a Borrower with respect to that Borrower's Project funded under the Program.

1.14 AUDITS & INSPECTIONS.

- A. Following reasonable written notice, each Program Sponsor, and/or the applicable Borrower for a Project, shall make available for examination at intervals and during normal business hours to City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this MOU and any Project Loan Documents, and shall permit City to audit, examine, and make excerpts or transcripts from such records. City may make audits of any conditions relating to this MOU or the Project Loan Agreements.

- B. Following reasonable written notice to a Program Sponsor or Borrower, at any time during normal business hours and as often as the applicable federal regulatory agencies, California State Auditor or the City may deem necessary, the Program Sponsor or Borrower shall make available for examination, all of its records that support all matters covered by this MOU.**
- C. After commencement of drawing the Loan funds each applicable Borrower shall conduct audits or have audits conducted on an annual basis, in accordance with the Single Audit Act, 31 USC Sec. 7501 *et. seq.*; City Council action dated February 4, 1987, C.F. No. 84-2259-S1 and any administrative regulations or field memos implementing revisions or updates to the audit requirements. The auditor's reports, prepared in accordance with appropriate Federal Audit Standards, and any accompanying management reports on the operation of the entity or this MOU, shall be submitted to the City within one hundred twenty (120) days after the close of the Borrower's fiscal year.**
- 1. The audit is to be conducted annually on an organization wide basis to test the fiscal integrity of financial transactions as well as compliance with the terms and conditions of the Federal grant and this MOU.**
 - 2. If this MOU is terminated sooner than the close of the applicable Borrower's fiscal year, either by completion of the Collaborative's obligations under this MOU or because of default of either party, the audit shall be immediately conducted and submitted to the City within ninety (90) days after such termination.**
 - 3. The applicable Borrower, no later than fifteen (15) days after receipt of the final audit report and within one hundred twenty (120) days after the close of the applicable Borrower's fiscal year, shall submit three (3) copies of the report to the Portfolio Management Section of the HCIDLA.**
 - 4. If the auditor's report or management report identifies deficiencies with internal controls, contract compliance, or cost certification, the applicable Borrower shall prepare and submit a corrective action plan along with the auditor's reports. The plan shall address all deficiencies and provide specific details on corrective actions to be taken along with the date the action was or will be implemented. If the cost certification indicates funds were not spent in accordance with the provisions of this MOU or the applicable Project Loan Agreement, the applicable Borrower shall**

immediately reimburse the City for all such costs, and the City, in its reasonable discretion, may take further action to terminate this MOU.

- D. The City, California State Auditor, or applicable federal regulatory agencies shall have the authority to audit, examine and make excerpts or transcripts from records, including contracts, invoices, participant records and other records supporting this MOU and each Project Loan Agreement.
- E. Subject to approval by City, the Borrower may request the annual review to occur at the same time as the annual review for any other program on the applicable Project ("Mass Recertification Date").
- F. During the term of this MOU, the City and/or its agents will monitor the Collaborative's compliance with the MOU and each Borrower's compliance with the requirements of the source of funds utilized through each Project Loan Agreement. Violations of the MOU and/or funding requirements may result in penalties, fees and expenses being levied against the City. The Collaborative will be responsible for any costs, penalties, fees and expenses levied against the City and will be responsible to pay any expenses incurred by the City to enforce this MOU. The applicable Borrower will be responsible for any costs, penalties, fees and expenses levied against the City with respect to the applicable Project and the Project Loan Documents.

To ensure full compliance with the Accessibility Requirements, HCIDLA will monitor the initial production by applying the updated Alternative Accessibility Standard for new construction per HUD's Notice at 79 Fed. Reg. 29,671 (May 23, 2014), when used in conjunction with the new construction requirements of 24 C.F.R. pt. 8, 24 C.F.R. § 8.22, and the new construction requirements of 28 C.F.R. pt. 35, including the 2010 Standards for Accessible Design as defined in 28 C.F.R. § 35.104 and as applied to public entities (excluding any elevator exceptions). In order to determine compliance with the Accessibility Requirements, the applicable Borrower shall submit and HCIDLA shall review and approve a Certified Access Specialist ("CASP") for the Project. The CASP will: (1) review building plans and specifications for compliance with Accessibility Requirements and issue a Building Plans Compliance Report; (2) conduct progress/rough inspections and issue a Progress Inspection Report of the housing development that identifies any compliance issues; and (3) conduct final inspection(s) to ensure that all compliance issues have been resolved, and issue a set of findings that identify all compliance issues and a final Accessibility Report when the Project is in compliance.

HCIDLA shall inspect the construction and/or rehabilitation of each Project to verify that the correct number of Accessible Housing Units have been produced and that the necessary and required design elements have been constructed to make

the units and site accessible for individuals with disabilities, in compliance with Article 2 and supported by an independent CASp consultant's report.

During the term of this MOU and through the term of each applicable Project Loan Agreement, HCIDLA will also monitor the ongoing occupancy compliance of the Accessible Housing Units and the Accessible Housing Development, as well as nondiscrimination in regards to individuals with disabilities, utilizing the Housing Development's City approved Property Management Plan and Fair Housing Policy in Regard to Disability. Compliance with the Accessibility Requirements shall include, but not be limited to: target marketing; establishing and monitoring transfer and waiting lists for the Accessible Housing Units, reasonable accommodations and modifications requests; implementation of the service animal policy and policy for re-leasing empty Accessible Housing Units; and all elements contained in the Fair Housing Policy in Regard to Disability dated July 28, 2014, as amended over time.

- G. The Collaborative's and each Program Sponsor's duties hereunder apply to Program-level obligations under this MOU, while the applicable Borrower shall assume any Project-level duties hereunder as part of Borrower's execution of Project Loan Documents. Once such duties are assumed by the applicable Borrower, the Collaborative and Program Sponsor(s) shall be released from such assumed obligations in accordance with Section 1.3 herein.

1.15 PROJECT-SPECIFIC EXPENSES, RESERVES, AND RESIDUAL RECEIPTS.

Distributions of Residual Receipts, and the terms and conditions with respect to project-specific operating expenses and reserves, shall be set forth in detail in each respective Project Loan Agreement for projects funded under the Program.

1.16 TITLE AND TITLE INSURANCE. Each respective Borrower warrants that it shall obtain and maintain good and marketable title to any property acquired under the Program. As a condition for closing on any Project Loan Agreement, each Borrower shall obtain an ALTA lender's policy of title insurance naming City as the insured with liability not less than the principal amount of the Project Loan, issued by an insurer satisfactory to City, excepting only such defects, liens, encumbrances, and exceptions as are approved by City, and containing such endorsements as City may reasonably require.

1.17 ENCUMBRANCE OF PROPERTY. Except as otherwise provided in this MOU, no Program Sponsor nor Borrower shall engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon any specific Property where a

Project funded under the Program is located, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Property, except with the prior written consent of City. Until issuance of a Notice of Completion, the applicable Borrower shall notify City in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Property, and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of any Program Sponsor or Borrower, or otherwise.

A. The following liens and encumbrances, subject to City's conditions for subordination of a City Deed of Trust and/or City Regulatory Agreement, have been approved by City as allowable encumbrances to a City Deed of Trust and/or City Regulatory Agreement:

- 1. General ad valorem real property taxes not yet due and payable.**
- 2. Easements, Special Assessments, etc.**
- 3. Deeds of Trust in the amounts and priority, as specified in Exhibit F, Method of Financing.**

B. The Program Sponsor (and after execution of a Project Loan Agreement, the Borrower) shall provide notice to its other lenders of the City's requirements for any subordination of a Project's City Deed of Trust and/or City Regulatory Agreement. If City is requested to subordinate any project-specific City Deed of Trust and/or City Regulatory Agreement, any request shall be subject to, but not limited to, the following terms:

- 1. The subordinated amount, including any additional advances, shall not exceed the amount authorized by the Los Angeles City Council and is subject to HCIDLA policies and approvals.**
- 2. Upon a default under the senior loan documents, senior lender and Borrower shall provide City written notice giving City an additional thirty (30) days prior to the senior lender filing a notice of default with the Los Angeles County Recorder's Office.**
- 3. Upon a default under the senior loan documents, senior lender shall give City a right to purchase the Property from the Borrower, at any time after the default under the senior loan documents but prior to a foreclosure sale.**

4. Upon the purchase of the Property by the City, the senior lender shall permit the City to assume the Borrower's obligations under the senior loan under the original terms and conditions.
5. There shall be no material modification of the senior loan documents without the prior written consent of City, which consent will not be unreasonably withheld or delayed.
6. Senior lender agrees that it will not modify the senior loan so as to: a) increase the principal amount of the loan, b) increase the interest rate, c) decrease the term, or d) permit substitution of the security collateral, without the prior written consent of City.

ARTICLE 2. EMPLOYMENT

2.1 NONDISCRIMINATION.

Unless otherwise exempt, this MOU is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in Los Angeles Administrative Code ("LAAC") Section 10.8, *et seq.*, as amended from time to time.

- A. The Collaborative and each Program Sponsor shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and City. In performing this MOU, each Program Sponsor shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1 (f) are incorporated and made a part of this MOU by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the "Equal Employment Practices" provisions of this MOU.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the "Affirmative Action Program" provisions of this MOU.

Any subcontract entered into by a Program Sponsor for work to be performed under this MOU must include an identical provision.

2.2 EQUAL OPPORTUNITY. Each Program Sponsor and Borrower, and any contractors, subcontractors, and professional service providers for the Program shall comply with all requirements concerning equal employment opportunity as set forth in this MOU and any attachments, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the Project.

A. Pursuant to Executive Order 11246 and implementing regulations at 41 CFR Chapter 60, each Program Sponsor, for itself and its successors and assigns, agrees that:

1. The Program Sponsor shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, gender identity, transgender status, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. The Program Sponsor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, marital status, domestic partner status, pregnancy, childbirth and related medical conditions, familial status, acquired immune deficiency (AIDS), acquired or perceived, citizenship, and political affiliation or belief. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Program Sponsor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
2. The Program Sponsor shall, in all solicitations or advertisements for employees placed by or on behalf of the Program Sponsor, state that all qualified applicants will receive consideration for employment without regard to race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical

handicap, mental disability, medical condition, marital status, domestic partner status, pregnancy, childbirth and related medical conditions, familial status, acquired immune deficiency (AIDS), acquired or perceived, citizenship, and political affiliation or belief.

3. The Program Sponsor shall send a notice to each labor union or representative of workers with which the Program Sponsor has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of the Program Sponsor's commitments under Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Program Sponsor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Program Sponsor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to the Program Sponsor's books, records and accounts by the City, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of a Program Sponsor's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this MOU may be canceled, terminated, or suspended in whole or in part and each Program Sponsor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law; provided, however, the City shall have no right to either terminate or take other remedial action with respect to any Project Loan Agreement signed by the City and a non-defaulting Borrower.
7. Each Program Sponsor and Borrower shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase

order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. The Program Sponsor will take such action with respect to any construction contract, subcontract, or purchase order as the City or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two (2) lines of this subsection shall be changed to read "During the performance of this Contract, the Program Sponsor agrees as follows:" and the term "Program Sponsor" shall be changed to "Contractor."

- B. Except as provided in California Government Code Section 12940, *et seq.*, the Program Sponsor shall not engage in the following prohibited employment practices:

Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or to discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

- C. Unless otherwise exempt, this agreement is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, State and Federal requirements, as amended from time to time.

1. During the performance of this agreement, Program Sponsor agrees and represents that it will provide equal employment practices, including compensation, and Program Sponsor and each contractor and subcontractor hereunder will ensure that in his or her employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship and political affiliation or belief

- a. **This provision applies to work or service performed or materials manufactured or assembled in the United States.**
 - b. **Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.**
 - c. **Program Sponsor agrees to post a copy of Paragraph 1 hereof in conspicuous places at its place of business available to employees and applicants for employment.**
2. **Program Sponsor will, in all solicitations or advertisements for employees placed by or on behalf of Program Sponsor, state that all qualified applicants will receive consideration, including compensation, for employment without regard to their race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief.**
 3. **As part of the City's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, Program Sponsor shall certify in the specified format that he or she has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis of compensation or because of race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief.**
 4. **Program Sponsor shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment practices provisions of City contracts. Program Sponsor shall, upon request, provide evidence that it has or will comply therewith.**
 5. **The failure of any Program Sponsor to comply with the Equal Employment Practices provisions of this contract may be deemed to be a material breach of City contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No**

such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to Program Sponsor.

6. Upon a finding duly made that Program Sponsor has failed to comply with the Equal Employment Practices provisions of a City contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City. In addition such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Program Sponsor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, Program Sponsor shall be disqualified from being awarded a contract with the City for a period of two years, or until Contractor shall establish and carry out a program in conformance with the provisions hereof.
7. Notwithstanding any other provision of this contract, the City shall have any and all other remedies at law or in equity for any breach hereof.
8. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
9. At the time a supplier registers to do business with the City, or when an individual bid or proposal is submitted, Contractor shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of City Contracts.
10. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - a. Hiring practices;
 - b. Compensation;
 - c. Apprenticeships where such approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
 - d. Training and promotional opportunities; and
 - e. Reasonable accommodations for persons with disabilities.
11. Any contract or subcontract entered into by Program Sponsor, to the extent allowed hereunder, shall include a like provision for work to be performed

under this Contract. Failure of Program Sponsor to comply with this requirement or to obtain the compliance of its contractors or subcontractors with all such obligations shall subject Program Sponsor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the Program Sponsor's Contract with the City.

- 2.3 AFFIRMATIVE ACTION PROGRAM.** Unless otherwise exempt, this contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, State and Federal requirements, as amended from time to time.
- A.** During the performance of a City contract, each Program Sponsor certifies and represents that Program Sponsor and each contractor and subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, including compensation, persons are employed and employees are treated equally and without regard to or because of race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. Program Sponsor shall and shall cause contractors and subcontractors to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B.** Program Sponsor will, in all solicitations or advertisements for employees placed by or on behalf of Program Sponsor, state that all qualified applicants will receive consideration for employment, including compensation without regard to their race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief.
- C.** As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract compliance, Program Sponsor shall certify on an electronic or hard copy form to be supplied, that Program Sponsor, its contractor or subcontractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis of compensation or because of race, religion, national origin, ancestry, sex, sexual

orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, domestic partner status, marital status, pregnancy, childbirth and related medical conditions, citizenship, and political affiliation or belief.

- D. Program Sponsor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts. Program Sponsor shall, upon request, provide evidence that it has or will comply therewith.
- E. The failure of a Program Sponsor or any contractor or subcontractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the applicable Program Sponsor with a copy to other members of the Collaborative.
- F. Upon a finding duly made that any Program Sponsor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City. In addition such breach may be the basis for a determination by the awarding authority or the Board of Public Works that said Program Sponsor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such Program Sponsor shall be disqualified from being awarded a contract with the City for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that a Program Sponsor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to Program Sponsor by the City under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City shall have any and all remedies at law or in equity for any breach hereof.

- I. **Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.**
- J. **Each applicable Borrower shall submit an Affirmative Action Plan which shall meet the requirements of the Los Angeles Administrative Code at the time it submits its bid or proposal or at the time it registers to do business with the City. The Plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require Borrower's contractors, subcontractors, and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a Plan, Borrower may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, Borrower must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.**
1. **Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.**
 2. **Borrower may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.**
- K. **The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and Program Sponsor.**
- L. **The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:**
1. **Apprenticeship where approved programs are functioning and other on-the-**

- job training for non-apprenticeable occupations;**
2. **Classroom preparation for the job when not apprenticeable;**
 3. **Pre-apprenticeship education and preparation;**
 4. **Upgrading training and opportunities;**
 5. **Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;**
 6. **The entry of qualified women, minority and all other journeymen into the industry; and**
 7. **The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimizes the impact of any disability.**
- M. **Any adjustments which may be made in the applicable Borrower's, contractor's, subcontractor's or supplier's work force to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.**
- N. **Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration; pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its contract compliance Affirmative Action Program.**
- O. **All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the Contract and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the Contract.**

2.4 LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE.

- A. Each Program Sponsor shall comply with the Living Wage Ordinance, LAAC Section 10.37, *et seq.*, as amended from time to time. Program Sponsor further agrees that it shall comply with federal laws proscribing retaliation for union organization. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.
- B. Each Program Sponsor shall comply with the Service Contract Worker Retention Ordinance, LAAC Sections 10.36, *et seq.*, as amended from time to time. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.
- C. A Program Sponsor's duties hereunder further apply to any Borrower of a Project funded under the Program, and Program Sponsor shall cause any such designated affiliate to comply with the obligations of Program Sponsor hereunder.

2.5 AMERICANS WITH DISABILITIES ACT, ACCESS AND ACCOMMODATIONS.

Each Program Sponsor represents and certifies for itself that:

1. Program Sponsor shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Sections 12101, *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sections 701, *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments; and California Government Code Section 11135. Program Sponsor further represents that the Project will be designed, constructed, completed, and operated in a manner consistent with the Accessibility Covenants contained in Exhibit D to the City Regulatory Agreement.
2. Program Sponsor shall not discriminate on the basis of disability or on the basis of person's relationship to, or association with, a person who has a disability;
3. Program Sponsor shall provide reasonable accommodation upon request to ensure equal access to all of its programs, services and activities;
4. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 CFR, Part 40; and

5. The buildings and facilities used to provide services under this MOU are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, the Accessibility Covenants in the City Regulatory Agreement, or other applicable federal and state law.

Each Program Sponsor understands that the City is relying upon these certifications and representations as a condition to funding this MOU. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.

2.6 EQUAL BENEFITS ORDINANCE. Unless otherwise exempt, this MOU is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the project, each Program Sponsor certifies and represents for itself that the Program Sponsor and any contractor and subcontractor will comply with the EBO.
- B. The failure of the Program Sponsor to comply or to ensure that any contractor or subcontractor comply with the EBO will be deemed by the City to be a material breach of the MOU.
- C. If the Program Sponsor and any contractor and subcontractor fails to comply with the EBO, the City may cancel, terminate or suspend the MOU, in whole or in part, and all monies due or to become due under the MOU may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against the Program Sponsor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the City's designated Administrative Agency determines that a Program Sponsor has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the MOU. Violation of this provision may be used as evidence against the Program Sponsor in actions taken pursuant to the provisions of the Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- F. The Program Sponsor shall post and shall ensure posting the following statement in conspicuous places at its place of business and the project available to employees

and applicants for employment:

"During the performance of this project with the City of Los Angeles, the Program Sponsor and any contractor or subcontractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of contract Compliance at (213)847-1922".

2.7 CONTRACTOR RESPONSIBILITY ORDINANCE. Each Program Sponsor shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40, *et seq.*, as amended from time to time.

2.8 SLAVERY DISCLOSURE ORDINANCE. Each Program Sponsor shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41, *et seq.*, as amended from time to time. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.

2.9 DISCLOSURE OF BORDER WALL CONTRACTING ORDINANCE. Each Program Sponsor shall comply with the Border Wall Contracting Ordinance, LAAC Section 10.50, *et seq.*, as amended from time to time. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.

2.10 PROGRAM SPONSORS USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS. Each Program Sponsor shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48, *et seq.*, as amended from time to time. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.

2.11 FIRST SOURCE HIRING ORDINANCE. Each Program Sponsor shall comply with the First Source Hiring Ordinance (FSHO), LAAC Sections 10.44, *et seq.* as amended from time to time. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.

2.12 CHILD SUPPORT ASSIGNMENT ORDERS. Each Program Sponsor shall comply with the Child Support Assignment Orders Ordinance, LAAC Section 10.10, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, Program Sponsor shall fully comply with all applicable State and Federal employment reporting requirements. Failure of Program Sponsor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of Program Sponsor to comply with any Wage and Earnings Assignment or Notices of Assignment

applicable to them personally, shall constitute a default by the Program Sponsor under this Loan Agreement. Failure of Program Sponsor or principal owner(s) to cure the default within ninety (90) days of the notice of default will subject this MOU to termination for breach. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.

2.13 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. By executing this MOU, each Program Sponsor acknowledges that any Project funded under the Program constitutes a “public works” project pursuant to California Labor Code, Section 1720, thereby subjecting Program Sponsor, the applicable Borrower, and the Project to the further requirements of California Labor Code sections 1771, 1774-76, 1777.5, 1813, and 1815.

For any Project funded under the Program, the respective Borrower shall monitor and enforce the equal employment opportunity, MBE/WBE provisions, and prevailing wage requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that the Borrower fails to monitor or enforce these requirements against any contractor or subcontractor, the Borrower shall be liable for the full amount of any underpayment of wages, plus costs and attorney’s fees, as if the Borrower was the actual employer, and City may withhold payments to the Borrower, may impose liquidated damages on the Borrower in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default under the applicable Project Loan Agreement and this MOU and pursue any of the other remedies available under this MOU.

2.14 LABOR COMPLIANCE MEETING. The applicable Program Sponsor and Borrower shall meet with HCIDLA’s Labor Compliance staff for pre-construction briefings on all City construction requirements prior to the issuance of a notice to proceed for any Project funded under the Program.

2.15 LOCAL BUSINESS PREFERENCE ORDINANCE. Each Program Sponsor shall comply with the Local Business Preference Ordinance, LAAC Sections 10.47, *et seq.* as amended from time to time. Any subcontract entered into by Program Sponsor for work to be performed under this MOU must include an identical provision.

ARTICLE 3. INDEMNITY AND INSURANCE

3.1 INSURANCE COVERAGE.

- A. **General Conditions.** During the term of this MOU and City Regulatory Agreement and without limiting each Program Sponsor's obligation to indemnify, hold harmless and defend City, each applicable Borrower on a Project shall provide and

maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (Form General 146 in Exhibit Q to each Project Loan Agreement). The insurance must (1) conform to City's requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 which is included in Exhibit Q to each Project Loan Agreement); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. Each Borrower shall comply with all Insurance Contractual Requirements shown in Exhibit Q in each Project Loan Agreement, which is hereby incorporated by reference and made a part of this MOU.

- B. Modification of Coverage. City reserves the right at any time during the term of this MOU and City Regulatory Agreement to change the amounts and types of insurance required hereunder by giving each applicable Borrower and any contractor and subcontractor ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to the Borrower and any contractor and subcontractor, City agrees to negotiate additional compensation proportional to the increased benefit to City.
- C. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the commencement of any work, inception of any operations, or tenancy by the Borrower and any contractor and subcontractor.

Each Borrower's and any contractor's and subcontractor's failure to procure or maintain required insurance during the entire term of the respective Project Loan Agreement and City Regulatory Agreement shall constitute a material breach of the Project Loan Agreement and this MOU, under which City may immediately suspend or terminate the Project Loan Agreement and any Project-specific terms of this MOU or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premiums in connection therewith, which shall become an additional obligation of Borrower to City and shall be secured by the applicable Project's City Deed of Trust.

- D. Proceeds. All proceeds of insurance with respect to loss or damage to any Project funded under the Program during the term of the City Loan shall be payable, under the provisions of the policy of insurance, jointly to the applicable Borrower, the City, construction lender[s], permanent lenders and any other lender permitted by the City, and said proceeds shall constitute a trust fund to be used for restoration, repair or rebuilding of the Project in accordance with plans and specifications

approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied first to repay the approved secured senior lenders and then to repay the City Loan. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project improvements or any part thereof, the Borrower shall have the right to rebuild the improvements, and to use all available insurance proceeds therefor, provided that (a) such proceeds are sufficient to keep the City Loan in balance and rebuild the improvements in a manner that provides adequate security to the City for repayment of the City Loan or if such proceeds are insufficient then the Borrower shall have funded any deficiency, (b) the City shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the City Loan. If the casualty affects only part of the improvements and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the City Loan in a manner that provides adequate security to the City for repayment of the remaining balance of the City Loans.

- E. Underlying Insurance. Each Borrower shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect Borrower's and City's interests and for ensuring that such persons comply with any applicable insurance statutes. Program Sponsor and each Borrower are encouraged to seek professional advice in this regard.
- F. Worker's Compensation. By signing this MOU, Program Sponsor hereby certifies that it is aware and shall make any contractor and subcontractor aware of the provisions of Sections 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this MOU. By signing each respective Project Loan Agreement, the applicable Borrower shall also certify the foregoing with respect to the applicable Project.

A Waiver of Subrogation in favor of City will be required when work is performed on City premises under hazardous conditions.

3.2 INSURANCE POLICY REQUIREMENTS DURING ACQUISITION. Each Borrower must provide the City with a one (1) year prepaid Certificate of Insurance policy (or binder followed by a certificate within thirty (30) days of loan closing) evidencing the required

coverage stated below. The term of the insurance policy must not be less than the expected development period or one year, whichever is greater:

- A. **Builders Risk Property Insurance.** Prior to the start of construction, each Borrower shall provide and maintain Builders Risk property insurance protecting the Project from "Special Form" causes of loss for the actual replacement cost value of such property. Property insured under this section shall include, but not be limited to the following: All labor and materials comprising new work on the project site, including footings and foundations below grade, materials and equipment destined to become a permanent part of the finished structure and all soft costs applicable to development. Builders Risk insurance shall also extend to building materials located at off-site storage areas or in transit in amounts not less than \$50,000 or actual replacement cost value, whichever is greater. The property insurance limit applicable to all property on the site shall be no less than 100% of the actual replacement cost new. The maximum deductible for Program Sponsors Builders Risk protection shall be \$25,000.
- B. **Mechanical Breakdown (Boiler and Machinery).** For developments which equal or exceed \$5,000,000 in total hard cost funded by the Program, the Borrower shall provide and maintain protection against the perils of mechanical breakdown in amounts not less than the building limit.
- C. **Flood Insurance.** If any Project funded by the Program is located in a Special Flood Hazard Area (SFHA), the respective Borrower shall provide and maintain flood insurance in the maximum amount provided by the National Flood Insurance Program (NFIP) or the full replacement cost of the subject property, whichever is less.
- D. **Commercial General Liability.** Each Borrower shall, at all times during the development period, provide and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage and personal and advertising injury in an amount not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Program Sponsor shall require its general contractor to provide and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, completed operations and personal and advertising injury in an amount not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

3.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. The City's officers, officials, employees or agents shall not be personally liable to Program Sponsor or

any Borrower under the Program for any obligation created under the terms of this MOU or the Project Loan Documents except in the case of actual fraud or willful misconduct by such person.

3.4 BONDS. All bonds required by City shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with LAAC Sections 111.47, *et seq.*, as amended from time to time.

3.5 INDEMNIFICATION. Except for the active negligence or willful misconduct of City, or any of its boards, officers, agents, employees, assigns and successors in interest, the Collaborative, jointly and severally, shall defend, indemnify and hold harmless City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including each Program Sponsor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by any Program Sponsor, subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this MOU. This provision will survive expiration or termination of this MOU and each respective Project Loan Agreement.

3.6 INTELLECTUAL PROPERTY INDEMNIFICATION. The Collaborative, jointly and severally, at its own expense, shall defend, indemnify, and hold harmless the City, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by City, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by a Program Sponsor, or its subcontractors, in performing the work under this MOU; or (2) as a result of City's actual or intended use of any work product furnished by a Program Sponsor, or its subcontractors, under this MOU. The rights and remedies of City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this MOU. This provision will survive expiration or termination of this MOU and each respective Project Loan Agreement.

ARTICLE 4. DEFAULT AND REMEDIES

4.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an "Event of Default" under this MOU:

- A. General Performance of MOU Obligations.** Any breach by the Collaborative or a Program Sponsor of any obligations imposed in this MOU, including but not limited to failing to perform, in whole or in part, any promise, covenant, obligation, or agreement set forth herein, or any representation made by the Collaborative or a Program Sponsor deemed to be untrue;

- B. Representations and Warranties.** A determination by City that any of the Collaborative's or a Program Sponsor's representations or warranties made in this MOU, any statements made to City by the Collaborative or a Program Sponsor, or any certificates, documents, or schedules supplied to City by the Collaborative or a Program Sponsor were untrue in any material respect when made, or that the Collaborative or a Program Sponsor concealed or failed to disclose a material fact from City;

- C. Bankruptcy, Dissolution, or Insolvency.** Any Program Sponsor's, or any general partner of Program Sponsor's, or any corporation controlling Program Sponsor's, (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

4.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For any Event of Default, City shall give written notice thereof to each Program Sponsor by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days (or ten (10) calendar days if the Event of Default is monetary) from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

Notwithstanding anything to the contrary set forth herein, any act or omission stated in this Article 4 as a default shall not constitute an "Event of Default" for the purposes of this MOU if the defaulting party cures, corrects or remedies the act or omission within (a) thirty (30) calendar days (or ten (10) calendar days if the Event of Default is monetary) from receipt from the non-defaulting

party of the aforementioned notice (or refusal thereof), or (b) solely in the event of a non-monetary default, if such non-monetary default cannot be reasonably cured within thirty (30) days, such longer period as is necessary to cure such default, provided the defaulting party commences the cure within the thirty (30) day period from receipt (or refusal) of the aforementioned notice and diligently prosecutes such cure to completion.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by one or more Program Sponsors, or any Borrower's limited partners, shall be deemed to be a cure by the defaulting party (whether the Collaborative or a particular Program Sponsor) and shall be accepted or rejected on the same basis as if made or tendered by the defaulting Collaborative or Program Sponsor.

4.3 CITY'S REMEDIES.

A. Upon the happening of an Event of Default by the Collaborative or any Program Sponsor and a failure to cure said Event of Default within the time specified in Section 4.2 above, City's obligation to disburse funds committed under this MOU but not yet encumbered by or evidenced in a Project Loan Agreement shall terminate, and City may also, in addition to other rights and remedies permitted by the Project Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination City may choose in its sole discretion:

1. Terminate this MOU, in which event any further funding commitments by City covered by this MOU, and not documented in fully-executed (and as applicable, recorded) Project Loan Documents, shall also terminate;
2. Bring an action in equitable relief (1) seeking the specific performance by Program Sponsor of the terms and conditions of this MOU, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
3. Pursue any other remedy allowed at law or in equity.
4. Notwithstanding anything to the contrary herein, the City does not intend to allow for any Projects under this MOU to be cross-defaulted against each other. As a result, a default under one set of Project Loan Documents shall not be considered a default under any other Project Loan Documents for another Project funded under the Program. Moreover, following execution of Project Loan Documents with a Borrower for a particular Project, a

default by the Collaborative or any Program Sponsor under this MOU alone, without independent acts or omissions by the Borrower triggering a default under the Project Loan Documents, shall not trigger a default on the Project.

4.4 PROGRAM SPONSOR'S REMEDIES. Upon the fault or failure of City to meet any of its obligations under this MOU, Program Sponsor may bring an action in equitable relief seeking the specific performance by City of the terms and conditions of this MOU; and/or pursue any other remedy allowed at law or in equity.

ARTICLE 5. GENERAL PROVISIONS

5.1 TIME. Time is of the essence in these Loan Documents.

5.2 CONSTRUCTION OF PROVISIONS AND TITLES HEREIN. All titles, subtitles, or headings in this MOU have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this MOU shall be construed according to its fair meaning and not strictly for or against the City or Program Sponsor. The word "Program Sponsor" in this MOU includes the party or parties identified in the MOU. The singular shall include the plural; if there is more than one Program Sponsor herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

5.3 RELATIONSHIP OF PARTIES. The relationship of the Collaborative, each Program Sponsor, and the City for this Project under this MOU is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. City neither undertakes nor assumes any responsibility or duty to the Collaborative or each Program Sponsor (except as provided for herein) or any third party with respect to the Project, the Property, or the Loan. Except as City may specify in writing, neither the Collaborative nor any Program Sponsor shall have authority to act as an agent of City or to bind City to any obligation.

5.4 OBLIGATIONS OF PROGRAM SPONSOR APPLICABLE TO BORROWER. City acknowledges that each Program Sponsor intends to designate an affiliate acceptable to the City who is controlled by (or whose General Partner is controlled by) Program Sponsor to (i) own or (ii) act as lessee under a long-term lease, for any Project funded under the Program, which affiliate would thereby become the Borrower under the particular Project Loan Agreement funded under the Program. As contemplated in Section 1.3 herein, all obligations of the Collaborative or any Program Sponsor under this MOU shall become the obligations of Borrower with respect to that particular Project, and the terms of this MOU shall be incorporated

by reference into each Project Loan Agreement and into all other Project Loan Documents executed by Borrower.

5.5 ASSIGNMENT AND ASSUMPTION. Neither the Collaborative nor any Program Sponsor shall, unless it has first obtained the prior written consent of the City, (a) assign any of its interests under this MOU or the Project Loan Documents to any other party; (b) delegate, subcontract, or otherwise transfer any of its duties under this contract; except as specifically permitted under the terms of this MOU or the Project Loan Documents. Any unauthorized assignment shall be void.

5.6 BINDING UPON SUCCESSORS. All provisions of this MOU and all Project Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this MOU or any City Project Loan Documents by the Collaborative or any Program Sponsor without City's consent.

5.7 CONFLICTS OF INTEREST. Each Program Sponsor covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administering any of its subcontracts where such person is a director, officer, employee or agent of the subcontractor; or where such person knows or should have known that:

1. A member of such person's immediate family or domestic partner, or organization has a financial interest in the subcontract;
2. The subcontractor is someone with whom such person has or is negotiating any prospective employment; or
3. The participation of such persons would be prohibited by the California Political Reform Act, California Government Code Section 87100, *et seq.*, if such person were a public officer, because such person would have a "financial or other interest" in the subcontract.
4. No members of the Board of Directors may be employed by the Contractor if this Contractor is a corporation.

A. Definitions

1. The term "immediate family" includes, but is not limited to domestic partner and/or those persons related by blood, marriage and/or adoption, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law,

mother-in-law, brother-in-law, son-in-law, and daughter-in-law, his or her significant other, and his or her domestic partner.

2. The term "financial or other interest" includes but is not limited to:

a. Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.

b. Any of the following interests in the subcontractor ownership: partnership interest or other beneficial interest of five percent (5%) or more; ownership of five percent (5%) or more of the stock; employment in a managerial capacity; or membership on the board of directors or governing body.

B. For further clarification of the meaning of any of the terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the City of Los Angeles, State of California, and Federal regulations regarding conflict of interest.

C. Each Program Sponsor further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from an actual or potential subcontractor, supplier, a party to a subagreement, (or persons who are otherwise in a position to benefit from the actions of any officer, employee or agent).

D. Each Program Sponsor shall not subcontract with a former director, officer, or employee within a one (1) year period following the termination of the relationship between said person and the contractor.

E. Prior to obtaining the City's approval or any subcontract, each Program Sponsor shall disclose to the City any relationship, financial or otherwise, direct or indirect, of the Program Sponsor or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees. In the event that such a relationship exists, Program Sponsor shall obtain prior approval from City for any such subcontract.

F. Each Program Sponsor warrants that it has not paid or given and will not pay or give to any third person any money or other consideration for obtaining this MOU

or any of the Project Loan Documents.

- G. Each Program Sponsor covenants that no member, officer or employee of Program Sponsor shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work to be performed in connection with any Projects funded under the Program during his or her tenure as such employee, member or officer or for one (1) year thereafter.
- H. Each Program Sponsor may not hire a person in an administrative capacity, staff position, or on-the-job training position with funds provided by this MOU or under any Project Loan Agreement if a member of that person's immediate family is engaged in an administrative capacity for the Program Sponsor. A person in an administrative capacity is a person who either has an overall administrative responsibility for a program, or has responsibility for the direction, hiring, or fiscal integrity of the Program Sponsor's program.
- I. The Collaborative and each Program Sponsor shall incorporate the foregoing subsections of this section into every agreement that it enters into in connection with any Project funded under the Program.
- J. The above restrictions shall apply now and in the future to all activities that are a part of this MOU and any Project funded under the Program, and shall cover any such interest or benefits during or at any time after such person's tenure.
- K. Each Program Sponsor shall comply with the conflict of interest provisions for all sources of funds. This includes, but is not limited to, the provision that no (a) owner, developer or sponsor of any Project funded under the Program; (b) officer, employee, agent, consultant or elected or appointed official of the owner, developer or sponsor; or (c) a member of the Immediate Family of such person as described in the definitions above in subsection A, may occupy a unit in the development.
- L. Each Program Sponsor covenants that it will comply with the HOME conflict of interest provisions contained within 24 CFR 92.356 and the code of conduct provisions contained within 24 CFR 84.42.

5.8 PROGRAM SPONSOR'S WARRANTIES. Each Program Sponsor shall cause its affiliate Borrower to warrant that the work performed under any Project Loan Agreement shall be completed in manner consistent with professional standards practiced among those firms within Program Sponsor's profession, doing the same or similar work under the same or similar circumstances. Each Program Sponsor represents and warrants, as to itself, (1) that it has access

to professional advice and support to the extent necessary to enable Program Sponsor to fully comply with the terms of this MOU and the Project Loan Documents, and to otherwise carry out the Project in a manner consistent with professional standards practiced among those within Program Sponsor's profession, doing the same or similar work under the same or similar circumstances, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake any Project funded under the Program, and to execute any Project Loan Documents, (4) that the persons executing and delivering any Project's Loan Documents are authorized to execute and deliver such documents on behalf of Program Sponsor; and (5) that each Project funded under the Program will be designed, constructed, completed and operated in a manner consistent with the Accessibility Covenants and any applicable local and state non-discrimination laws, including any subsequent amendments, modifications, and revisions.

5.9 INTELLECTUAL PROPERTY WARRANTY. Each Program Sponsor represents and warrants, as to itself, that its performance of all obligations herein do not infringe in any way, directly or contributory, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

5.10 OTHER AGREEMENTS. Each Program Sponsor represents that it has not and/or will not enter(ed) into any agreements that are inconsistent with the terms of this MOU and each Project's Loan Documents. Program Sponsor shall not enter into any agreements that are inconsistent with the terms of this MOU or each Project's Loan Documents without an express waiver by City in writing.

5.11 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this MOU, Program Sponsor shall maintain and submit records to City within ten (10) business days of City's request which clearly document Program Sponsor's performance under each requirement of this MOU or any Project's Loan Documents.

5.12 CONSENTS AND APPROVALS. Any consent or approval of City or Program Sponsor required under this MOU or any Project's Loan Documents shall not be unreasonably withheld. Any approval required shall be in writing and executed by an authorized representative of the party granting the approval.

5.13 WAIVER. A waiver of a default of any part, term or provision of this MOU must be in writing and shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

5.14 INTEGRATED AGREEMENT. This MOU and the other Project Loan Documents, including exhibits, contains the full and complete agreement between the parties, sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous agreements or understandings, whether written or oral, relating thereto. No verbal agreement nor conversation with any representative of either party shall affect or modify any of the terms and conditions of this agreement. This MOU and the other Project Loan Documents may be amended only as provided for herein or in the Project Loan Documents.

5.15 TIME OF EFFECTIVENESS. Unless otherwise provided, this MOU shall be binding and take effect when all of the following events have occurred:

- A. This contract has been signed on behalf of each Program Sponsor by the person or persons authorized to bind the Program Sponsor hereto;
- B. This contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this contract as to form; and
- D. This contract has been signed on behalf of the City by the person designated by the City Council, or by the board, officer or employee authorized to enter into this contract and has been attested to by the City Clerk.

5.16 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this MOU or the Project Loan Documents must be in writing, and shall be made only if properly executed by the authorized representatives of each Program Sponsor and City (as to this MOU) and each Borrower and City (as to Project Loan Documents). No verbal agreement or conversation with any officer or employee of either party shall affect or modify any terms and conditions of this agreement.

Each Program Sponsor agrees to comply with all future City Directives or any rules, amendments or requirements promulgated by the City affecting this MOU.

5.17 APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT. Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City. This MOU shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. Program Sponsor shall comply with new, amended, or revised laws, regulations, policies, and/or procedures that apply to the performance of this MOU.

In any action arising out of this MOU, Program Sponsor consents to personal jurisdiction,

and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

5.18 CONFLICTS BETWEEN CITY DOCUMENTS. In the event that any monetary provisions of the MOU, City Project Loan Agreement(s), City Regulatory Agreement(s), City Deed(s) of Trust, and/or City Note(s) conflict, the terms of the City Note(s) and City Deed(s) of Trust shall control. In the event that any monetary provisions of the City Note(s) or City Deed(s) of Trust conflict, or in the event that any non-monetary provisions of the MOU, Project Loan Agreement(s), City Regulatory Agreement(s), City Deed(s) of Trust, and/or City Note(s) conflict, the strictest provision shall control.

5.19 STATUTORY REFERENCES. All references in this MOU or the Project Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Los Angeles shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject as the provision to which specific reference was made.

5.20 SEVERABILITY. Every provision of this MOU is intended to be severable. If any provision of this MOU shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

5.21 PUBLICITY. Any publicity generated by Program Sponsor for the Project during the term of this MOU and for one (1) year thereafter shall make reference to the contribution of City in making the applicable Project possible. The words "The City of Los Angeles" will be prominently displayed in any and all pieces of publicity, including but not limited to flyers, press releases, posters, signs, brochures, public service announcements, interviews, and newspaper articles. Program Sponsor further agrees to cooperate with authorized staff and officials of City in any City-generated publicity or promotional activities undertaken with respect to the Project.

5.22 AUTHORITY. Each party to this MOU hereby represents and warrants that each person executing this agreement on behalf of a party has the right, power, legal capacity and authority to enter into and perform under the agreement and that the agreement constitutes valid and binding obligations of such party, enforceable against such party in accordance with its terms.

5.23 EXCUSABLE DELAYS. Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this MOU, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes,

terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as “Force Majeure Events”).

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of Program Sponsor shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both Program Sponsor and Subcontractor, and without any fault or negligence of either of them. In such case, Program Sponsor shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in a sufficient time to permit Program Sponsor to perform timely. As used in this MOU, the term “Subcontractor” means a subcontractor at any tier.

In the event Program Sponsor’s delay or failure to perform arises out of a Force Majeure Event, Program Sponsor agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

5.24 INDEPENDENT CONTRACTOR. Program Sponsor is an independent contractor and not an agent or employee of City. Program Sponsor shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of City.

5.25 DATA PROTECTION.

A. Each Program Sponsor shall protect, using the most secure means and technology that is commercially available, City-provided data or consumer-provided data acquired in the course and scope of this MOU or any Project Loan Agreement, including but not limited to customer lists and customer credit card or consumer data (collectively, the “City Data”). A Program Sponsor shall notify City in writing as soon as reasonably feasible, and in any event within twenty-four hours, of Program Sponsor’s discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting or potentially affecting City Data related to cyber security (a “Security Incident”) including, but not limited to, denial of service attack, system outage, instability or degradation due to computer malware or virus. The Program Sponsor shall begin remediation immediately. The Program Sponsor shall provide daily updates, or more frequently if required by City, regarding findings and actions performed by the Program Sponsor until the Data Breach or Security Incident has been effectively resolved to City’s satisfaction. The Program Sponsor shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with City. At City’s sole discretion, City and its authorized agents shall have the right to lead or participate in the

investigation. The Program Sponsor shall cooperate fully with City, its agents and law enforcement.

B. If City is subject to liability for any Data Breach or Security Incident, then the Program Sponsor shall fully indemnify and hold harmless City and defend against any resulting actions.

5.26 COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT CARD DATA SECURITY STANDARDS. Each Program Sponsor shall comply with all identify theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. The Program Sponsor also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the Program Sponsor shall verify proper truncation of receipts in compliance with FACTA.

5.27 CONFIDENTIALITY. All documents, information and materials provided to each Program Sponsor by City or developed by Program Sponsor pursuant to this MOU, and which were not previously made publicly available by the City (collectively “Confidential Information”) are confidential. No Program Sponsor shall provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by City or as required by law. The Program Sponsor shall immediately notify City off any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this MOU.

5.28 PET OWNERSHIP IN PUBLICLY-FINANCED HOUSING DEVELOPMENTS. With respect to any Project funded under the Program, each Program Sponsor shall comply with the Pet Ownership in Publicly-Financed Housing Developments Ordinance, LAMC Sections 51.20, *et seq.*, as amended from time to time.

[Signatures Begin on Next Page]

IN WITNESS WHEREOF, the City and the Program Sponsor have caused this MOU to be executed by their duly authorized representatives.

City:

**Executed this _____ day of _____, 2019
THE CITY OF LOS ANGELES
Housing and Community Investment Department**

**By: _____
SEAN L. SPEAR,
Assistant General Manager**

**APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney**

**By: _____
Deputy/Assistant City Attorney**

Date: _____

**ATTEST:
HOLLY WOLCOTT, City Clerk**

**By: _____
Deputy City Clerk**

Date: _____

IN WITNESS WHEREOF, the City and the Program Sponsor have caused this MOU to be executed by their duly authorized representatives.

City:

Executed this 10th day of JANUARY, 2019
THE CITY OF LOS ANGELES
Housing and Community Investment Department

By: [Signature]
SEAN L. SPEAR,
Assistant General Manager

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

By: [Signature]
Deputy/Assistant City Attorney

Date: 1/14/20

ATTEST:
HOLLY WOLCOTT, City Clerk

By: [Signature]
Deputy City Clerk

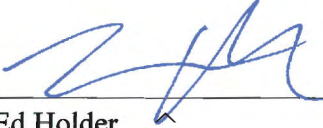
Date: 1/14/20

C-134881



Program Sponsor:

Mercy Housing California,
a California nonprofit public benefit corporation

By: 
Ed Holder
Vice President, Real Estate Development

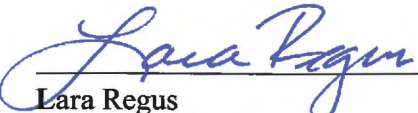
Date: 1/4/10

City Business License Number: 012036-25

Internal Revenue Service ID Number or Social Security Number: 91-3081666

Program Sponsor:

Abode Communities,
a California nonprofit public benefit corporation

By: 
Lara Regus
Senior Vice President, Development


Date: 11/8/2020

City Business License Number: 0000605748-0001-6

Internal Revenue Service ID Number or Social Security Number: 95-6377511

Program Sponsor:

L.A. Family Housing Corporation,
a California nonprofit public benefit corporation

By: 
Stephanie Klasky-Gamer
President and Chief Executive Officer

Date: _____

City Business License Number: 806771-08

Internal Revenue Service ID Number or Social Security Number: 95-3920560

Said Agreement is Number _____ of City Contracts
Council File Number 17-0090-S4

EXHIBIT A
PROP HHH MEMORANDUM OF UNDERSTANDING
[STREAMLINING HOUSING SOLUTIONS]

PROGRAM DESCRIPTION

The Program Sponsor's Strategy focuses on the new construction of 100% permanent supportive housing projects consisting of no less than 360 units, including no less than one manager unit not funded by HHH proceeds for each project, and for residents earning 30% or less AMI. The Streamlining Housing Solutions strategy works to develop supportive housing faster and at a lower cost by standardizing modular design, cutting entitlement time, utilizing a financing plan with modular construction in mind, and demonstrating cost savings with replicable modular construction.; more detailed terms to follow in Exhibit E, the Program Term Sheet.

**EXHIBIT B
PROP HHH MOU
DEFINITIONS**

The following terms have the meanings and content set forth in this section wherever used in this MOU, attached Exhibits, any Project Loan Agreement or other Project Loan Documents, or documents incorporated into this MOU by reference.

1. **"ACCESSIBILITY COVENANTS"** shall mean the accessibility covenants attached as Exhibit D to the form of City Regulatory Agreement, which are hereby incorporated into this MOU by reference, and which describe the obligations of Borrower regarding the accessibility of any Project.

2. **"ACCESSIBILITY STANDARDS"** shall mean the accessibility design and construction standards for the Project as defined in the Accessibility Covenants.

3. **"ANNUAL FINANCIAL STATEMENT"** means the audited financial statement of Operating Expenses and Revenues, prepared at Borrower's expense by an independent certified public accountant acceptable to Lender. All audited annual financial statements submitted by Borrower for the purpose of Residual Receipts calculation under any Project Loan Agreement are to be presented in the standardized format proscribed in HCIDLA's Residual Receipts Loan Reporting Requirements and shall form the basis for determining the Residual Receipts.

4. **"AREA MEDIAN INCOME"** means the median income for the Los Angeles-Long Beach HUD Metro Fair Market Rent Area (FMR Area), as defined by U.S. Department of Housing and Urban Development (HUD), with adjustments for family size, as determined from time to time by HUD pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Los Angeles that HUD may hereafter adopt in connection with said Act.

5. **"ASSIGNMENT OF ARCHITECT'S CONTRACT AND PLANS AND SPECIFICATIONS AND PERMITS"** means the agreement in the form of Exhibit L.

6. **"ASSISTED UNIT"** means a housing unit on a Property which is financed by Prop HHH Funds.

7. **"BORROWER"** shall mean Program Sponsor, or a designee of Program Sponsor for a particular Project acceptable to the City as specified in the Project Loan Agreement and other Project Loan Documents, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

8. **"BUDGET"** means that budget for the development of any Project, a form of which is attached as Exhibit E.

9. **"CERTIFICATE OF OCCUPANCY"** shall mean such certificate as shall be issued to the Program Sponsor (or its designee Borrower) by the City for any Project following completion of the Improvements pursuant to Section 91.109 of the Los Angeles Municipal Code.

10. **"CHRONICALLY HOMELESS"** shall mean (a) experiencing chronic homelessness as defined in 24 C.F.R. Part 578.3; (b) residing in a transitional housing project that will be eliminated and meets the definition of chronically homeless in effect at the time in which the individual or family entered the transitional housing project; (c) residing in a place not meant for human habitation, an emergency shelter, or a safe haven, but where the individuals or families experiencing chronic homelessness as defined in 24 C.F.R. Part 578.3 had been admitted and enrolled in a permanent housing project within the last year and were unable to maintain a housing placement; (d) residing in transitional housing funded by a Joint Transitional Housing and Permanent Housing Rapid Re-Housing component project and who were experiencing chronic homelessness as defined in 24 C.F.R. Part 578.3 prior to entering the project; (e) residing and having resided in a place not meant for human habitation, a safe haven, or an emergency shelter for at least 12 months in the last three years, but has not done so on four separate occasions; or (f) receiving assistance through the Department of Veterans Affairs (VA) funded homeless assistance programs and met one of the above criteria at intake to the VA's homeless assistance system.

11. **"CITY"** means the City of Los Angeles, a municipal corporation.

12. **"CITY DEED OF TRUST"** means any deed of trust, assignment of rents, and security agreement placed on the Borrower's fee interest in a Property, as security for the portion of City Loan funds designated for any Project, with Borrower as trustor, and City as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust, a form of which is attached hereto as Exhibit D. The terms of any City Deed of Trust shall be incorporated by reference into the Project Loan Agreement for the respective Project.

13. **"CITY LOAN"** means the loan for any Project of up to [X] Dollars (\$X) from the City to Borrower, as provided in the MOU.

14. **"CITY NOTE"** means any promissory note for any Project executed by Borrower in favor of Lender evidencing the Loan for the Project, which is secured by a City Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note, in the form hereto as Exhibit C. The terms of each City Note are hereby incorporated into this MOU by this reference.

15. **"CITY REGULATORY AGREEMENT"** means an agreement executed by Borrower and City as part of closing a City Loan, a form of which is attached as Exhibit K, and recorded against each Property prior to or contemporaneously with the City Loan and Deed of Trust, which regulates the use of the Project and stipulates, among other things, that the Project shall remain affordable for a minimum of fifty-five (55) years.

16. **"COMMENCEMENT OF CONSTRUCTION"** means the time Borrower or the construction contractor begins substantial physical construction work on any Project at any Property, including site preparatory work, beyond maintenance of the Property in its status quo condition. Such work shall not include work related solely to the remediation of Hazardous Materials.

17. **"ELIGIBLE COSTS"** means those Project costs for which Loan proceeds may be used as specified in Exhibit E to each Project Loan Agreement, and in the Budget as attached and any revisions to the Budget that are approved in writing by Lender. In addition, other items may be Eligible Costs if approved in writing by Lender.

18. **"ELIGIBLE HOUSEHOLD"** means a household that qualifies to rent and occupy a unit at any Project based on the eligibility and income requirements specified in Exhibit N.

19. **"ESCROW HOLDER"** means the person or entity designated by Borrower and approved by the Lender to hold all Loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

20. **"FAMILY INCOME"** means the gross amount of income of all family members that is anticipated to be received during the coming 12-month period determined in accordance with the definition of Annual Income contained in 24 C.F.R. 5.609.

21. **"FULL OCCUPANCY"** means the initial point at which all units are rented to eligible tenants.

22. **"HAZARDOUS MATERIALS"** means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

23. **"HCIDLA"** shall mean the City of Los Angeles Housing and Community Investment Department of the City of Los Angeles, California.

24. **"HOME FUNDS"** means those funds granted to the City by HUD from the HOME Investment Partnerships Program, codified at 42 U.S.C. Sections 12701, et seq., 24 C.F.R. Part 92, to provide funds for affordable housing.

25. **"HOMELESS"** shall mean (a) an individual who lacks a fixed, regular and adequate nighttime residence; or (b) an individual who has a primary nighttime residence that is: (i) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or (ii) an institution that provides a temporary residence for individuals intended to be institutionalized; or (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

26. **"HOUSING DEVELOPMENT"** means the whole of one or more residential structures and appurtenant structures in the Project, including common walkways and parking lots that were or are designed, constructed, altered, operated, administered or financed in whole or in part in connection with the Project.

27. **"HOUSING UNIT"** means a single unit of residence in the Housing Development that provides spaces for living, bathing and sleeping.

28. **"HOUSING UNIT WITH HEARING/VISION FEATURES"** means a Housing Unit that complies with 24 C.F.R. §8.22 and the applicable UFAS or 2010 ADA Standards.

29. **"HOUSING UNIT WITH MOBILITY FEATURES"** means a Housing Unit that complies with 24 C.F.R. §8.22 and the applicable UFAS or 2010 ADA Standards.

30. **"HUD"** means the United States Department of Housing and Urban Development.

31. **"IMPROVEMENTS"** shall mean construction of the physical structures for any Project resulting in units serving Homeless and Chronically Homeless individuals. Additional use and income restrictions are set forth in each Project Loan Agreement and related exhibits.

32. **"LEASE"** means the lease in a form satisfactory to Lender entered into between Borrower and a tenant of a unit in the Project.

33. **"LENDER"** means the City of Los Angeles, a municipal corporation and its authorized representatives, officers, officials, directors, employees, and agents.

34. **"LOAN"** means the loan of funds provided by Lender to any Borrower on a Project pursuant to a Project Loan Agreement, or any component thereof funded under a Project Loan Agreement.

35. **"MANAGEMENT PLAN"** means Borrower's plan for the operation of any Project. Program Sponsor/Borrower shall submit its Management Plan for review and approval by the HCIDLA pursuant to this MOU and the Project Loan Agreement for the related Project.

36. **"MBE/WBE"** means Minority Business Enterprises/Women-Owned Business Enterprises.

37. **"MOU"** means this Memorandum of Understanding executed by Program Sponsor and the City, which outlines the general terms of the City funding commitment and describes the Program, as well as any amendments to, modifications of, or restatements of said agreement.

38. **"NOTICE OF COMPLETION"** means that notice filed by Project Sponsor or its designee evidencing completion of the construction of the Improvements pursuant to the terms of this MOU and the Project Loan Agreement for the related Project, and recorded in the Official Records of Los Angeles County.

39. **"PLANS AND SPECIFICATIONS"** means the plans and specifications for the construction of any Project approved by Lender as well as any change orders approved by Lender.

40. **"PROGRAM"** means the program to develop multiple projects (including the Project) proposed by Program Sponsor and selected for funding by the City pursuant to the Proposition HHH Housing Challenge Request for Proposals, as more fully described in Exhibit E to the MOU.

41. **"PROJECT"** means any project for the construction and operation of the Property for residential use according to the terms of the MOU, the City Project Loan Agreement, and the City Regulatory Agreement.

42. **"PROJECT COMPLETION"** means that: (1) all necessary title transfer requirements and construction work have been performed; (2) the Project complies with the requirements and property standard for all sources of funds (including 24 CFR Part 92 and the property standards within 24 CFR 92.251, if applicable to the source funds); (3) the final drawdown of construction funds has been disbursed for the Project; (4) occurs upon completion of construction and before occupancy; (5) the Temporary Certificate of Occupancy or the Certificate of Occupancy has been issued.

43. **"PROJECT COMPLETION DATE"** means the date of issuance of the Temporary Certificate of Occupancy or the Certificate of Occupancy for any new construction Project, or the Notice of Completion for any rehabilitation Project.

44. **"PROJECT LOAN AGREEMENT"** means any loan agreement executed concurrently with other Project-level documents by Borrower and the City, and which governs the City Loan and details of how the City Loan will fund a specified Project under the Program, as well as any amendments to, modifications of, or restatements of said loan agreement.

45. **"PROJECT LOAN DOCUMENTS"** are collectively any Project Loan Agreement for a particular Project (including all exhibits thereto), as well as the corresponding City Note, City Deed of Trust, City Regulatory Agreement, and the UCC-1, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

46. **"PROPERTY"** consists of any and all parcels of real property acquired for any Project financed by the commitment of funds outlined in this MOU. Each Property shall be more particularly described in Exhibit A in each Project Loan Agreement, which are hereby incorporated into this MOU by this reference, as well as any buildings or Improvements now or hereafter situated on said real properties.

47. **"QUALIFYING HOUSEHOLD"** means a Family Income not exceeding the maximum income level as established in Exhibit N for an Assisted Unit and who is otherwise eligible to rent an Assisted Unit.

48. **"QUALIFYING RENT"** means the maximum rent for an Assisted Unit allowed under any Project Loan Agreement and the corresponding City Regulatory Agreement, less an allowance for tenant-paid Utilities as calculated by the City of Los Angeles subject to HUD rules and

regulations, and is the consideration, including any bonus, benefits or gratuity, demanded or received by Borrower for or in connection with the use or occupancy of a rental unit, including parking, laundry facilities, and other housing services and amenities of any kind that are reasonably deemed as part of rent by the City. The following is not permissible: (a) additional service charges resulting in a rent amount above the maximum allowable rent set by the City Regulatory Agreement and the Project Loan Documents; and (b) contracts with other agencies resulting in rent payments on behalf of the tenant for more than the regulatory agreement's qualifying rent, unless the project is designated as a HUD project based rental assisted building.

49. **"RESIDUAL RECEIPTS"** shall mean Revenues for a Project reduced in order as described in the applicable City Project Loan Agreement.

50. **"RESTRICTED UNIT"** means a housing unit on the Property which is reserved for occupancy by [X]% Income Households, or other designated income as set forth in the form of Exhibit N attached to each Project Loan Agreement, and which is designated to be rented at a Qualifying Rent as set forth in Exhibit N.

51. **"REVENUE"** shall mean all income derived from the Project, including but not limited to rent from the units, laundry operations, and parking fees. Syndication proceeds, interest earned on reserves and income derived from a commercial component (if applicable) shall not be deemed Revenue.

52. **"SCHEDULE OF PERFORMANCE"** means the Project timeline, a form of which is attached as Exhibit M. It is the responsibility of Borrower to strictly comply with the Schedule of Performance.

53. **"SPECIAL NEEDS"** shall mean disabled households, agricultural workers, single-parent households, survivors of physical abuse, homeless persons or persons at risk of becoming homeless, chronically ill persons including those with HIV or mental illness, displaced teenage parents (or expectant teenage parents), homeless youth as defined in California Government Code § 11139.5, individuals exiting from institutional settings, chronic substance abusers, or other specific groups with unique housing needs. "Special Needs Populations" do not include seniors or the frail or elderly unless they otherwise qualify as a member of a Special Needs Population.

54. **"[X]% INCOME HOUSEHOLD"** means an annual Family Income not exceeding [X] percent (X%) of the median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households.

**EXHIBIT C
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF CITY PROMISSORY NOTE [TO BE EXECUTED IN
CONJUNCTION WITH EACH PROJECT LOAN AGREEMENT]**

(Residual Receipts)

RECITALS

WHEREAS, on or about June 29, 2016, the Los Angeles City Council adopted a Resolution proposing the issuance of general obligation bonds to be submitted for approval by a two-thirds vote of the qualified voters of the City, in accordance with California Constitution Article XIII A, Section 1(b)(2), in order to finance the acquisition or improvement of real property to provide: (a) supportive housing for extremely low income or very low income individuals and families who are Homeless or Chronically Homeless, which includes facilities from which assistance and services, such as mental health treatment, health care, drug and alcohol treatment, education and job training, may be provided; (b) temporary shelter facilities, storage facilities, shower facilities and other facilities to be used to provide supportive services or goods to, or otherwise benefit, those who are Homeless, Chronically Homeless or at risk of homelessness; (c) affordable housing, including veterans housing, for extremely low income, very low income and/or low income individuals and families, including those who are at risk of homelessness; and (d) associated infrastructure and landscaping, including utilities, sidewalks and streets to be used in connection with the aforementioned housing units and other facilities; any of which may be operated, managed, owned or used by the City, other public entities, nonprofit entities or private entities, as permitted by law (the "Resolution").

WHEREAS, the Resolution was supported by findings, including that (1) the Los Angeles Homeless Services Authority identified approximately 26,000 Homeless persons within the City, (2) the Homeless population represented all segments of society, including all ethnicities and ages, and affected areas throughout the City, (3) the homelessness situation has created a public health and safety crisis, which has been exacerbated by the underbuilding of housing in the City, which has created a shortage of housing for all residents, including the Homeless population, and (4) low-income individuals and households face a greater risk and danger of homelessness because of the shortage of housing and affordable housing in the City of Los Angeles and resulting high rents.

WHEREAS, pursuant to the Resolution, the Office of the Los Angeles City Attorney presented the proposed general obligation bond proposition to the public as the "HOMELESSNESS REDUCTION AND PREVENTION, HOUSING, AND FACILITIES BOND. PROPOSITION HHH", referred to hereinafter as "Prop HHH".

WHEREAS, during the general election in November 2016, voters in the City passed Prop HHH by the requisite two-thirds margin, thereby authorizing the City to issue up to \$1.2 billion in General Obligation bonds over a ten-year period for the purposes outlined in the Resolution.

WHEREAS, the City designated the Housing and Community Investment Department of the City of Los Angeles (“HCEDLA”) as the department sponsor for the Prop HHH Permanent Supportive Housing Program in order to fund the acquisition and/or improvement of real property for the construction of permanent supportive housing units for those who are Homeless or at risk of homelessness (the “PSH Program”).

WHEREAS, on October 15, 2019, City Council authorized the award of up to \$[X] to Program Sponsor based on Program Sponsor’s selection as a recommended program for funding pursuant to the Proposition HHH Housing Challenge Request for Proposals (Council File No. 17-0090-S4). The \$[X] award amount includes [ADD DETAILS OF HOW FUNDS TO BE USED].

WHEREAS, under the PSH Challenge Program, the City issued a loan to [the Program Sponsor’s or its designee Borrower] in the amount of X Dollars (\$X) from the City’s Prop HHH Funds, loaned to support eligible acquisition, predevelopment, construction and permanent costs (“City Project Loan Agreement”).

WHEREAS, Borrower shall acquire a [fee/leasehold] interest in certain parcels of real property located at [To Be Disclosed] (as more particularly described in Exhibit A) (the “Property”) for the construction of an apartment building resulting no less than X (X) total units serving Homeless and Chronically Homeless individuals, and [one] manager’s unit. Further details and restrictions are as set forth in the City Project Loan Agreement and related exhibits (the “Project”, as more particularly described in Exhibit A1).

WHEREAS, part of the consideration for the City Loan from Lender to Borrower shall be (1) this Note in the amount of X Dollars (\$X); (2) security for the Note, which shall be that certain City Deed of Trust executed by Borrower in favor of the City; and (3) compliance with the Project Loan Agreement and the City Regulatory Agreement.

1. NOW, THEREFORE, FOR VALUE RECEIVED, [BORROWER] (the "Borrower"), promises to pay to the order of City of Los Angeles, a municipal corporation ("Lender"), a total principal amount of X Million Dollars (\$X) and all accrued interest thereon or so much as may be advanced to the Borrower pursuant to the Project Loan Agreement] executed on or about [DATE], between the Borrower and Lender.
2. The obligation of the Borrower is subject to the terms applicable to Borrower within the Memorandum of Understanding executed between [PROGRAM SPONSOR] and City on or about December 20, 2019 (the “MOU”), the Project Loan Agreement, the City Deed of Trust, the City Regulatory Agreement, and this Note, executed by the Borrower for the purpose of securing this Note. Said documents are public records on file in the office of the City Clerk, and the provisions of said documents are incorporated herein by this reference.
3. All initially capitalized terms in this Note shall have the definition ascribed to such term in the City Project Loan Agreement. The following terms are defined in the City Project Loan Agreement and repeated here for convenience of reference:

- a. **"Annual Financial Statement"** means the financial statement of Operating Expenses and Revenues, prepared at the Borrower's expense, by an independent certified public accountant reasonably acceptable to the City, which shall form the basis for determining the Residual Receipts.

- b. **"Operating Expenses"** shall mean actual, approved reasonable and customary costs, fees and expenses directly attributable to the operation, recordkeeping, maintenance, taxes and management of the Project, including but not limited to a commercially reasonable property management fee; taxes and assessments; payroll and payroll taxes for property employees; insurance; security, painting, cleaning, repairs, and alterations; landscaping; sewer charges; utility charges; advertising, promotion and publicity; cable television, satellite and other similar services; office, janitorial, cleaning and building supplies; purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishing; fire alarm monitoring; fees and expenses of accountants, attorneys, consultants and other professionals; and supportive services expenses for supportive services coordination case management as defined under Article 1, Section 1.19.1 (Supportive Services Amount) in the City Project Loan Agreement. Also included in Operating Expenses are those costs incurred by the transfer of households, within the development, that are not appropriately housed in regards to accessibility. Specifically, the cost of transferring a household from an accessible unit, who does not need the accessibility features of that unit, to a comparable, conventional unit and the costs of transferring a household in a non-accessible conventional unit to an accessible unit so that the household with a person who has a disability that requires the accessible features of that unit can be appropriately housed. The transfer costs of moving these households, any utility transfer costs, if applicable, and unit preparation costs for occupancy are eligible operating expenses. The cost of making unit modifications requested by tenants in order to make a conventional unit more accessible for their use, and any costs associated with providing effective communications (including interpreters) with limited English speaking persons are also eligible operating expenses and reasonable accommodations to make housing and housing-related services accessible to individuals with disabilities in accordance with Section 504/ADA regulations. The Operating Expenses shall be reported in the Annual Financial Statement. Expenses for the purpose of calculating residual receipts are subject to HCIDLA approval and shall be calculated on a cash basis.

- c. **"Payment Date"** shall mean [X DATE] for the first payment, and annually thereafter until the City Loan is paid in full or otherwise terminated.

- d. **"Residual Receipts"** shall mean Revenues reduced in the following order: (1) Operating Expenses calculated on a cash basis; (2) debt service on senior project debt secured by the senior position deed of trust; (3) deposits to the

Operating Reserve Fund; (4) deposits to the Replacement Reserve Fund; (5) deposits to the Supportive Services Reserve Fund; (6) repayment of general partner loans; (7) deferred developer fees paid with cash (excluding any interest); and (8) related or third party transactions, including but not limited to partnership management fee, investor service fee, asset management fee, annual partnership review fee, administrative fee, incentive supervisor fee, and/or facility administration fee. The combined total amount of related or third party transactions shall not exceed twenty-five thousand dollars (\$25,000) annually or Portfolio Management Guidelines, whichever is greater. Deferred developer fees shall be drawn from project cash flow over the first fifteen (15) years of project operation.

- e. "Revenue" shall mean all income derived from the Project, including but not limited to rent from the units, laundry operations, and parking fees. Syndication proceeds or interest earned on reserves and income derived from a commercial component (if applicable) shall not be deemed Revenue.
4. This Note evidences the obligation of the Borrower to Lender to repay funds loaned to the Borrower to finance a portion of the cost of predevelopment, construction, and permanent financing for the Project.
5. This Note is payable in lawful money of the United States at the office of City of Los Angeles Housing and Community Investment Department, 1200 W. 7th Street, 8th Floor, Los Angeles, California 90017, or at such other place as the holder hereof may inform the Borrower in writing.
6. This Note shall bear simple interest at the rate of X percent (X%) per annum on the principal amount outstanding from the date of the warrant (Los Angeles City check), until paid. Interest shall be computed based upon a three hundred sixty-five (365) day year.
7. All interest accrued from the date of the warrant (Los Angeles City check) until the Project Completion Date (the "Construction Period Interest"), shall be due and payable to Lender within sixty (60) days after the Project Completion Date, but not later than the date of the permanent loan conversion. Payment of the Construction Period Interest is a condition required prior to conversion from a construction loan to a permanent loan. All interest accrued after the Project Completion Date shall be due pursuant to the terms and conditions of this Note.
8. Unless sooner due pursuant to this Note, the combined principal of the City Loan and all accrued interest thereon shall be due and payable on the earliest of (a) fifty-seven (57) years from the date of the execution of this Note, (b) the date the Property is sold or refinanced, or (c) an Event of Default by Borrower which has not been cured as provided for in the MOU and the Project Loan Agreement. The termination date may be extended at the sole discretion of Lender provided the Borrower agrees to extend the Project Term of the Restricted Units.

9. Interest shall be due and payable to Lender for the preceding calendar year on the Payment Date. Interest due and unpaid in any given year shall accrue and be cumulative and shall be paid to Lender from City's Share received in subsequent years.
10. Any amounts (including but not limited to amounts of principal and interest on the Loan) which Borrower does not pay when due under the terms of the Loan Agreement or this Note shall bear the simple interest rate of fifteen percent (15%) ("Default Rate") per annum (or such lesser maximum amount permitted by law), from the date due until the date paid.
11. On or before each Payment Date, the Borrower shall submit its audited Annual Financial Statements to the City for the preceding fiscal year together with, if any, the City's Share. Failure to do so will result in a default of the loan agreement. Once received on a timely basis, the City shall review and approve such financial statements and share of residual receipts, or request revisions, within ninety (90) days after receipt. In the event that the City determines as the result of its review that there is an understatement in the amount and payment of Residual Receipts due to the City, Borrower shall promptly pay to the City its share of such understatement, but in any event, within thirty (30) days of notice of such understatement. In the event that the City determines that there is an overstatement, the City shall promptly refund the amount to Borrower within thirty (30) days of such determination.
- If contested, Borrower is required to pay under protest. Borrower shall have thirty (30) days from notice of obligation to submit, in writing, any contentions to the City. If the City receives contentions in writing, the City will have forty-five (45) days upon receipt to respond. If no written contentions are received by the City within the thirty (30) days, Borrower is deemed to concur with the obligation.
12. Residual Receipts shall be distributed as follows:
- a. City shall receive an amount equal to fifty percent (50%);
 - b. Borrower shall receive an amount equal to fifty percent (50%) of Residual Receipts of the Project.
13. City's share of Residual Receipts shall be applied first to pay current annual interest due, then the cumulative interest owed, and then to reduce the principal amount of the City Loan. Upon payment in full of the City Loan, Lender shall have no further right to payment of any portion of Residual Receipts.
14. The City Loan and all current and accrued interest thereon shall be due and payable immediately if the Project, or any portion thereof or interest therein, is sold, transferred, assigned or refinanced otherwise than in accordance with the MOU and the Project Loan Agreement. Leases in accordance with the City Project Loan

Agreement shall not be in violation of the City Project Loan Agreement. However, upon Lender's approval of purchaser, the City Loan will be fully assumable by said purchaser.

15. **The City Loan is a non-recourse obligation of Borrower. Except for misappropriation of funds, neither the Borrower nor any other party shall have any personal liability for repayment of the City Loan. The sole recourse of Lender under this Note for repayment of the City Loan shall be the exercise of its rights against the Project and related security thereunder. However, nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement of all the rights and remedies of the Lender against all such security for the Notes, or (b) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the Notes as demand for money within the meaning of the California Code of Civil Procedure.**

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Notes; except nothing contained in the foregoing is intended to relieve the Borrower of personal liability for (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges (which are not contested by Borrower in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the City Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the Borrower's indemnification obligations under the Project Loan Agreement; (4) misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security; and (5) payment to the Lender of any rental income or other income arising with respect to the Property received by the Borrower after the Lender has given notice to the Borrower of the occurrence of an Event of Default, subject to the rights of any lender providing a loan secured by the Property to which the Lender has subordinated the City Deed of Trust.

16. **The Borrower shall have the right to prepay without penalty the obligation evidenced by this Note, or any part thereof, at any time and from time to time.**
17. **Subject to the MOU and the Project Loan Agreement, Lender, at its option, may declare the City Loan immediately due and payable, together with any accrued interest thereon, if the Borrower fails to fulfill its obligations to Lender under the MOU, the Project Loan Agreement, this Note, the City Deed of Trust, or any agreement or instrument executed in connection therewith.**
18. **All covenants, conditions and agreements contained in the City Deed of Trust, MOU, Project Loan Agreement, and any other Project Loan Documents, are hereby made a part of this Note. Upon any Event of Default, as defined in the MOU and Project Loan Agreement, Lender may exercise any other right or remedy permitted under the Project Loan Documents or the MOU.**
19. **Upon an Event of Default, the outstanding principal and (to the extent permitted by**

law) interest and any other sums outstanding in connection with the Loan shall thereafter bear interest at the Default Rate of fifteen percent (15%) (or such lesser maximum rate permitted by law), payable from the date of such declaration until paid in full.

20. Upon an Event of Default, Lender is entitled to its equity share upon the sale of the property. HCIDLA will be entitled to a share in any appreciation that has occurred between the acquisition and the time of sale. HCIDLA's share in the appreciation will be equal to the proportion of the HCIDLA loan funds used in the purchase of the property or the amount of HCIDLA loan funds used to repay an acquisition bridge loan. This section 20 shall apply until construction has been completed and a Notice of Completion has been issued.
21. In the event that any monetary provisions of the MOU, Project Loan Agreement, City Regulatory Agreement, City Deed of Trust, and/or City Note conflict, the terms of the City Note and the City Deed of Trust shall control. In the event that any monetary provisions of the City Note or City Deed of Trust conflict, or in the event that any non-monetary provisions of the MOU, Project Loan Agreement, City Regulatory Agreement, City Deed of Trust, and/or City Note conflict, the strictest provision shall control.

[Remainder of page intentionally left blank.]

[Signatures begin on next page.]

IN WITNESS WHEREOF, the Lender and the Borrower have caused this Promissory Note to be executed by their duly authorized representatives.

Borrower:

[NAME and SIGNATURE BLOCK]

**EXHIBIT D
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF DEED OF TRUST [TO BE EXECUTED IN CONJUNCTION WITH EACH
PROJECT LOAN AGREEMENT]**

NO FEE DOCUMENT

Recording requested by and
when recorded, mail to:

City of Los Angeles
City of Los Angeles Housing and Community Investment Department
P.O. Box 532729
Los Angeles, CA 90053-2729
Attn: Portfolio Management Unit (HIMS# [ADD])

Assessor's Identification Numbers: XXX

**CITY DEED OF TRUST
ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT**

(Securing loan of \$X)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT ("Deed of Trust") is made this ____ day of _____, 2019, by [Borrower Name], a California limited partnership ("Trustor"), to [Name] Title Company, a California corporation, as trustee ("Trustee"), for the benefit of the City of Los Angeles, a municipal corporation ("Beneficiary"). This Deed of Trust is being executed in order to secure Beneficiary's interest as a governmental agency in ensuring both that public funds loaned for project development are repaid, and that housing projects assisted by public funds are developed and operated in a manner that is consistent with the public interest.

GRANT IN TRUST

1. **GRANT.** Trustor, in consideration of the indebtedness referred to below, hereby irrevocably grants and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all of Trustor's right, title, and interest in the that real property located at [To be identified in Project Loan Agreement], and described in the attached Exhibit A, incorporated herein by this reference (the "Property");

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, including

all equipment and machinery used for supplying or distributing heating, cooling, electricity, gas, water, air, and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all security and access control equipment, fire prevention and extinguishment equipment, elevators, floor coverings, window coverings, paneling, cabinets, (provided, however, that Trustor shall have the right to remove, if necessary, such fixtures, furnishings, and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and equipment either now or hereafter delivered to the Property and intended to be installed therein or any such material and equipment purchased with Loan proceeds whether or not located on the Property; all reserves, accounts, deferred payments, and refunds relating to development on the Property; all rents and income generated by the Property or improvements thereon (subject however to the assignment of rents to Lender contained herein); all leases, subleases and rental agreements covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, or payments of similar nature with respect to such leases, subleases, or rental agreements; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any street, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil, gas or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans, or other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of occupants of dwelling units on the Property); all intangible property and rights relating to the Property or operations on the Property, including trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction on the Property; all architectural, structural, and mechanical plans, specifications, designs, studies, and data with respect to construction of improvements on the Property; all environmental tests, studies and reports with respect to the Property; all current and future claims and rights of action of Trustor against prior owners and operators of the Property, neighboring property owners and operators, tenants and former tenants, consultants, advisors, and other third parties with respect to environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state, or local ordinances, statutes, regulations, or administrative decisions or common law.

Notwithstanding anything set forth hereinabove to the contrary, the following shall be specifically excluded therefrom: any and all inventory, equipment and articles of personal property or trade fixtures used by Trustor specifically in the operation of Trustor's business, whether or not attached to or installed on the Property, and which may be removed without material injury to the buildings or structures to which they are attached.

All of the foregoing, together with the Property, is herein referred to as the "Security."

OBLIGATIONS SECURED

2. **OBLIGATIONS.** Trustor makes this grant for the purpose of securing the following obligations:

- A. Repayment of the indebtedness of Trustor to Beneficiary in the principal sum of **X Dollars (\$X)** with interest thereon (the "Loan") evidenced by a promissory note executed by Trustor as Borrower (the "Note," on file at the offices of Beneficiary, which is hereby incorporated into this Deed of Trust by this reference) or as much as has been disbursed to Trustor therewith, along with any extensions, amendments, modifications, or renewals to the Note; and
- B. Payment of any sums advanced by Beneficiary to protect the security and priority of this Deed of Trust; and
- C. Payment of any sums advanced by Beneficiary following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and
- D. Performance of every obligation, covenant or agreement of Trustor contained in this Deed of Trust, the Note, the loan agreement executed between Trustor and Beneficiary for this loan (the "Loan Agreement", on file at the offices of Beneficiary, which is hereby incorporated into this Deed of Trust by this reference), and the regulatory agreement executed between Trustor and Beneficiary of even date herewith (the "Regulatory Agreement"), including all modifications, extensions and renewals of these obligations; and
- E. Performance of any other obligation or repayment of any other indebtedness of Trustor to Beneficiary, where such evidence of obligation or indebtedness specifically recites that it is secured by this Deed of Trust; and
- F. Performance of any obligations of Trustor in any other agreements with respect to financing of the Project or the Security the absence of which should adversely affect Beneficiary, whether or not Beneficiary is a party to such agreements.

ABSOLUTE ASSIGNMENT OF RENTS AND RIGHT TO POSSESSION

3. **ASSIGNMENT.** As additional security, Trustor hereby assigns to Beneficiary: (a) all off the rents, revenues, profits, and income from the Security, any deposits now or hereafter in Trustor's possession which have been collected with respect to the Security, and any reserve or capital funds now or hereafter held by Trustor with respect to construction or operation of the Security (collectively, the "Rents"); and (b) the right to enter, take possession of, and manage the Security; provided however that Trustor shall have, before an Event of Default, the exclusive right to possess the Security and to collect Rents and use them in accordance with the Project Loan Documents. This assignment is intended to be an absolute and present transfer of Trustor's interest in existing and future Rents, effective as of the date of this Deed of Trust.

4. **ENFORCEMENT.** Any default by Borrower under the Project Loan Documents which constitutes an Event of Default thereunder shall also constitute an Event of Default by Trustor for purposes of enforcement of this Deed of Trust. Upon the happening of an Event of Default

which remains uncured after expiration of the applicable cure period pursuant to the terms of the Project Loan Agreement or other Project Loan Documents, and written notice to Trustor, Beneficiary may, in addition to other rights and remedies permitted by the Loan Agreement, this Deed of Trust, or applicable law, (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security, (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this Deed of Trust, all in such order as Beneficiary may determine, (c) enter upon and take possession of the Security, and complete construction of any improvements on the Security as provided for in the Plans and Specifications approved under the Loan Agreement or any modifications to the Plans and Specifications or the Project that Beneficiary in its sole discretion believes is appropriate, and/or (d) Beneficiary may make, cancel, enforce, and modify leases and rental agreements, obtain and evict tenants, set and modify rent terms, sue for rents due, enter into, modify, or terminate any contracts or agreements, or take any legal action, as it deems necessary with respect to the Rents or to development or operation of the Security.

5. **APPOINTMENT OF A RECEIVER.** In any action to enforce this assignment, Beneficiary may apply for the appointment of a receiver to take possession of the Security and take whatever measures are necessary to preserve and manage the Security for the benefit of Beneficiary and the public interest. Trustor hereby consents to the appointment of a receiver. The receiver shall have all of the authority over the Security that Beneficiary would have if Beneficiary took possession of the Security under this assignment as a mortgagee-in-possession, including the right to collect and apply Rents and the right to complete construction of improvements.

6. **NO WAIVER OF POWER OF SALE.** The entering upon and taking possession of the Security and the collection of Rents shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or notice of default and, notwithstanding the continuance in possession of the Security or the collection and application of Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

COMMERCIAL CODE SECURITY AGREEMENT

7. **GRANT.** This Deed of Trust is intended to be a security agreement and financing statement pursuant to the California Commercial Code for any of the items specified above as part of the Security which under applicable law may be subject to a security interest pursuant to the Commercial Code, and Trustor hereby grants Beneficiary a security interest in said items. Beneficiary may file a copy of this Deed of Trust in the real estate records or other appropriate index as a financing statement for any of the items specified as part of the Security. Trustor shall execute and deliver to Beneficiary at Beneficiary's request any financing statements, as well as extensions, renewals, and amendments thereof, and copies of this instrument in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and shall pay all reasonable costs of any record searches for financing statements and releases. Without the prior written consent of Beneficiary, Trustor shall not create or permit any other security interest in said items.

8. **REMEDIES.** Upon occurrence of an Event of Default by Trustor on any obligation or agreement in the Project Loan Documents, Beneficiary shall have the remedies of a secured party under the Commercial Code and at Beneficiary's option may also invoke the remedies provided for elsewhere in this Deed of Trust with respect to said items. Beneficiary may proceed against the items of real property and personal property specified above separately or together and in any order whatsoever.

RIGHTS AND OBLIGATIONS OF TRUSTOR

9. **PERFORMANCE OF SECURED OBLIGATION.** Trustor shall promptly perform each obligation secured by this Deed of Trust.

10. **PAYMENT OF PRINCIPAL AND INTEREST.** Trustor shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note.

11. **MAINTENANCE OF THE SECURITY.** Trustor shall, at the Trustor's own expense, maintain and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable and tenantable condition. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Security. Trustor shall not commit or permit waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security. In the event Trustor fails to maintain the Security in accordance with the standards in this Deed of Trust, the Loan Agreement, or the Regulatory Agreement, Beneficiary, after at least seven (7) calendar days prior written notice to Trustor and after any applicable cure periods, may, but shall be under no obligation to, make such repairs or replacements as are necessary and provide for payment thereof. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

12. **INSPECTION OF THE SECURITY,** Trustor shall permit Beneficiary to enter and inspect the Security for compliance with these obligations upon twenty-four (24) hours advance notice of such visit by Beneficiary to Trustor or Trustor's management agent.

13. **LIENS, ENCUMBRANCES, AND CHARGES.** Trustor shall discharge any lien or encumbrance not approved by Beneficiary in writing that may attain priority over this Deed of Trust, as provided for in the Loan Agreement.

14. **DEFENSE AND NOTICE OF CLAIMS AND ACTIONS.** Trustor shall appear in and defend, at its own expense, any action or proceeding purporting to affect the Security and/or the rights of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding and of any condemnation offer or action with respect to the Security.

15. SUITS TO PROTECT THE SECURITY. Following reasonable notice to Trustor, Beneficiary shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Security or the rights of Beneficiary, (b) to preserve or protect its interest in the Security and in the Rents, and (c) to restrain the enforcement of or compliance with any governmental legislation, regulation, or order, if the enforcement of or compliance with such legislation, regulation, or order would impair the Security or be prejudicial to the interest of Beneficiary.

16. DAMAGE TO SECURITY. Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to the Security. If any building or improvements erected on the Property is damaged or destroyed by an insurable cause, Trustor shall, at its cost and expense, repair or restore said buildings and improvements consistent with the original plans and specifications. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Trustor shall make up the deficiency.

17. TITLE. Trustor warrants that Trustor lawfully has legal title to the Security without any limitation on the right to encumber.

18. GRANTING OF EASEMENTS. Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to the Security except those required or desirable for installation and maintenance of public utilities including water, gas, electricity, sewer, cable television, telephone, or those required by law.

19. TAXES AND LEVIES. Trustor shall pay prior to delinquency, all taxes, fees, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security. However, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any contested liabilities. In the event that Trustor fails to pay any of the foregoing items, Beneficiary may, but shall be under no obligation to, pay the same, after Beneficiary has given written notice to Trustor of such failure to pay and Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

20. INSURANCE. Trustor shall provide such insurance as required under the Loan Agreement and the Regulatory Agreement. In the event Trustor fails to maintain the full insurance coverage required by this Deed of Trust, Beneficiary, after at least seven (7) business days prior written notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event

such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

21. **CONDEMNATION.** All judgments, awards of damages, settlements and compensation made in connection with or in lieu of taking all or any part of or interest in the Security under assertion of the power of eminent domain ("Funds") are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary shall determine at its sole option. All or any part of the amounts so collected and recovered by Beneficiary may be released to Trustor upon such conditions as Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust.

Notwithstanding anything to the contrary set forth herein, Beneficiary shall, prior to the application of the Funds or any portion thereof to the indebtedness or other obligations, apply such portion of the Funds as is reasonable and necessary to repair and preserve the value, marketability and rentability of the Security.

22. **ACCELERATION ON TRANSFER OF SECURITY; ASSUMPTION.** In the event that Trustor, without the prior written consent of the Beneficiary, sells, agrees to sell, transfers, or conveys its interest in the Security or any part thereof or interest therein, Beneficiary may at its option declare all sums secured by this Deed of Trust to be immediately due and payable. This option shall not apply in case of:

- A. the grant of a tenant, leasehold, or fee interest to qualifying households who will occupy Project units as provided for under the Project Loan Documents and the City Regulatory Agreement; or
- B. sale or transfer of fixtures or personal property pursuant to the grant provisions in this Deed of Trust; Consent to one (1) sale or transfer shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

23. **RECONVEYANCE BY TRUSTEE.** This trust is intended to continue for the entire term of the Project Loan Documents. Upon written request of Beneficiary stating that all obligations secured by this Deed of Trust have been paid and performed, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

DEFAULT AND REMEDIES

24. **EVENTS OF DEFAULT.** Any of the events listed in the Loan Agreement as an Event of Default by Borrower shall also constitute an Event of Default by Trustor under this Deed of Trust, including, but not limited to, (1) Trustor's failure to pay when due any sums payable under this Deed of Trust, or such failure by Borrower under the Note or the Loan Agreement; (2) Trustor's

failure to observe or to perform any of its other covenants, agreements or obligations under this Deed of Trust, or such failure by Borrower under the Note or the Loan Agreement; or (3) Trustor's or Borrower's failure to make any payment or perform any of its other covenants, agreements, or obligations under any other agreement with respect to financing for the Project or the Security, whether or not Beneficiary is a party to such agreement.

Notwithstanding anything to the contrary set forth herein, any "Event of Default" described hereinabove shall not constitute an "Event of Default" for the purposes of this Deed of Trust or any other Loan Document if the defaulting party cures, corrects or remedies the Event of Default within (a) thirty (30) calendar days (~~ten (10)~~ calendar days if the Event of Default is **monetary) from receipt from the non-defaulting party of notice pursuant to the terms of the Loan Agreement, or (b) solely in the event of a non-monetary Event of Default, if such non-monetary default cannot be reasonably cured within thirty (30) days, such longer period as is necessary to cure such default, provided the defaulting party commences the cure within the thirty (30) day period from receipt of the aforementioned notice and diligently prosecutes such cure to completion.**

Notwithstanding anything to the contrary contained herein, the Beneficiary hereby agrees that any cure of any default made or tendered by one or more of Trustor's limited partners shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor.

25. ACCELERATION OF MATURITY. Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, Beneficiary may declare all sums advanced to Trustor under the Note and this Deed of Trust immediately due and payable.

26. BENEFICIARY'S REMEDIES. Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, Beneficiary may, in addition to other rights and remedies permitted by the Loan Agreement, the Note, or applicable law, proceed with any or all of the following remedies:

- A. Enforce the assignment of rents and right to possession as provided for in this Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect Rents;**
- B. Enter the Security and take any actions necessary in its judgment to complete construction on the Security as permitted under the Assignment of Development Rights executed by Trustor (on file with Beneficiary) and the assignment of rents and right to possession in this Deed of Trust, either in person or through a receiver appointed by a court;**
- C. Disburse from Loan proceeds any amount necessary to cure any Monetary Default under this Deed of Trust, the Loan Agreement, or the Note;**
- D. Commence an action to foreclose this Deed of Trust pursuant to California Code of Civil Procedure Sections 725a, et seq., and/or seek appointment of a receiver from a**

court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security, including the authority to complete construction of improvements;

- E. Deliver to Trustee a written declaration of Default and demand for sale, and a written Notice of Default and election to cause Trustor's interest in the Security to be sold, which notice Trustee or Beneficiary shall duly file for record in the Official Records of Los Angeles County, and exercise its power of sale as provided for below; or
- F. Pursue any other rights and remedies allowed at law or in equity.

27. **FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the power of sale contained in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust (the deposit of which shall be deemed to constitute evidence that the unpaid sums disbursed under the Note are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by Trustor, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: (i) first, to the payment of all sums then secured by this Deed of Trust, in such order and amounts as Beneficiary in its sole discretion determines, and (ii) the remainder, if any, to the person or persons legally entitled thereto.

28. **REMEDIES CUMULATIVE.** No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust is intended to be exclusive of any other rights, powers or remedies, but each such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

GENERAL PROVISIONS

29. **GOVERNING LAW.** This Deed of Trust shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

30. **STATEMENT OF OBLIGATION.** Beneficiary may collect a fee not to exceed the maximum allowable under applicable law for furnishing a statement of obligations as provided in the California Civil Code.

31. **CONSENTS AND APPROVALS.** Any consent or approval of Beneficiary required under this Deed of Trust shall not be unreasonably withheld.

32. **TIME.** Time is of the essence in this Deed of Trust.

33. **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Trustor and Beneficiary shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Trustor and Beneficiary as follows:

Beneficiary: City of Los Angeles
Housing and Community Investment Department
P.O. Box # 532729
Los Angeles, CA 90053-2729
Attention: Portfolio Management Unit (HIMS# [Add])

Copy to:
Director of Finance and Development Division

Trustor: [Name and Address]

Copy to Investor/Limited Partner:
[Name and Address]

34. **BINDING UPON SUCCESSORS.** All provisions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Trustor, Trustee, and Beneficiary.

35. **WAIVER.** Any waiver by Beneficiary of any obligation of Trustor in this Deed of Trust must be in writing. No waiver will be implied from any delay or failure by Beneficiary to take action on any breach or default of Trustor or to pursue any remedy allowed under the Deed of Trust or applicable law. Any extension of time granted to Trustor to perform any obligation under this Deed of Trust shall not operate as a waiver or release Trustor from any of its obligations under this Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

36. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Deed of Trust must be in writing, and shall be made only if mutually agreed upon by Beneficiary and Trustor.

37. **CONFLICTS BETWEEN CITY DOCUMENTS.** In the event that any monetary provisions of the City Project Loan Agreement, City Regulatory Agreement, Deed of Trust, and/or City Note conflict, the terms of the City Note and Deed of Trust shall control. In the event that any monetary provisions of the City Note and Deed of Trust conflict or in the event that any non-monetary provisions of the City Project Loan Agreement, City Regulatory Agreement, Deed of Trust, and/or City Note conflict, the strictest provision shall control, except that Trustor shall have no defense or claim that this instrument does not establish a valid lien on the Property or Security.

38. **DEFINITIONS.** Capitalized terms not otherwise defined in this Deed of Trust shall have the same meaning as defined terms in the Loan Agreement.

39. **PROOFS OF CLAIM.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, recomposition or other proceedings affecting Trustor, its creditors or its property, Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

40. **SEVERABILITY.** Every provision of this Deed of Trust is intended to be severable. If any term or provision of this Deed of Trust is declared to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforceability of the remaining provisions shall not be affected. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt and all payments made on the debt (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first paid or applied to the payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

41. **SUBSTITUTION OF TRUSTEES.** Beneficiary may from time to time appoint another trustee to act in the place and stead of Trustee or any successor. Upon such appointment and without conveyance, the successor trustee shall be vested with all title, powers, and duties conferred upon Trustee. Each such appointment and substitution shall be made by a written instrument executed by Beneficiary containing reference to this Deed of Trust and its place of record, which when duly recorded in the Los Angeles County Office of the Recorder shall be conclusive proof of proper appointment of the successor trustee.

42. **ACCEPTANCE BY TRUSTEE.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

43. NONRECOURSE. The loan secured by this Deed of Trust is a non-recourse obligation of Trustor. Neither Trustor nor any other party shall have any personal liability for repayment of the Loan. The sole recourse of Beneficiary for repayment of the Principal and interest shall be the exercise of Beneficiary's rights against the Property. However, nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement of all the rights and remedies of the Beneficiary against all such security for the City Notes, or (b) be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the City Notes as demand for money within the meaning of the California Code of Civil Procedure.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Notes; except nothing contained in the foregoing is intended to relieve the Trustor of personal liability for (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges (which are not contested by Trustor in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the Trustor's indemnification obligations under the Loan Agreement; (4) misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security; and (5) failure to pay to the Beneficiary any rental income or other income arising with respect to the Property received by the Trustor after the Beneficiary has given notice to the Trustor of the occurrence of an Event of Default, subject to the rights of any lender providing a loan secured by the Property to which the Beneficiary has subordinated the Deed of Trust.

[Signatures begin on next page.]

IN WITNESS WHEREOF, Trustor and Beneficiary has caused this Deed of Trust to be executed by their duly authorized representatives.

Trustor:

[Signature Block]

Beneficiary:
Executed this _____ day of _____, 2019
THE CITY OF LOS ANGELES
Housing and Community Investment Department

By: _____
SEAN L. SPEAR,
Assistant General Manager

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

By: _____
Deputy/Assistant City Attorney

Date: _____

ATTEST:
HOLLY WOLCOTT, City Clerk

By: _____
Deputy City Clerk

Date: _____

THIS DOCUMENT MUST BE NOTARIZED FOR RECORDING

**EXHIBIT A
CITY DEED OF TRUST
[PROGRAM NAME]**

LEGAL DESCRIPTION

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

[Add Legal Description]

ASSESSOR'S IDENTIFICATION NUMBER: XXX

COMMON ADDRESSES: [Address]

BORROWER: [Name]

Mercy/Abode/LA Family Housing HHH Challenge Strategy
Streamlining Housing Solutions
Program Term Sheet Document (Exhibit E of the Memorandum of Understanding)
Key Terms and Conditions

1. Parties to the Agreement:

The Program Term Sheet (“PTS”) for the Streamlining Housing Solutions Strategy Proposal shall be governed by the Memorandum of Understanding (“MOU”) entered by and between the City of Los Angeles, a municipal corporation (“City”), Mercy Housing California, Abode Communities, and LA Family Housing (collectively, the “Collaborative” and each with respect to any particular Project in which it acts a lead developer, the “Project Sponsor” (“Project Sponsors”). All three organizations will serve as Lead Developer for their respective affordable housing developments.

Once properties are designated for purchase (site control) and upon approval of project underwriting by HCIDLA, (or a designated affiliate/partner acceptable to the City) shall be issued a 12-month conditional funding commitment and a Project Loan Agreement for the particular property to be acquired, with the City as Lender (the “Project Loan Agreement”), as well as related promissory notes, security documents, and other project documents (collectively, the “Project Loan Documents”), some of which shall be recorded in the Official Records simultaneously with closing of the Project Loan Agreement. The Project Loan Documents shall govern project-specific requirements under the Program generally set forth in the MOU. The terms of each Project Loan Agreement will also require Borrower to comply with all obligations of Program Sponsor under the MOU.

2. Conditional Funding Commitment:

The execution of the MOU must be completed and executed within two months of formal City Council approval of the Reservation award. Project Sponsor shall secure site control within four months of executing the MOU. Once site control is achieved for individual projects, a portion of the Reservation shall convert to a project-specific conditional commitment along with a project specific loan agreement. If Relocation is contemplated, the Project Sponsor must comply with all Relocation requirements per the Request For Proposal (“RFP”) as well as specific requirements set forth in the Project Loan Agreement. To accommodate the use of a RCLF (defined below) per the Collaborative strategy, the conditional commitment will last no longer than the range of 12 to 18 months from the date that HCIDLA provides the project-specific conditional commitment, unless extended by Council, and construction must be completed within 18 months, unless extended by Council.. Except with respect to modular deposits and in-factory modular work funded through the RCLF (as defined below), Funding will only be provided to individual resulting projects at or following construction loan closing, and only for eligible project development costs.

3. **Development Strategy Description:**

Mercy/Abode/LA Family Housing's Streamlining Solutions strategy works to develop supportive housing faster and at a lower cost by standardizing modular design, cutting entitlement time, utilizing a financing plan with modular construction in mind, and demonstrating cost savings with replicable modular construction. The collaboration will build 100% permanent supportive housing projects with no less than 360 units (including manager units not funded by HHH proceeds). Features of the Strategy are (but not limited to):

- a) **Standardization of site selection:** The collaboration will use dedicated brokers and a land use consultant with clear criteria for by-right sites that are accessible for modular units and other state streamlining provisions;
- b) **Standardization of unit design:** The collaboration will coordinate with one architectural firm and one modular fabricator to design a standard building of studio units with services space, open space and required staff and visitor parking. Project Sponsors will work with Factory OS or equivalent;
- c) **Streamlining construction financing:** Because of the lack of ample construction loan funds for in-factory modular work not yet delivered to a site that secures the loan, the collaboration proposes a portion of the use of HHH Funds as a Revolving Construction Loan Fund ("RCLF"). A to be determined Community Development Financial Institution ("CDFI") will fund additional dollars into the RCLF and also will serve as the administrator of the RCLF. The City will enter into an intercreditor agreement with the CDFI and Borrower for the disbursements of funds out of the RCLF. See sections #4 and #5 of this PTS;
- d) **To leverage site and design standardization along with zoning and entitlements streamlining, the prototypical project will include one standardized unit plan across all projects to promote design and factory production efficiencies. This studio unit will also be optimized to approximately 325 square feet to support further cost savings;**
- e) **The population served by the Program Strategy formerly homeless individuals and chronically homeless individuals with incomes of 30% or less of AMI, most of whom have qualifying mental health diagnosis and/or co-occurring disorders See Section #15 in this PTS;**
- f) **Property Management:** With respect to any Project Abode Communities or Mercy Housing;
- g) **The Project Sponsor will utilize HHH proceeds for modular deposits and in-factory modular work (through the RCLF) subject to criteria set forth by HCIDLA and the CDFI. The Remaining HHH proceeds (not part of the RCLF) will be disbursed as a construction loan and convert to a permanent loan subject to criteria set forth by HCIDLA. The Remaining HHH proceeds will reimburse eligible predevelopment and acquisition costs, and cover construction costs including both on-site and off work. Other funding sources for each project**

include No Place Like Home if available (or equivalent funding subject HCIDLA approval), LIHTC equity, and a conventional construction loan. Each project is expected to secure long-term project-based rental assistance. See section #19 in this PTS.

The Development Strategy shall be implemented and completed as described above (as well as per the Project Sponsor's application submission and HHH Challenge RFP guidelines), subject to City approval and the receipt by Project Sponsor of the necessary enforceable financing commitments. City and Collaborative acknowledge and agree that modular construction is an essential component of the Program. As of the date of this MOU, the Mayor's Office is working diligently with Collaborative and other City stakeholders to establish a separate MOU to create a planning, permitting, inspection process, and timeline applicable to the City's review of modular construction for the Program Sponsors Strategy. The Parties are working in good faith to complete the modular MOU by the end of February 2020.

4. Loan Amount:

Total Loan Amount of \$40,000,000 (RCLF and remaining HHH Proceeds)

- a. RCLF:
 - i. The HHH RCLF shall not exceed \$5,000,000;
 - ii. Additional needed proceeds provided by CDFI;
 - iii. Closing typically before other sources of financing;
 - iv. Borrower, HCID, and CDFI/administrator will enter into an agreement to allow the funds to revolve from one approved project to another.
 - v. Secured by both a subordinate interest in the property and by a subordinate interest borrower's ownership interest in the materials and work in factory.
 - vi. Funding Criteria: All funds for Modular deposits, materials, and in-factory work are disbursed as required with approval of each draw subject to HCIDLA and CDFI approval and submittal of invoices for each approved project.
 - vii. Subject to having a Deed of Trust. Parties acknowledge that RCLF funding disbursement/details remain to be negotiated and drafted and will be finalized pursuant to any RCLF loan documentation.
- b. ~~Remaining HHH Loan Proceeds shall not exceed \$35,000,000;~~
 - i. The total subsidy per unit for the Remaining HHH Loan Proceeds for each individual loan per project shall not exceed \$97,000 per unit;
 - ii. The remaining HHH proceeds (not part of the RCLF) will be disbursed as a construction loan and convert to a permanent loan subject to criteria set forth by HCIDLA.
 - iii. Construction Draws will follow HCIDLAs standard process.

5. Loan Term & Rate:

- e. RCLF (\$5,000,000):
 - i. 3% interest rate;
 - ii. Interest accrues during the construction period. All interest accrued from the date of the warrant until the Project Completion Date, shall be due and payable to Lender within 60 days after the Project Completion Date, but not later than the date of the permanent loan conversion;
 - iii. Reimbursement/Payoff of RCLF funds by standard construction lender as modules are delivered on site. Funds would then return to the RCLF;
 - iv. THE RCLF loan term is expected to be 24 months or less.
- d. Remaining HHH Proceeds (\$35,000,000):
 - i. 3% interest rate;
 - ii. Interest accrues during the construction period. All interest accrued from the date of the warrant until the Project Completion Date, shall be due and payable to Lender within 60 days after the Project Completion Date, but not later than the date of the permanent loan conversion;
 - iii. Residual receipts (payable from a prorata share, split among all government residual receipts lenders, of 50% residual receipts payment schedule);
 - iv. 57-year loan term (from execution of note)/55-year covenant (from construction completion) for each individual Property in the Project Sponsor's Proposal from the date of Closing;
 - v. Individual Projects may be subject to a Project Labor Agreement (see section # 14 in this PTS).

6. Debt Service Coverage Ratio:

A ratio of at least 1.15:1 is required for the full 15-year projection period for each individual loan.

7. Budget/Cost Estimator:

The Project Sponsor will be required to submit a Cost Estimator report to the City prior to receiving a conditional commitment. Also, Project Sponsor will also submit the Budget and Eligible Costs for a Project; and include any other items approved in writing by Lender prior to receiving a conditional commitment. Undisbursed Loan funds in one category or line item (e.g. insurance costs) may not be applied to another category or line item (e.g., interest reserve) unless the Budget expressly and specifically allows such use or Lender consents to the specific use in writing. In its sole discretion, HHCIDLA may approve changes in the budget by the execution of an approval letter stating the reasons for the changes which shall include an attached modified budget. Borrower shall adhere to the modified budget. Line item increases are to be first funded from the contingency line item,

then from any cost savings in any one line item. Prior to Closing, Project Sponsor will submit an updated budget for each individual project.

At the request of the City (Post Closing), the Project Sponsor shall furnish formal updated project data (closing budget and final cost review) within ten (10) business days including (but not limited to) the following:

- a. Project Cost Data:
 - i. Project Costs Per Unit
 - ii. Land
 - iii. Hard Costs
 - iv. Soft Costs
- b. Project Timeline progress
- c. Ultimate Population Served

8. Project Sponsor 5 year Pro Forma:

Provided by Project Sponsor for each individual project prior to receiving a conditional commitment from the City (per Section #2 in this PTS).

9. Project Site Plan:

Provided by Project Sponsor for each individual project prior to receiving a conditional commitment.

10. Developer Fee:

For all projects applying for Measure HHH financing, the maximum developer fee that may be included in project costs is the relevant limit established by the California Tax Credit Allocation Committee (CTCAC) in the California Code of Regulations, Title 4, Division 17, Chapter 1, Section 10327(c)(2)(A) and (B). Notwithstanding the CTCAC developer fee maximums, the maximum developer fee that may be paid out of development funding sources is \$2.5 million. The balance of a higher earned developer fee permissible under Section 10327(c) (2) (B) must be offset by a capital contribution of an equal amount to defray the development costs associated with the permanent supportive housing project. The project budget may not reflect, nor may the project pay out, a deferred developer fee beyond the balance owed on the \$2.5 million portion of the fee. Developer fees for projects developed as multiple simultaneous phases must comply with CTCAC regulations

11. ADA Requirements:

A CASp will be retained for each individual Project in the Project Sponsor's strategy, which will comply with all City requirements as listed in the HHH regulations. At least 11% of the units comply with the Uniform Federal Accessibility Standards (UFAS) requirements for mobility accessibility and an additional 4% of the units comply with

UFAS requirements for sensory accessibility. Program Sponsor represents and certifies that:

- a. Project Sponsor shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Sections 12101, *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sections 701, *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments; and California Government Code Section 11135. Project Sponsor further represents that the Project will be designed, constructed, completed, and operated in a manner consistent with the Accessibility Covenants contained in Exhibit D to the Regulatory Agreement.
- b. Project Sponsor shall not discriminate on the basis of disability or on the basis of person's relationship to, or association with, a person who has a disability;
- c. Project Sponsor shall provide reasonable accommodation upon request to ensure equal access to all of its programs, services and activities;
- d. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 CFR, Part 40; and
- e. The buildings and facilities used to provide services under this Loan Agreement are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, the Accessibility Covenants in the Regulatory Agreement, or other applicable federal and state law.
- f. And other policies and agreements as required by HCIDLA.

12. Collateral:

As collateral for the Loan, upon Borrower's acquisition of the real property, the Borrower shall provide the Lender an executed Deed of Trust (to be executed by Project Sponsor, as Borrower, or by any affiliate of Project Sponsor which shall be the owner of the property at closing) granting the Lender a subordinate security interest on fee parcels for the Project funded under the Loan. The Borrower shall deliver concurrently with the execution of the City Deed of Trust, the original executed City Note which Lender shall hold until the City Note is paid in full.

Lender shall file a UCC-1 with the California Secretary of State giving Lender a security interest in the Improvements, personal property, and Plans and Specifications for each particular property.

Concurrent with the recordation of the City Deed of Trust and the Regulatory Agreement, the Lender shall cause all previous deeds of trust for that particular property to be respectively reconveyed. All of the previous promissory notes for that particular property shall be canceled and returned to the Program Sponsor. All of the previous UCC-1's for that particular property shall likewise be terminated.

As further security, Project Sponsor agrees to assign and transfer to the City, subject to the rights of prior lien holders, its successors or assigns, all of (1) Project Sponsor's (or Borrower's) rights in and to the Plans and Specifications, together with all amendments, modifications, supplements, general conditions and addenda thereto relating to the Project, and (2) Project Sponsor's (or Borrower's) right, title and interest in the agreement between the Project Sponsor and the Architect relating to the development of the Project.

13. Closing:

Upon Site Control, a 12-month conditional commitment will be provided for each individual Project. Construction closing is expected to commence up to 12 months from Site Control and is subject to Exhibit G and Exhibit E in each City Project Loan Agreement.

In addition, prior to any Loan disbursements, Project Sponsor shall identify a particular property for acquisition and provide cost, organizational, and other financial documentation reasonably requested by HCIDLA to justify the requested disbursement of loan funds associated with the particular property. Prior to or simultaneously with disbursement of any loan proceeds, and pursuant to escrow instructions in a form acceptable to HCIDLA, Borrower shall sign a City Project Loan Agreement and a City Note in a form acceptable to HCIDLA, and shall further cause the recordation of a City Deed of Trust and Regulatory Agreement on the property in the Official Records of Los Angeles County. Any such disbursements made shall be in accordance with the terms of this City MOU as well as the City Project Loan Agreement for the particular property associated with the disbursement request. All additional funding per section #20 of this PTS shall be committed and ready for Closing. In addition, evidence of funding for ongoing operations will need to be submitted.

14. Labor Rates:

The Project will incur federal Davis Bacon and state prevailing wages. HHH regulations require prevailing wages. It is assumed that each individual project will not be required to enter into a Project Labor Agreement ("PLA") based on project sizes. Program Sponsor must verify compliance with PLA ordinance. A PLA is applicable for projects with 65 units or more.

15. Social Services:

Each individual Project will provide Social Services on-site and all units will be filled through the Los Angeles County Coordinated Entry System or qualified system deemed approved by HCIDLA. A Supportive Service Plan with an identified lead service provider is required at the time of application for any general low-income units or Special Needs units in the proposed project that are not supported by the L.A. County Health Agency. The Program Sponsor's proposed lead service provider will be LA Family Housing.

Service programming by LA Family Housing will be provided at no cost to the tenants and shall include the following: (1) Supportive services and intensive case management to support housing maintenance & healthy independent living; (2) Establishment of a medical home, utilization of a primary care provider & referrals to physical healthcare services; (3) Linkage to mental health services; (4) Biopsychosocial assessment to identify barriers and create Individual Service Plans (ISP); (5) Individual Service Plans for each tenant to support stability and increase overall quality of life; (6) Assistance with medication self-management; (7) Linkage & referrals to substance use disorder treatment services; (8) Peer Support Groups; (9) Referrals to HIV/AIDS testing, treatment and preventative education; (10) Life skills training; (11) Employment training; (12) Benefits advocacy and benefits acquisition; and (13) Transportation assistance; (14) Linkage to recreational/social activities.

16. Minimum Reserves:

- a. Capitalized Operating Reserves required per project is estimated at three months of operating expenses and debt service payments.
- b. Annual Replacement Reserves required is a minimum \$350 per unit.
- c. Capitalized Supportive Reserves: Program Sponsor will be permitted to establish a Reserve Fund for Supportive Services Coordination. To the extent that there are funds available after the 1) payment of all Operating Expenses, and 2) funding of the Replacement Reserve Fund, funds may be deposited into this account for the purposes of providing supportive services coordination for the project's tenant population. Deposits to this fund shall be in amounts of no more than the following:
 - i. Up to \$4,080 per unit, per year for the chronically homeless
 - ii. Up to \$3,060 per unit, per year for homeless with special needs
 - iii. Up to \$250 per unit, per year for low income senior and other tenant populations.

17. Subordination for each individual loan:

The following summarizes the agreed upon subordination assumption for the City's affordability restrictions loan:

- d. HHH Affordability Restrictions-Subordinated to Conventional Sources subject to acceptance by City of form of subordination agreement and order of priority.

18. Affordability Restrictions:

Affordability requirements will be restricted for a minimum of 55 years from the Certificate of Occupancy by the following regulatory agreements:

- e. City Land Restrictions:
 - i. A total of no less than 360 PSH units restricted to 30% AMI per the Program Sponsor's strategy. The Program Sponsor expects studios to

comprise the total PSH count. Program Sponsor will request to 'float' rental rates above 30% AMI in the event of a loss of rental subsidy, and HCIDLA will evaluate such a request at the time made in accordance with its standard 'float-up' language in HHH loan documents.

ii.

19. Total Estimated Strategy Financing Plan:

Permanent Loan	\$26,595,600
HHH (includes RCLF)	\$40,000,000
CDFI (RCLF)	\$3,000,000
NPLH	\$33,527,303
4% TCAC Equity	\$51,780,531
GP Equity / Deferred Developer Fee	\$5,357,448
Total	\$160,260,882

Total Estimated Strategy Financing Plan (Predevelopment)

Permanent Loan	\$0
HHH (RCLF)	\$5,000,000
CDFI (RCLF)	\$3,000,000
NPLH	\$0
4% TCAC Equity	\$0
GP Equity / Deferred Developer Fee	\$0
Total	\$8,000,000

Total Estimated Strategy Financing Plan (Construction)

Permanent Loan	\$34,595,600
HHH (Remaining Proceeds)	\$35,000,000
HHH (RCLF)	\$0
CDFI (RCLF)	\$0
NPLH, if available (or equivalent funding subject HCIDLA approval)	\$33,527,303
4% TCAC Equity	\$51,780,531
GP Equity / Deferred Developer Fee	\$5,357,448
Total	\$152,260,882

Per Project Estimated Financing Plan

Permanent Loan	\$4,432,600
HHH (includes RCLF)	\$5,786,551
NPLH, if available (or equivalent funding subject HCIDLA approval)	\$6,468,000
4% TCAC Equity	\$8,630,089
GP Equity / Deferred Developer Fee	\$892,908
Total	\$26,210,147

20. Milestones:

The below Milestones represent maximum time frames. In addition, the Program Sponsor anticipates securing all other funds or an alternative source (s) to complete each individual project relative to the timeframes listed below:

<u>Action</u>	<u>Date</u>
MOU Executed	By January 10, 2019
Obtain Sites (Site Control)	January 11, 2020 to May 11, 2020
Conditional Project Specific Approval for HHH Funds)	May 2021 June 2021 July 2021 August 2021 September 2021 October 2021
Obtain Other Funding Approvals	December 2019 to May 2021
All Construction Completed by:	December 2022

**EXHIBIT F
PROP HHH MOU
[PROGRAM NAME]**

**BUDGET AND METHOD OF FINANCING [TO BE FINALIZED IN CONJUNCTION
WITH EACH PROJECT LOAN AGREEMENT]**

The Budget and Method of Financing for the project are as indicated in the attached, and include any other items approved in writing by Lender.

Note: Project costs which were incurred before this Loan was approved by HCIDLA are also eligible for reimbursement, if appropriately documented and approved, by HCIDLA.

Undisbursed Loan funds in one category or line item (e.g., insurance costs) may not be applied to another category or line item (e.g., interest reserve) unless the Budget expressly and specifically allows such use or Lender consents to the specific use in writing.

In its sole discretion, HCIDLA may approve changes in the budget by the execution of an approval letter stating the reasons for the changes which shall include an attached modified budget. Borrower shall adhere to the modified budget. Line item increases are to be first funded from the contingency line item, then from any costs savings in any one line item.

The Total Development Cost for any Project funded under the Program, and the anticipated interim and permanent sources of funding for each Project are also attached.

Borrower shall promptly inform Lender of any changes in the amount, terms, and/or sources of financing or funding for each Project. Unless otherwise approved by Lender, any increases in a financing source shall be utilized to reduce the City Loan amount where feasible. Unless otherwise approved by Lender, any cost savings and unused contingency funds shall be utilized to reduce Lender's loan.

Deferred developer fees shall be drawn from project cash flow over the first fifteen (15) years of project operation.

**EXHIBIT G
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF LOAN DISBURSEMENT REQUIREMENTS
[TO BE FINALIZED IN CONJUNCTION WITH EACH PROJECT LOAN
AGREEMENT]**

A. CONDITIONS PRECEDENT TO ELIGIBLE ACQUISITION REIMBURSEMENTS, PREDEVELOPMENT REIMBURSEMENTS, AND CONSTRUCTION DISBURSEMENTS. Lender shall not be obligated to make any disbursements of Loan proceeds or take any other action under the Project Loan Documents unless all of the following applicable conditions precedent are satisfied:

1. Documents reflecting the Partnership's good standing and evidence that all necessary actions have been taken by the Partnership to authorize the execution of this Loan Agreement and a copy of the Partnership's Fictitious Business Name Statement, if any, as published and filed with the Clerk of Los Angeles County, and specimen signatures.
2. Borrower must submit to Lender all documents reflecting the Limited Liability Company's good standing and evidence that all necessary actions have been taken by the Limited Liability Company to authorize the execution of the Loan Agreement and a copy of the Limited Liability Company's Fictitious Business Name Statement, if any, as published and filed with the Clerk of Los Angeles County.
3. Borrower has submitted for review and approval by HCIDLA, all corporate and tax related agreements, including but not limited to certified copy of articles of incorporation, by-laws, the organizational minutes of the corporation's board of directors, certificate of status of good standing of the corporation issued by the California Secretary of State, as well as Board of Director's resolution authorizing the Loan.
4. Borrower shall submit financial statements, reviewed by a certified public accountant, for Lender's review and approval.
5. The financial condition of the Borrower has not materially and adversely changed since the application for the Loan.
6. Borrower shall execute and deliver to Lender all documents, instruments, and policies required under the Project Loan Documents, including but not limited to the City Note, City Deed of Trust, and the City Regulatory Agreement.

7. **Borrower shall comply with all reporting requirements set forth in this Loan Agreement.**
8. **There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default.**
9. **Borrower shall submit, for the City's approval, a phase I toxic assessment for the Property.**
10. **Receipt of an environmental clearance. Borrower shall also submit to Lender a complete subsurface report.**
11. **Borrower shall submit evidence of site control and verification that site control will be maintained until acquisition of the Property.**
12. **Borrower shall submit, for City's approval, an appraisal for the Property showing that the Property is valued in at least the amount of the portion of the Loan that is for the purchase of the Property.**
13. **Borrower shall comply with Los Angeles Municipal Code section 96.300, Form 9a, Report of Residential Property Records and Pending Special Assessment Liens.**
14. **Borrower shall take and maintain ownership of the property with free and clear title except for HCIDLA approved encumbrances.**
15. **Borrower shall deliver to Lender an ALTA lender's policy of title insurance, ensuring the Lender's interest in the Project, from a title insurance company approved by the Lender in a form acceptable to Lender.**
16. **Borrower shall provide, maintain and deliver to the City a certificate of insurance or copy of the insurance policy, which policy shall be satisfactory to the City, with loss payable to the City in addition to the Borrower. Borrower shall submit evidence of insurance on City-approved forms. Failure to maintain the required liability and hazard insurance shall be considered a default under the City Project Loan Agreement.**
17. **Borrower shall submit for Lender's review and approval executed commitments for all sources of financing, and may only have contingencies that are clearly within the Borrower's control to satisfy.**
18. **Lender shall have the right to review, approve, and require changes to all design drawings. The architect and Borrower shall follow the HCIDLA Design Review Process as outlined in the AHTF NOFA: Submittal Requirements for Architectural Review.**

19. Borrower shall submit evidence that the Project conforms to City zoning requirements, or evidence that the Project will comply with the City zoning requirements within Two Hundred Seventy (270) days of the award of tax credits.
20. Borrower shall submit Plans and Specifications and any changes thereto acceptable to Lender.
21. Borrower shall submit, for Lender's review and approval, all service contracts including the architect, financial consultants, attorney, planning consultant and any other Project related service contracts. No disbursements will be processed for services whose contracts were not approved by HCIDLA in advance and/or which are not in compliance with the budget submitted to HCIDLA and TCAC.
22. Borrower shall have delivered and Lender shall have approved a preliminary Management Plan in a form complying with Lender's requirements.
23. [IF APPLICABLE] Borrower shall receive a preliminary Federal tax credit allocation of at least X Dollars (\$X), annually for the next ten years.
24. [IF APPLICABLE] Borrower shall provide a letter of intent from Tax Credit Investors for the purchase of federal tax credits at a minimum of X DOLLARS AND CENTS (\$X) per federal tax credit dollar.
25. Borrower shall submit for Lender's review and approval all Project design and architectural development phases of the Project. Lender will disburse funds as each architectural phase is completed and approved by Lender.
26. Borrower shall submit for Lender's review and approval a scope of work with qualities and location of work to be completed, or a complete set of working drawings for the purpose of facilitating a cost estimate by the Lender.
27. HCIDLA shall approve the final construction cost breakdown, the construction contract(s), the contractor and any change orders related to the construction of the Project.
28. Borrower shall submit, for Lender's review and approval, all Project invoices and receipts prior to reimbursement of previously incurred costs and future disbursements.
29. Borrower shall submit a construction schedule satisfactory to Lender as listed in Exhibit M, the Schedule of Performance. Noncompliance with this schedule, unless specifically permitted by HCIDLA, shall be considered a default under the City Project Loan Agreement.
30. Borrower shall submit verification of the total development costs. The total development costs, the developer fee and contractor's overhead and profit may not

differ by more than five percent (5%) from the amount indicated in the development cost schedule that was submitted by the Borrower.

31. Borrower shall be responsible for all cost overruns. Any increases in excess of the Project contingencies will be absorbed by the developer's fee or other sources secured by Borrower and approved by Lender.
32. Borrower shall submit an executed Certification and Disclosure Regarding Lobbying, as required by 24 CFR 87.110, attached as Exhibit H, and incorporated into this Loan Agreement by this reference.
33. Borrower shall submit an executed Certification Regarding Ineligibility, Suspension and Debarment, as required by Executive Order 12549, attached as Exhibit I, and incorporated into this Loan Agreement by this reference.
34. Borrower shall deliver an Affirmative Action and MBE/WBE Plan acceptable to Lender.
35. Borrower shall comply with the American with Disabilities Act and all other applicable state and federal laws with respect to accessibility requirements and standards.
36. Borrower shall comply with the Living Wage Ordinance and Service Contract Worker Retention Ordinance, Uniform Federal Accessibility Standards, Section 504 of the Rehabilitation Act of 1973, and Fair Housing Act, as certified by the Project's Architect.
37. Borrower shall comply with the Child Support Compliance.
38. Borrower shall, upon entrance of the contract and any renewal thereof, complete, sign and submit to the City the Iran Contracting Act of 2010 Compliance Affidavit.

B. ADDITIONAL CONDITIONS PRECEDENT TO DISBURSEMENTS OF ANY LOAN PROCEEDS. Prior to disbursement of any proceeds of the City Loan or proceeds of any other loan, Borrower shall comply with the following:

1. Borrower shall simultaneously submit identical copies of a request for disbursement ("Disbursement Request"), as well as: (i) waivers and lien releases for work or services performed and releases of stop notices and mechanic's liens if applicable; (ii) all documents evidencing compliance with the labor compliance requirements, pursuant to the Project Loan Documents, and (iii) any items required by City to clear any deficiencies from the previous month's compliance review. Items (ii) and (iii) shall be collectively referred to herein as the "Compliance Submittal" and should only be forwarded to the City's Contract Compliance Unit. The Disbursement Request shall specify the line item for which the requested funds will be used and shall also specify the source of such funds.

2. **Prior to submission of any Disbursement Request, Borrower must have cleared all outstanding deficiency items identified in the Contract Compliance Notice from the previous month. Borrower shall require the general contractor to keep payroll records current. In the event the Contract Compliance Unit disapproves the Disbursement Request for non-compliance and / or Borrower fails to clear any outstanding deficiency items identified on previous Contract Notices, all parties agree that Borrower must delete the disputed amount requested from that subcontractor ("non-Compliant Item") from the Disbursement Request and resubmit the Disbursement Request to all parties; however, should a dispute arise among the parties regarding funding all or a portion of the Disbursement Request or any funds held pursuant to a Non-Compliant Item and said dispute cannot be resolved within a reasonable period following receipt of the Disbursement Request by the party funding the Disbursement Request, then the party funding the Disbursement Request may make the final determination whether to fund all or a portion of the Disbursement Request. Lender shall retain an amount equal to but not more than ten percent (10%) of the City Loan ("Retention Funds"), which is intended to be utilized primarily for the payment of hard construction costs as set forth in the Cost Breakdown. All parties further agree that in no event will any portion of the Retention Funds be disbursed until the Contract Compliance Unit has provided written notification to all parties that Borrower has obtained final clearance from the Contract Compliance Unit.**

C. DISBURSEMENT OF ACQUISITION LOAN PROCEEDS. Disbursement of Loan proceeds for the acquisition of the Property shall be made through the Escrow Holder pursuant to the Lender's escrow instructions.

D. DISBURSEMENT OF PREDEVELOPMENT LOAN PROCEEDS. Lender must approve, as required in the HCIDLA staff report, all requests for payment prior to disbursement of Loan proceeds for payment of any predevelopment costs incurred on the Project.

E. DISBURSEMENT OF CONSTRUCTION LOAN PROCEEDS. Lender must approve all requests for payment prior to disbursement of Loan proceeds for payment of any construction costs incurred on the Project. Requests will be approved only on the basis of site inspections by Lender's designees confirming that the construction schedule is being met and that the construction is progressing in accordance with the Plans and Specifications and industry standards. Lender's approval for disbursements shall only be for approximate work performed. Lender shall not be responsible for the quality of construction plus compliance with the Plans and Specifications. Pursuant to Section 2.24 of the City Project Loan Agreement, Borrower must submit a certification from the architect for the Project stating that the Improvements were made in substantial accordance with the Plans and Specifications and/or work write-up, and the terms of the Project Loan Documents.

Any approved cost overruns shall be drawn first from contingency line items and then from developer fees.

Reimbursements for the construction costs will be made only for work in place unless specific provisions are made by the contractor and approved by Lender to protect supplies stored on- or off-site from loss and to protect Lender's interest therein. Any obligations incurred in connection with the construction contract must be reported to Lender within sixty (60) days following the recording of a valid Notice of Completion. No claims submitted after the sixty (60) day period shall be binding on Lender for reimbursement. Any obligations and/or debts incurred by Borrower or its construction contractor and not reported to Lender within the sixty (60) day period shall be the sole liability of the party who incurred the liability and/or debt.

F. AMOUNT OF CONSTRUCTION COSTS DISBURSEMENT.

Loan proceeds shall be disbursed up to the amount of the Loan shown in the Budget and only for construction items that are shown as Eligible Costs. Borrower may exceed the budgeted amount for each construction item in the Budget by not more than ten percent (10%), provided that the total Loan amount is not exceeded. Changes in individual construction items comprising the Budget in excess of ten percent (10%) of the amount budgeted shall require the prior written request of Borrower and the written consent of Lender. However, Lender's obligations shall in no event exceed the construction Loan amount specified in this Loan Agreement. Any costs above this amount necessary for the completion of the Project shall be the sole responsibility of Borrower.

G. PERFORMANCE RETENTION. Lender shall withhold final disbursement of the Loan proceeds budgeted for direct costs of the construction costs as set out in the intercreditor agreement, which amount shall be at least ten percent (10%) of each disbursement for construction costs, until all of the following conditions precedent are satisfied:

1. All of the conditions precedent to disbursements of Loan proceeds as specified above have been satisfied;
2. All of the conditions imposed on Borrower prior to issuance of a Notice of Completion as provided for herein have been satisfied;
3. Borrower has submitted to Lender a copy of a recorded Notice of Completion;
4. Borrower has delivered to Lender all lien waivers and releases required by Lender, or the applicable statutory periods for filing mechanics or other similar liens have passed;
5. The Project has been completed in full compliance with the Plans and Specifications to the satisfaction of Lender; and
6. The Project has received a CASp report stating that it is in compliance with the Accessibility Standards described in the City Regulatory Agreement.

H. CLAIMS FOR REIMBURSEMENT. Any obligations incurred in connection with the Project must be reported to Lender within one hundred twenty (120) days following the recording of a valid Notice of Completion. No claims submitted after the one hundred twenty (120) day period shall be binding on Lender for reimbursement. Any obligations and/or debts incurred by Borrower

or its agents and not reported to Lender within the one hundred twenty (120) day period shall be the sole liability of the party who incurred the liability and/or debt. This provision does not apply to obligations incurred in connection with the construction contract which is restricted to a sixty (60) day period addressed under Disbursement of Construction Loan Proceeds.

EXHIBITS H AND I (INTENTIONALLY OMITTED)


H and I (Omitted)

**EXHIBIT J
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF UCC-1 [TO BE EXECUTED IN CONJUNCTION WITH EACH PROJECT
LOAN AGREEMENT]**

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)(a1)
B. E-MAIL CONTACT AT FILER (optional)(a1)
C. SEND ACKNOWLEDGMENT TO (Name and Address)(ss)


THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME						
OR	1b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE or ASSIGNOR or SECURED PARTY) Provide only one Secured Party name (3a or 3b)(b)

3a. ORGANIZATION'S NAME						
OR	3b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY

4. **COLLATERAL** (This financing statement covers the following collateral):

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

Public Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

Agricultural Lien Non-UCC Filing

7. **ALTERNATIVE DESIGNATION** (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licenser

8. **OPTIONAL FILER REFERENCE DATA:**

EXHIBIT A TO UCC FINANCING STATEMENT

(BORROWER)

COLLATERAL DESCRIPTION

DEBTOR: BORROWER
A California Limited Partnership/Non-Profit, etc.

SECURED PARTY: THE CITY OF LOS ANGELES,
A Municipal Corporation and Charter City

Relating to the \$_____ loan from the City of Los Angeles ("City") pursuant to a Loan Agreement dated _____ between the City and _____ a California Limited Partnership.

COLLATERAL

All of the following-described estate, property and interest of Debtor now or hereafter acquired, together with all cash and non-cash proceeds thereof: Real property located at:

_____.

All interest, estates of other claims, both in land and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs and landscaping now or hereafter erected or located on the Property, including all equipment and machinery used for supplying or distributing heating, cooling, electricity, gas, water, air and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all extinguishment equipment, elevators, floor coverings, window coverings, paneling, cabinets, (provided, however, that Trustor shall have the right to remove, if necessary, such fixtures, furnishings and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and equipment either now or hereafter delivered to the Property and intended to be installed therein or any such material and equipment purchased with Loan proceeds whether or not located on the Property; all reserves, accounts, deferred payments, and refunds relating to development on the Property; all rents and income generated by the Property or improvements thereon (subject however to the assignment of rents to the lender contained herein); all leases, subleases and rental agreements covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, or payments of agreements; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any street, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil gas or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans or any other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of occupants of dwelling units on the Property); all intangible property and rights relating to the Property or operations on the Property, including trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction on the Property; all architectural, structural, and mechanical plans, specifications, designs, studies and data with respect to construction of improvements on the Property; all current and future claims and rights of action of Trustor against owners and operators, tenants and former tenants, consultants, advisors and other third parties with respect to environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state or local ordinances, statutes, regulations, or administrative decisions or common law.

EXHIBIT B TO UCC FINANCING STATEMENT

(BORROWER)

PROPERTY/LEGAL DESCRIPTION

LEGAL DESCRIPTION

ASSESSOR'S IDENTIFICATION NUMBERS:

COMMON ADDRESSES:

TRUSTOR:

A CALIFORNIA Limited Partnership

EXHIBIT C TO UCC FINANCING STATEMENT

(BORROWER)

PROMISSORY NOTE

See attached

EXHIBIT D TO UCC FINANCING STATEMENT

(BORROWER)

DEED OF TRUST

See attached

EXHIBIT E TO UCC FINANCING STATEMENT

(BORROWER)

DESCRIPTION OF IMPROVEMENTS, PLANS AND SPECIFICATIONS

1. **Improvements:** The improvements ("Improvements") consisting of: (_____) single-room occupancy units/ efficiency units.
2. **Plans and Specifications:** The plans and specifications, as of the date hereof, are those which the Borrower has heretofore, or will hereafter, deliver to the Lender.

**EXHIBIT K
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF CITY REGULATORY AGREEMENT [TO BE EXECUTED IN
CONJUNCTION WITH EACH PROJECT LOAN AGREEMENT]**

NO FEE DOCUMENT
Recording requested by and
when recorded, mail to:

City of Los Angeles
Housing and Community Investment Department
P.O. Box 532729
Los Angeles, CA 90053-2729
Attn: Portfolio Management (HIMS# [ADD])

Assessor's Identification Number: XXX

PROP. HHH REGULATORY AGREEMENT

This Regulatory Agreement is made this _____ day of _____, 2019 by and between the City of Los Angeles, a municipal corporation (the "City"), and [NAME], a California limited partnership ("Owner" or "Borrower").

RECITALS

A. On or about June 29, 2016, the Los Angeles City Council adopted a Resolution proposing the issuance of general obligation bonds to be submitted for approval by a two-thirds vote of the qualified voters of the City, in accordance with California Constitution Article XIII A, Section 1(b)(2), in order to finance the acquisition or improvement of real property to provide: (a) supportive housing for extremely low income or very low income individuals and families who are Homeless or Chronically Homeless, which includes facilities from which assistance and services, such as mental health treatment, health care, drug and alcohol treatment, education and job training, may be provided; (b) temporary shelter facilities, storage facilities, shower facilities and other facilities to be used to provide supportive services or goods to, or otherwise benefit, those who are Homeless, Chronically Homeless or at risk of homelessness; (c) affordable housing, including veterans housing, for extremely low income, very low income and/or low income individuals and families, including those who are at risk of homelessness; and (d) associated infrastructure and landscaping, including

utilities, sidewalks and streets to be used in connection with the aforementioned housing units and other facilities; any of which may be operated, managed, owned or used by the City, other public entities, nonprofit entities or private entities, as permitted by law (the "Resolution").

B. Pursuant to the Resolution, the Office of the Los Angeles City Attorney presented the proposed general obligation bond proposition to the public as the "HOMELESSNESS REDUCTION AND PREVENTION, HOUSING, AND FACILITIES BOND. PROPOSITION HHH", referred to hereinafter as "Prop HHH".

C. During the general election in November 2016, voters in the City passed Prop HHH by the requisite two-thirds margin, thereby authorizing the City to issue up to \$1.2 billion in General Obligation bonds over a ten-year period for the purposes outlined in the Resolution.

D. The City wishes to promote the construction of multifamily rental housing within the City of Los Angeles, and designated the Housing and Community Investment Department of the City of Los Angeles ("HCIDLA") as the department sponsor for the Prop HHH Permanent Supportive Housing Program in order to fund the improvement of real property for the construction of permanent supportive housing units for those who are Homeless or at risk of homelessness (the "PSH Program"), using proceeds from the Prop HHH bond issuance passed by voters in November 2016.

E. On October 15, 2019, City Council authorized the award of up to [X Million Dollars] to Program Sponsor based on Program Sponsor's selection as a recommended program for funding pursuant to the Proposition HHH Housing Challenge Request for Proposals (Council File No. 17-0090-S4).

F. Under the PSH Program, the City issued a loan to the Borrower in the amount of X Million Dollars (\$X) from the City's Prop HHH Funds, loaned to support eligible [acquisition reimbursements/predevelopment reimbursements, construction and permanent costs].

G. The use of the Prop HHH Funds are to pay eligible acquisitions reimbursements, predevelopment reimbursements, construction, and/or permanent costs up to a maximum total amount of Forty Million Dollars (\$40,000,000), as follows:

	Acquisition	Predevelopment (RCLF)	Construction	Total
Prop HHH	N/A	\$	\$	\$
Other:				
Other:				
Total		\$	\$	\$

H. WHEREAS, Borrower shall acquire a fee interest in certain parcels of real property located at [at a To be disclosed site addresses] (as more particularly described in Exhibit A) (the "Property") for the construction of an apartment building resulting in no less than X (X) total units

that serve the Homeless and Chronically Homeless, plus [one] manager's unit. Further details and restrictions are as set forth in the City Project Loan Agreement and related exhibits (the "Project", as more particularly described in Exhibit A1).

I. The purpose of this Regulatory Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Property for the benefit of Property, occupants and the people of the City of Los Angeles. The covenants in this Regulatory Agreement are intended to run with the land and be binding on Owner and Owner's successors for the full term of this Regulatory Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, Owner and City hereby agree as follows:

I. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Regulatory Agreement or attached exhibits.

1. "ACCESSIBILITY COVENANTS" shall mean the accessibility covenants attached as Exhibit D to this Regulatory Agreement, which are hereby incorporated by reference, and which describe the obligations of Owner regarding the accessibility of the Project.

2. "ACCESSIBILITY STANDARDS" shall mean the accessibility design and construction standards for the Project as defined in the Accessibility Covenants.

3. "AREA MEDIAN INCOME" means the median income for the Los Angeles-Long Beach HUD Metro Fair Market Rent Area (FMR Area), as defined by U.S. Department of Housing and Urban Development (HUD), with adjustments for family size, as determined from time to time by the HUD pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Los Angeles that HUD may hereafter adopt in connection with said Act.

4. "ASSISTED UNIT" means a housing unit on the Property which is financed by Prop HHH Funds.

5. "CERTIFICATE OF OCCUPANCY" shall mean such certificate as shall be issued to the Borrower by the City following completion of the Improvements pursuant to Section 91.109 of the Los Angeles Municipal Code.

6. "CHRONICALLY HOMELESS" shall mean (a) experiencing chronic homelessness as defined in 24 C.F.R. Part 578.3; (b) residing in a transitional housing project that will be eliminated and meets the definition of chronically homeless in effect at the time in which the individual or family entered the transitional housing project; (c) residing in a place not meant for human habitation, an emergency shelter, or a safe haven, but where the individuals or families

experiencing chronic homelessness as defined in 24 C.F.R. Part 578.3 had been admitted and enrolled in a permanent housing project within the last year and were unable to maintain a housing placement; (d) residing in transitional housing funded by a Joint Transitional Housing and Permanent Housing Rapid Re-Housing component project and who were experiencing chronic homelessness as defined in 24 C.F.R. Part 578.3 prior to entering the project; (e) residing and having resided in a place not meant for human habitation, a safe haven, or an emergency shelter for at least 12 months in the last three years, but has not done so on four separate occasions; or (f) receiving assistance through the Department of Veterans Affairs (VA) funded homeless assistance programs and met one of the above criteria at intake to the VA's homeless assistance system.

7. **"CITY"** is the City of Los Angeles, a municipal corporation, and its officers, officials, directors, employees, agents and authorized representatives.

8. **"CITY DEED OF TRUST"** means any deed of trust, assignment of rents, and security agreement placed on the Borrower's fee interest in a Property, as security for the portion of City Loan funds designated for any Project, with Borrower as trustor, and City as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust, a form of which is attached as Exhibit D to the City Project Loan Agreement.

9. **"CITY PROJECT LOAN AGREEMENT"** means the loan agreement executed concurrently with this Regulatory Agreement by Owner and the City which governs the City Loan and details of how the City Loan will fund the Project, as well as any amendments to, modifications of, or restatements of said loan agreement. The City Project Loan Agreement is on file with the City of Los Angeles Housing and Community Investment Department.

10. **"CITY LOAN"** is any loan of funds provided by the City to Owner for the Project.

11. **"CITY NOTE"** means any promissory note for any Project executed by Borrower in favor of Lender evidencing the Loan for the Project, which is secured by a City Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note, the form of which is attached as Exhibit C to the City Project Loan Agreement.

12. **"ELIGIBLE COSTS"** means those costs for which Loan proceeds may be used as specified in the City Project Loan Agreement, and any revisions to the City Project Loan Agreement that are approved in writing by City. In addition, other items may be Eligible Costs if approved in writing by City.

13. **"ELIGIBLE HOUSEHOLD"** means a household that qualifies to rent and occupy a unit at the Project based on the eligibility and income requirements specified in Exhibit N to the City Project Loan Agreement. For reference purposes, the eligibility and income requirements are specified in Exhibit B herein.

14. **"FAMILY INCOME"** means the gross amount of income of all family members that is anticipated to be received during the coming 12-month period determined in accordance with the definition of Annual Income contained in 24 C.F.R. 5.609.

15. **"FULL OCCUPANCY"** means the initial point at which all units are rented to eligible tenants.

16. **"HCIDLA"** shall mean the City of Los Angeles Housing and Community Investment Department of the City of Los Angeles, California.

17. **"HOME FUNDS"** means the HOME Investment Partnerships Program, codified at 42 U.S.C. Sections 12701, et seq., 24 C.F.R. Part 92, to provide funds for affordable housing.

18. **"HOMELESS"** shall mean (a) an individual who lacks a fixed, regular and adequate nighttime residence; or (b) an individual who has a primary nighttime residence that is: (i) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or (ii) an institution that provides a temporary residence for individuals intended to be institutionalized; or (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

19. **"HOUSING DEVELOPMENT"** means the whole of one or more residential structures and appurtenant structures in the Project, including common walkways and parking lots that were or are designed, constructed, altered, operated, administered or financed in whole or in part in connection with the Project.

20. **"HOUSING UNIT"** means a single unit of residence in the Housing Development that provides spaces for living, bathing and sleeping.

21. **"HUD"** means the United States Department of Housing and Urban Development.

22. **"IMPROVEMENTS"** shall mean construction of an apartment building on a Property resulting in a specified number of units, with corresponding use and income restrictions, as set forth in a Project Loan Agreement and related exhibits.

23. **"LOAN"** means the loan of funds provided by City to Program Sponsor pursuant to this MOU and a Project Loan Agreement.

24. **"LOAN AGREEMENT" and "CITY LOAN AGREEMENT"** means both this MOU, as well as the Project Loan Agreement entered into between City and Owner which covers the specific Project for which the Loan was made.

25. **"MOU"** means this agreement, which outlines the general terms of the City's financial commitment and describes the Program, as well as any amendments to, modifications of, or restatements of said loan agreement. This MOU shall be on file with the City of Los Angeles Housing and Community Investment Department.

26. **"PROJECT LOAN DOCUMENTS"** are collectively the MOU, the City Project Loan Agreement, the City Note, the City Deed of Trust, this Regulatory Agreement, and the UCC-1, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

27. **"OWNER"** is [Name], a California limited partnership, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

28. **"PROGRAM"** means the program to develop multiple projects (including the Project) proposed by Program Sponsor and selected for funding by the City pursuant to the Proposition HHH Housing Challenge Request for Proposals, as more fully described in Exhibit E to the MOU.

29. **"PROJECT"** means the construction and operation of a particular Property for residential use according to the terms of the MOU, and the related Project Loan Agreement and City Regulatory Agreement.

30. **"PROJECT COMPLETION"** means that: (1) all necessary title transfer requirements and construction work have been performed; (2) the project complies with the requirements and property standard for all sources of funds (including 24 CFR Part 92 and the property standards within 24 CFR 92.251, if applicable to the source funds); (3) the final drawdown of construction funds has been disbursed for the Project; (4) occurs upon completion of construction and before occupancy; and (5) the Temporary Certificate of Occupancy or the Certificate of Occupancy has been issued.

31. **"PROJECT COMPLETION DATE"** means the date of issuance of the Temporary Certificate of Occupancy or the Certificate of Occupancy for new construction projects or the Notice of Completion for rehabilitation projects.

32. **"PROPERTY"** means the real property described in the attached Exhibit A, which is hereby incorporated into this Regulatory Agreement by this reference, and any buildings or Improvements now or hereafter situated on said real property.

33. **"QUALIFYING HOUSEHOLD"** means a Family Income not exceeding the maximum income level as established in Exhibit B for an Assisted Unit and who is otherwise eligible to rent an Assisted Unit.

34. **"QUALIFYING RENT"** means the maximum rent for an Assisted Unit allowed under the City Project Loan Agreement and this Regulatory Agreement, less an allowance for tenant-paid Utilities as calculated by the City of Los Angeles subject to HUD rules and regulations, and is the consideration, including any bonus, benefits or gratuity, demanded or received by Owner for or in connection with the use or occupancy of a rental unit, including parking, laundry facilities, and other housing services and amenities of any kind that are reasonably deemed as part of rent by the City. The following is not permissible: (a) additional service charges resulting in a rent amount above the

maximum allowable rent set by this Regulatory Agreement and the Project Loan Documents; and (b) contracts with other agencies resulting in rent payments on behalf of the tenant for more than the regulatory agreement's qualifying rent, unless the project is designated as a HUD project based rental assisted building or the contract is otherwise approved by HCIDLA.

35. **"RESTRICTED UNIT"** means a housing unit on the Property which is reserved for occupancy by a X% Income Household, or other designated income as set forth in Exhibit B, and which is designated to be rented at a Qualifying Rent as set forth in Exhibit B.

36. **"UTILITIES"** means the provision of electricity, gas, water, sanitation, or other public services.

37. **"X% INCOME HOUSEHOLD"** means an annual Family Income not exceeding X percent (X%) of the median for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households.

II. OWNER'S OBLIGATIONS

2.1 **COMPLIANCE WITH CITY LOAN DOCUMENTS.** Owner's actions with respect to the Property and the use of City Loan funds shall at all times be in full conformity with all of the requirements of the Project Loan Documents.

2.2 **TERM OF AGREEMENT.** This Regulatory Agreement shall be in effect for fifty-five (55) years from the date of Project Completion.

The term of the entire Regulatory Agreement shall be in full force and effect, regardless of any expiration of the term of any City Loan, any payment or prepayment of any City Loan, any assignment of a City Note, any reconveyance of a City Deed of Trust, or any sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by the City in writing or extended by the mutual consent of the parties. However, failure to record this Regulatory Agreement or the certificate by the City shall not relieve Owner of any of the obligations specified herein.

2.3 **COMPLIANCE WITH FUNDING REQUIREMENTS.** Owner must comply with all the requirements imposed on properties assisted under the applicable sources of funds, as applicable to this Project:

- A. HOME Funds through the HOME Investment Partnership program as contained in 42 U.S.C. Sections 12701, et seq., 24 C.F.R. Part 92,
- B. Any other implementing rules and regulations are incorporated by this reference.
- C. In the event of any conflict between this Regulatory Agreement and the regulations of the applicable source of funds, the most restrictive requirement shall govern.

2.4 BARRIERS TO THE DISABLED. Owner shall ensure that the Project is developed, maintained, and operated in compliance with all applicable federal, state and local rules, laws, and regulations related to accessibility and reasonable accommodations and modifications for persons with disabilities, including but not limited to the Americans with Disabilities Act, as amended, 42 U.S.C. 12101 et seq., and its implementing regulations at 28 CFR Parts 35 and 36 (ADA), Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701, and implementing regulations at 24 CFR Part 8, the Fair Housing Act, as amended, 42 U.S.C. 3601, et seq., and its implementing regulations at 24 CFR Part 100, and any further requirements of the City, and shall adopt and comply with the Accessibility Covenants attached hereto.

III. PROJECT OCCUPANCY AND RENTS

3.1 OPERATION OF PROPERTY. Owner and its agents shall lease, operate and manage the Property after completion in full conformance with the terms of the Regulatory Agreement.

Owner agrees to: (1) maintain and operate the Assisted Units so as to provide decent, safe, and sanitary housing; and (2) provide the Assisted Units with the same level of services (including security), amenities, and maintenance as are applied to the other dwelling units on the Property. Amenities that are provided to non-assisted unit households include, but are not limited to, and access to recreational facilities. Optional services provided must be available to all residents under the same terms and conditions. All incentives such as rent specials must be offered to all new residents, not only residents of non-assisted units. Borrower is prohibited from charging fees that are not customarily charged in rental housing in that housing area. Borrower must ensure that any fee charged to a tenant or prospective tenant is reasonable, customary, and complies with 24 CFR 92.504(c)(3)(xi).

Borrower agrees that during the term of the Regulatory Agreement, HCIDLA shall have the right to review, approve and request changes to the Property Management Plan ("PMP"), operation of the building and Property management entity, in order to preserve the affordability, physical appearance and condition of the Project.

3.2 DESIGNATED ASSISTED UNITS. Borrower must comply with all rules and regulations of each funding source. In compliance with 24 CFR 92.252(j), at the time of the execution of this agreement, the borrower must designate the HOME-restricted units (if applicable) as fixed or floating HOME units. The address or unit number of any HOME-restricted units must be specified and reported to the Lender at the time of initial occupancy. Fixed units remain as the same unit throughout the period of affordability. Floating units may change from comparable unit to comparable unit in order to maintain conformity with HOME Regulations Section 92.252. If the rental housing project has floating HOME units, the Borrower must provide the Lender with information regarding unit substitution. The designated HOME-restricted units on the Property shall meet the following standards:

- A. Generally reflect the average number of bedrooms per dwelling unit and average square footage of non-assisted units on the Property;

- B. Be similarly constructed and of comparable quality to all other units on the Property;
- C. Be dispersed throughout the Property; and
- D. Provide tenants access and enjoyment of all common areas and facilities of the Property on the same basis as tenants of other units.

3.3 LEASING THE PROPERTY. Before leasing any portion of the Property, Owner shall submit its proposed form of lease for City's review and approval. The term of the written Lease shall not contain any provision, nor subsequent modification thereto, which is prohibited by any State or City tenant-landlord laws. Any termination of the Lease or refusal to renew must be in conformance with any other applicable laws and must be preceded by not less than thirty (30) days written notice to the tenant by the Owner specifying the grounds for the action.

A. Assisted Units

- 1. All Assisted Units shall be leased and shall not be withdrawn from the market. Assisted Units shall be rented in a manner consistent with the Space and Occupancy Standards set forth in Chapter 5 of the Uniform Housing Code (1997) and any subsequent amendments, and in such a manner that there is no under-utilization of the floor space of Assisted Units.
- 2. If one (1) of the Assisted Units becomes vacated, Owner shall make reasonable attempts to rent that particular Assisted Unit, or identify another unit as an Assisted Unit.
- 3. During the initial lease up, and upon vacancies of an Assisted Unit, Owner shall make reasonable efforts to advertise to Eligible Households. The affirmative marketing requirements and procedures adopted must meet the requirements of federal fair housing laws and the City's affirmative marketing policy. Owner shall obtain and comply with the City's affirmative marketing guidelines contained within the Property Management Plan Packet from HCIDLA, and affirmatively market all Assisted Units at <http://housing.lacity.org> or such other platform designated by HCIDLA. All affirmative marketing requirements must be followed throughout the affordability period.

B. The Owner shall provide to each tenant, the following: (1) a signed copy of the lease and/or rental agreement; and (2) a signed copy of the supplemental agreement to the lease or rental agreement ("Mandatory Addendum").

C. Owner must submit evidence of marketing efforts and a marketing plan to the City if all restricted units are not occupied by eligible tenants within six (6) months following the

date of the Temporary Certificate of Occupancy. Borrower will be in default of this Agreement if any restricted unit has not been rented to eligible tenants within twelve (12) months after the date of the Temporary Certificate of Occupancy.

3.4 TENANT SELECTION. Before leasing the Property, Owner must provide City for its review and approval Owner's written tenant selection plan which shall be consistent with the requirements of the Lender and the rules and regulations of each funding source. Prior to leasing any Assisted Unit, Owner's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d) and any modifications thereto.

Owner shall rent the Assisted Units to any Eligible Household according to the tenant selection plan. Owner shall verify the prospective tenant's eligibility and shall require from each tenant documentation that such household's income from all sources does not exceed allowable limits as described in Exhibit B.

Owner shall give priority for Assisted Units to Qualified Households who have been displaced as a result of the City of Los Angeles' public projects.

Borrower shall require each prospective tenant to certify under penalty of perjury that they are not (a) an owner, developer or sponsor of the project; (b) an officer, employee, agent, consultant or elected or appointed official of the owner, developer or sponsor; or (c) a member of the Immediate Family of such person described in subsections (a) and (b). Borrower shall not rent any unit of the Project to any of said individuals.

3.5 INCOME CERTIFICATION. Owner shall limit for the full term of the Regulatory Agreement the rental of Assisted Units to Qualifying Households according to the schedule contained in Exhibit B. The income levels and other qualifications of applicants for Assisted Units shall be certified within ten (10) business days prior to the household's expected occupancy of one (1) of the units. No tenant shall occupy an Assisted Unit prior to income eligibility determination and certification by Borrower.

Upon the closing of the initial occupancy, and annually thereafter Owner shall provide the City with an occupancy summary report showing the name of each tenant, unit occupied by each tenant, tenant income, rent paid, and any other information which the City requests and which relates to the eligibility of these households. The income will be calculated using part 5 (Section 8) definition of Income and adhere to section 24 CFR 92.252. If the household size of an Eligible Household changes, Owner shall provide the City with the additional income documentation to determine eligibility. If the City determines that the Eligible Household is no longer an Eligible Household, such Unit will continue to be treated as an Assisted Unit until the next available unit of comparable size on the Property is rented to a person who qualifies for an Assisted Unit.

The City may require the Owner, at any time, to re-examine for compliance with the Exhibit B, the income of each tenant household and immediately submit its findings to the City.

3.6 AFFORDABILITY RESTRICTIONS. The affordability of the Project shall be maintained as follows:

- A. X (X) [studio/one bedroom, etc.] units shall at all times be occupied or held vacant and available for use as permanent supportive housing for Homeless/Chronically Homeless individuals.
- B. X (X) [studio/one bedroom, etc.] units shall at all times be occupied or held vacant and available for rental by X% Income Households.
- C. Income determination shall be made at the time of initial occupancy of a unit by a tenant.
- D. All units are described and limited as set forth in Exhibit B.
- E. If HOME Funds are used, Owner must comply with the affordability requirements contained in 24 CFR 92.252.

3.7 PROJECT RENTS. Rents for Restricted Units shall be limited to Qualifying Rents as set forth in Exhibit B. Qualifying Households shall be given at least thirty (30) days written notice prior to any rent increase.

The maximum allowable rent that may be charged for a Restricted Unit may change from time to time when there are changes in the Area Median Income as published by HUD, or when there are changes made to the allowances deducted for tenant paid Utilities as calculated by the City of Los Angeles, subject to HUD rules and regulations.

For projects subject to the City's Rent Stabilization Ordinance, the maximum rent increase allowed by that ordinance may be less or more than that allowed by changes in the Area Median Income. In such instances, the rents on Assisted Units may only be raised to the lesser of the two (2) allowed increases.

Notwithstanding the above, rental limits on units that have been allocated low income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1989 (26 U.S.C. 42), may have their rents raised in accordance with HUD and tax credit regulations during the term of the tax credit allocation and regulatory period.

If the Project is receiving necessary rental assistance through the Los Angeles Housing Authority, the Los Angeles County Department of Health Services, or through such similar program recognized by HCIDLA ("Rental Assistance") and said Rental Assistance is withdrawn or terminated due to reasons not attributable to the actions or inactions of the Borrower and approval to increase rents is received from the California Tax Credit Allocation Committee, the Borrower may petition HCIDLA and, upon confirmation of the circumstances outlined below, HCIDLA will approve to modify the affordability restriction and maximum rental charges designated in Exhibit N and Exhibit K(B), if the following circumstances exist: (a) alternative funding is unavailable, (b) the Project is

otherwise in full compliance with all the terms of the funding for the Project, and (c) more restrictive funding requirements do not apply to the Project. HCIDLA will allow changes in the target population to the minimum extent necessary to accommodate the new rent levels. In such event, HCIDLA will also allow changes to the Supportive Services Plan to reflect any change in the target population. Notwithstanding the foregoing, all modifications must comply with all funding and City requirements.

3.8 **NOTICE TO TENANTS,** There are five (5) points in time when the Owner is required to give written notice to all tenants of Restricted Units:

- A. Upon initial move-in/lease execution, Borrower shall give written notice, to all tenants of Restricted Units, of the duration of the rent restrictions under the Regulatory Agreement. Borrower must maintain, in its files, a copy of each notice containing each tenant's signed acknowledgment of the notice required hereunder. The notice shall, at the least, contain language that the rent restrictions under the Regulatory Agreement shall be in effect for fifty-five (55) years, and shall terminate fifty-five (55) years from the date of Project Completion and fulfillment of the conditions as contained in the Regulatory Agreement. Upon termination of the rent restriction period under the Regulatory Agreement, rents may be set at market rates unless otherwise restricted by some other legal, regulatory, or contractual requirement.
- B. Thirty-Six (36) months prior to the termination of the rent restriction period under the Regulatory Agreement, Borrower must give written notice to its tenants of the termination of the restrictions on the Restricted Units before their rents may be raised to market rent levels. Borrower must also give written notice pursuant to California Government Code Section 65863.10, to the Mayor of the City of Los Angeles, the Housing Authority of the City of Los Angeles, and the California Department of Housing and Community Development.
- C. Twelve (12) months prior to the termination of the rent restriction period under the Regulatory Agreement, Borrower must give written notice to its tenants of the termination of the restrictions on the Restricted Units before their rents may be raised to market rent levels. Borrower must also give written notice, pursuant to California Government Code Section 65863.10, to the Mayor of the City of Los Angeles, the Housing Authority of the City of Los Angeles, and the California Department of Housing and Community Development.
- D. Six (6) months prior to the termination of the rent restriction period under the Regulatory Agreement, Borrower must give written notice to its tenants of the termination of the restrictions on the Restricted Units before their rents may be raised to market rent levels. Borrower must also give written notice, pursuant to California Government Code Section 65863.10, to the Mayor of the City of Los Angeles, the Housing Authority of the City of Los Angeles, and the California Department of Housing and Community Development.

- E. Ninety (90) days prior to the termination of the rent restriction period under the Regulatory Agreement, Borrower must again give written notice to its tenants of the termination of the restrictions on the Restricted Units before their rents may be raised to market rent levels.

3.9 CONDOMINIUM CONVERSION. Owner shall not convert Property units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the term of this Regulatory Agreement.

3.10 NONDISCRIMINATION. Owner shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Property on the basis of race, religion, national origin, ancestry, sex, sexual orientation, gender identification, transgender status, sex stereotypes, age, physical handicap, mental disability, medical condition, marital status, domestic partner status, family status, pregnancy, childbirth and related medical conditions, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC) acquired or perceived, citizenship, political affiliation or belief, or any other arbitrary basis. Owner shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing. Owner shall include a statement in all advertisements, notices and signs for the availability of Property units for rent to the effect that Owner is an Equal Housing Opportunity Provider.

IV. PROPERTY MANAGEMENT

4.1 MANAGEMENT RESPONSIBILITIES. Owner is specifically responsible, subject to its obligations herein, for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Owner is responsible for maintaining the property in decent, safe and sanitary conditions and in good repair. The City shall have no responsibility over management of the Property.

4.2 MANAGEMENT ENTITY. The City shall have the right to review and approve the management entity chosen by Owner for the Property and the right to require a change in the management agent at any time during the term of this Regulatory Agreement. Any contracting of management services by Owner shall not relieve Owner of its primary responsibilities for proper performance of management duties.

4.3 PROPERTY MANAGEMENT PLAN. At least ninety (90) calendar days prior to completion of construction of the Project, Owner shall submit to the City for review and approval a plan for marketing and managing the Property (the "Property Management Plan"). The Plan shall address in detail how Owner plans to affirmatively market the availability of Project units to prospective Qualified Households in accordance with the City of Los Angeles's affirmative fair housing marketing guidelines, and how Owner plans to certify the eligibility of Qualified Households. The Plan shall also address how the Owner and the management entity plan to manage

and maintain the Property, and shall include appropriate financial information and documentation. The Plan shall include a form lease agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of this Plan in marketing, managing, and maintaining the Property.

At least ninety (90) calendar days prior to completion of construction of the Project, Owner shall also submit a proposed management contract to the City for the City's prior review and approval. The City shall have the right to review and approve any proposed amendments to the management contract or any new management contracts during the term of this Regulatory Agreement.

4.4 MAINTENANCE AND SECURITY. Owner shall at its own expense maintain the Property in good condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of Project occupants. Owner shall not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. Owner shall provide adequate ongoing security equipment and services for Project occupants. Owner shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Property Management Plan; but Owner's maintenance obligations shall not be limited only to the standards contained in these laws or the Property Management Plan.

In the event that Owner fails to maintain the Property in accordance with these standards and after at least ten (10) business days prior written notice to Owner, the City or the City's contractor or agent may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in the City's discretion, and provide for payment thereof. Any amount advanced by the City to make such repairs, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the City Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Owner to the City and shall be secured by any City Deed of Trust, if not previously reconveyed.

4.5 INSPECTION AND RECORDS. Owner shall maintain records which clearly document Owner's performance of its obligations to operate the Property under the terms of this Regulatory Agreement. Said records and documents shall include records pertaining to race, color, creed, sex and national origin of tenants and applicants; and books of original entry, source documents supporting accounting transactions, service records, general ledger, applicable requirements under HOME Funds contained in 24 CFR 92.508 and CDBG Funds contained in 24 CFR 570.490 and 24 CFR 570.493. Borrower shall maintain copies of such books and records in a location that is within twenty-five (25) miles of the Site. Owner shall submit any records to the City within ten (10) business days of the City's request. Owner shall permit the City, HUD and the U.S. Comptroller General to enter and inspect the Property for compliance with obligations under this Regulatory Agreement upon 24 hours advance notice of such visit by the City to Owner or Owner's management agent and to tenants of any inspected Project units.

Borrower's duty to keep and maintain documents include the following forms and

reports:

- A. Property Management Plan
- B. Affirmative Marketing Documentation
- C. Vacancy Notifications Log
- D. Applicant Demographics Log
- E. Proposed Media Ads
- F. Lease Rental Agreement Addendum
- G. Lease/Rental Agreement
- H. Management Company Agreement
- I. House Rules
- J. Tenant Income
- K. Rent Certifications
- L. Tenant Income Source Documents
- M. Occupancy Summary (including the race, national origin or ethnicity and disability status of applicants, households on a project waiting list and occupants)
- N. Certificate of Continuing Program Compliance
- O. Log of Reasonable Accommodation/modification requests

4.6 FEES, TAXES, AND OTHER LEVIES. Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

4.7 INSURANCE COVERAGE. Owner shall cause to have in full force and effect during the term of this Regulatory Agreement insurance coverage as required under Exhibit C1 & C2 of this Exhibit K and Article 5 of the Project Loan Documents, which are hereby incorporated by reference into this Regulatory Agreement.

4.8 PROPERTY DAMAGE OR DESTRUCTION. If any building or improvements erected by Owner on the Property shall be damaged or destroyed by an insurable cause, Owner shall, at its own cost and expense, diligently repair or restore the Property consistent with the original Plans and Specifications for the Project. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within eighteen (18) months thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Owner shall make up the deficiency.

4.9 HAZARDOUS MATERIALS. Owner shall comply with all of the obligations contained in any City Loan Agreement with respect to Hazardous Materials.

V. GENERAL PROVISIONS

5.1 MONITORING. During the term of this regulatory agreement, the City and/or its agents will monitor the Owner's compliance with this Regulatory Agreement and the requirements of the source of funds utilized to finance the City Loan. Violations of the Regulatory Agreement and

funding requirements may result in penalties, fees and expenses being levied against the City. The Owner will be responsible for any costs, penalties, fees and expenses levied against the City and will be responsible to pay any expenses incurred by the City to enforce this Agreement. The Borrower will be charged the cost of monitoring, not prohibited under HUD regulations or the regulations for the applicable funding source.

HCIDLA will monitor the initial production and ongoing occupancy of the Accessible Housing Units and the Accessible Housing Development by applying the updated ADAAG to ensure full compliance with the Accessibility Requirements. In order to determine compliance with the Accessibility Requirements, Owner shall submit and HCIDLA shall review and approve a Certified Access Specialist ("CASp") Inspection Report of the housing development that identifies the necessary and required design elements to make the units and site accessible for individuals with disabilities. HCIDLA shall inspect the construction/rehabilitation to verify production of the correct number of Accessible Housing Units and appropriate site improvements, in compliance with Section 2 and supported by an independent CASp consultant's report.

During the term of this Agreement, HCIDLA will utilize the Housing Development's City approved Property Management Plan and Fair Housing Policy in Regard to Disability, to monitor ongoing occupancy compliance of the Accessible Housing Units and nondiscrimination in regards to individuals with disabilities. Compliance with the Accessibility Requirements shall include, but not be limited to, target marketing, establishing and monitoring a waiting list specific to the Accessible Housing Units, reasonable accommodations and modifications, a service animal policy, policy for releasing empty Accessible Housing Units and all elements contained in the Fair Housing Policy in Regard to Disability dated July 28, 2014, as amended over time.

5.2 SUBORDINATION. This Regulatory Agreement shall be subordinated in priority only to the liens and encumbrances approved by the City in the MOU or the Project Loan Agreement, or otherwise in writing by the City in its sole and absolute discretion.

5.3 TRANSFER AND ENCUMBRANCE OF PROPERTY. During the term of this Regulatory Agreement, Owner shall not make or permit any sale, assignment, conveyance, lease (other than the rental of Project units to Qualifying Households and other eligible residential tenant occupants), or transfer of this Regulatory Agreement, other Project Loan Documents, the Project, or the Property or any part thereof, including the sale of any general or limited partnership interests, without the prior written consent of the City. The City shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) Owner is in compliance with this Regulatory Agreement and the other Project Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of this Regulatory Agreement or the other Project Loan Documents; (b) the transferee agrees to assume all obligations of Owner imposed by this Regulatory Agreement and the other Project Loan Documents and enter into such an agreement ("Assumption Agreement"); (c) the transferee demonstrates to the City's satisfaction that it is capable of owning and operating the Property in full compliance with this Regulatory Agreement and the other Project Loan Documents; (d) the terms of the sale, transfer, or conveyance shall not jeopardize the City's security interest in the Property and is in full compliance with all standards,

including eligibility requirements and other conditions imposed by any funding sources for the Project and any loan; and (e) the transferee is not in default on any other obligations.

During the term of this Regulatory Agreement, Owner shall not engage in any financing or other transaction creating any mortgage or other encumbrance or lien upon the Property (except for any financing provided by the City), without the prior written consent of the City. The City may give its consent to such financing if and to the extent necessary to maintain or improve the affordability or condition of the Property.

5.4 DEFAULT AND REMEDIES. In the event of any breach or violation of any agreement or obligation under this Regulatory Agreement, or of any Event of Default as defined by any City Loan Agreement which in any way pertains to or affects the continuing operation of the Property, and after the City has given written notice to Owner and an opportunity to cure in the same time and manner provided for with respect to Events of Default in said City Loan Agreement, the City may proceed with any or all of the following remedies:

- A. Bring an action in equitable relief seeking the specific performance by Owner of the terms and conditions of this Regulatory Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;
- B. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;
- C. After notice provided for herein, make such repairs or replacements to the Property as are necessary and provide for payment thereof;
- D. Require Borrower to pay all fines, penalties, and fees levied against the City, including any enforcement, repayment of funds to HUD and legal costs thereof and place a lien on the property for any and all remedial costs; or
- E. Pursue any other remedy allowed at law or in equity.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by one or more of Owner's limited partners shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

5.5 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. The City's officers, officials, employees or agents shall not be personally liable to Owner for any obligation created under the terms of this Regulatory Agreement except in the case of actual fraud or willful misconduct by such person.

5.6 INDEMNIFICATION. Except for the active negligence or willful misconduct of City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Borrower undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Borrower's and any contractor's and subcontractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Regulatory Agreement as a result (directly or indirectly) of or in connection with this Regulatory Agreement or the use of the Property by Borrower, its agents, employees, contractor or subcontractor of any tier, including suits, causes of action, claims, losses, demands and expenses relating to the condition of the Property. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Regulatory Agreement and those allowed under the laws of the United States, the State of California, and the City. The provisions of this paragraph shall survive expiration or termination of this Loan Agreement.

5.7 AMERICANS WITH DISABILITIES ACT. The Owner hereby certifies that it and any contractor and subcontractor will comply with the Accessibility Covenants. The Owner and any contractor and subcontractor will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in programs, services, and activities in accordance with the applicable provisions of the ADA, the ADAAG, Section 504, the UFAS, the FHA and all subsequent amendments. The Owner and any contractor and subcontractor will not discriminate against persons with disabilities or against persons due to their relationship to or association with a person with a disability. Any contract and subcontract entered into by the Owner, relating to this Regulatory Agreement and the Project, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

5.8 GOVERNING LAW. This Regulatory Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

5.9 CONFLICTS BETWEEN CITY DOCUMENTS. In the event that any monetary provisions of the City Loan Agreement, City Regulatory Agreement, City Deed of Trust, and/or City Note conflict, the terms of the City Note and City Deed of Trust shall control. In the event that any monetary provisions of the City Note and City Deed of Trust conflict or in the event that any non-monetary provisions of the City Loan Agreement, City Regulatory Agreement, City Deed of Trust, and/or City Note conflict, the strictest provision shall control.

5.10 TIME. Time is of the essence in this Regulatory Agreement.

5.11 CONSENTS AND APPROVALS. Any consent or approval of the City required under this Regulatory Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the City.

5.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between Owner and the City shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and the City as follows:

City: City of Los Angeles
Housing and Community Investment Department
P.O. Box # 532729
Los Angeles, CA 90053-2729
Attention: Portfolio Management Unit (HIMS# [Add])

Copy to:
Director of Finance and Development Division

Owner: [Name and Address]

Copy to Investor/Limited Partner:
[Name and Address]

5.13 BINDING UPON SUCCESSORS. All provisions of this Regulatory Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferee, and assigns of Owner and the City, and shall run with the land for the full term of this Regulatory Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of any City Loan or City Note, any reconveyance of any City Deed of Trust, or any conveyance or transfer of the Property. Any successor-in-interest to Owner and any purchaser or transferee of the Property shall be subject to all of the duties and obligations imposed on Owner under this Regulatory Agreement for the full term of this Regulatory Agreement. The term "Owner" as used in this Regulatory Agreement shall include all such assigns, successors-in-interest, and transferee.

5.14 COVENANT TO RUN WITH THE LAND. The Owner hereby subjects the Project covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project, provided, however, that on the termination of this Agreement, said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

5.15 RELATIONSHIP OF PARTIES. The relationship of Owner and the City for this Project during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. The City neither undertakes nor assumes any responsibility or duty to Owner or any third party with respect to the operation of the Property or the actions of Owner. Except as the City may specify in writing, Owner shall have no authority to act as an agent of the City or to bind the City to any obligation.

5.16 WAIVER. Any waiver by the City of any obligation in this Regulatory Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Owner or to pursue any remedy allowed under this Regulatory Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Regulatory Agreement shall not operate as a waiver or release from any of its obligations under this Regulatory Agreement. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

5.17 OTHER AGREEMENTS. Owner represents that it has not and/or will not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Regulatory Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without an express waiver by the City in writing.

5.18 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Regulatory Agreement must be in writing, and shall be made only if executed by both Owner and the City. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any terms and conditions of this Regulatory Agreement.

The Owner agrees to comply with all future City Directives or any rules, amendments or requirements promulgated by the City affecting this Regulatory Agreement.

5.19 SEVERABILITY. Every provision of this Regulatory Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

5.20 AUTHORITY. Each party to this Regulatory Agreement hereby represents and warrants that each person executing this Regulatory Agreement on behalf of a party has the right, power, legal capacity and authority to enter into and perform under the Regulatory Agreement and that the Regulatory Agreement constitutes valid and binding obligations of such party, enforceable against such party in accordance with its terms.

5.21 NONRECOURSE. The City Loan is a non-recourse obligation of Owner. Neither Owner nor any other party shall have any personal liability for repayment of the City Loan. The sole recourse of the City for repayment of the principal and interest shall be the exercise of the City's rights against the Property. However, nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement of all the rights and remedies of the City against all such security

for the City Notes, or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the City Notes as demand for money within the meaning of the California Code of Civil Procedure.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the City Notes; except nothing contained in the foregoing is intended to relieve the Owner of personal liability for (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges (which are not contested by Owner in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the City Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the Owner's indemnification obligations under the Loan Agreement; (4) misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security; and (5) failure to pay to the City any rental income or other income arising with respect to the Property received by the Owner after the City has given notice to the Owner of the occurrence of an Event of Default, subject to the rights of any lender providing a loan secured by the Property to which the lender has subordinated the City Deed of Trust.

[Signatures Begin on Next Page]

IN WITNESS WHEREOF, the City of Los Angeles and the Owner have caused this **Regulatory Agreement** to be executed by their duly authorized representatives.

Executed this _____ day of _____, 2019
THE CITY OF LOS ANGELES
Housing and Community Investment Department

By: _____
SEAN L. SPEAR,
Assistant General Manager

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

By: _____
Deputy/Assistant City Attorney

Date: _____

ATTEST:
HOLLY WOLCOTT, City Clerk

By: _____
Deputy City Clerk

Date: _____

“Owner”:

[SIGNATURE BLOCK]

THIS DOCUMENT MUST BE NOTARIZED FOR RECORDING

**EXHIBIT A
PROP. HHH REGULATORY AGREEMENT
[PROGRAM NAME]**

FORM OF LEGAL DESCRIPTION

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

[add legal description].

ASSESSOR'S IDENTIFICATION NUMBER:

COMMON ADDRESSES:

BORROWER: [NAME],
a California limited partnership

EXHIBIT B
PROP. HHH REGULATORY AGREEMENT
[PROGRAM NAME]

OCCUPANCY AND RENT RESTRICTIONS

**EXHIBIT C1
PROP. HHH REGULATORY AGREEMENT
[PROGRAM NAME]**

(INSURANCE REQUIREMENTS)

I. INSURANCE COVERAGE.

1. **General Conditions.** During the term of this Loan Agreement and Regulatory Agreement and without limiting Borrower's indemnification of the CITY, Borrower shall provide and maintain, as well as and ensure that any contractor or subcontractor provide and maintain, at its own expense a program of insurance having the coverages and limits not less than the amounts and types listed on the Required Insurance and Minimum Limits Sheet (Form Gen 146 in Exhibit Q of the City Project Loan Agreement), covering its operations hereunder. Such insurance shall also conform to CITY requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133) and with the conditions set forth on the applicable City Special Endorsement form(s), copies of which are included in Exhibit Q, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. Specifically, such insurance shall: 1) protect CITY as a Loss Payee on a Lender's Loss Payable endorsement, As Its Interests May Appear, respectively, when such status is appropriate and available depending on the nature of the applicable coverages; 2) provide CITY at least thirty (30) days advance written notice of cancellation (ten (10) days for nonpayment of premium).
2. **Modification of Coverage.** CITY reserves the right at any time during the term of this Loan Agreement and Regulatory Agreement to change the amounts and types of insurance required hereunder by giving Borrower and any contractor and subcontractor ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to the Borrower and any contractor and subcontractor, CITY agrees to negotiate additional compensation proportional to the increased benefit to CITY.
3. **Failure to Procure Insurance.** All required insurance must be submitted and approved by the City of the Administrative Officer, Risk Management prior to the commencement of any work, inception of any operations, or tenancy by Borrower and any contractor and subcontractor.

Borrower's and any contractor's and subcontractor's failure to procure or maintain required insurance during the entire term of this Loan Agreement and Regulatory Agreement shall constitute a material breach of this Loan Agreement under which CITY may immediately suspend or terminate this Loan Agreement or, at its

discretion, procure or renew such insurance to protect CITY'S interests and pay any and all premiums in connection therewith and shall become an additional obligation of Borrower to Lender and shall be secured by the City Deed of Trust.

5. Proceeds All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the, Owner, the City, construction lender[s], permanent lenders and any other lender permitted by the City, and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied first to repay the approved secured senior lenders and then to repay the City Loan. In the event of any fire or other casualty to the project or any part thereof, the Owner shall have the right to rebuild the improvements, and to use all available insurance proceeds therefor, provided that (a) such proceeds are sufficient to keep the City Loan in balance and rebuild the improvements in a manner that provides adequate security to the City for repayment of the City Loan or if such proceeds are insufficient then the Owner shall have funded any deficiency, (b) the City shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the City Loan. If the casualty affects only part of the improvements and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the City Loan in a manner that provides adequate security to the City for repayment of the remaining balance of the City Loans.

5. Underlying Insurance

Owner shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect Owner's and City's interests and for ensuring that such persons comply with any applicable insurance statutes. Owner is encouraged to seek professional advice in this regard.

6. Worker's Compensation. By signing this Loan Agreement, Borrower hereby certifies that it is aware and shall make any contractor and subcontractor aware of the provisions of Section 3700 et seq., of the Labor Code which require every employer to be insured against liability for Workers' Compensation in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Loan Agreement.

A Waiver of Subrogation in favor of CITY will be required when work is performed on CITY premises under hazardous conditions.

**EXHIBIT C2
PROP. HHH LOAN AGREEMENT
[PROGRAM NAME]**

INSURANCE REQUIREMENTS

Name: _____
Address: _____

I. INSURANCE POLICY REQUIREMENTS DURING ACQUISITION AND DEVELOPMENT. At close of escrow, the Borrower must provide the City with a one (1) year prepaid Certificate of Insurance policy (or binder followed by a certificate within thirty (30) days of loan closing) evidencing the required coverage stated below. The term of the insurance policy must not be less than the expected development period or one year, whichever is greater.

- A. Builders Risk Property Insurance.** No later than the time at which real or personal property subject to this agreement is at risk, Borrower shall provide and maintain Builders Risk property insurance protecting such property from "Special Form" causes of loss for the actual replacement cost value of such property. Property insured under this section shall include, but not be limited to the following: All labor and materials comprising new work on the project site, including footings and foundations below grade, materials and equipment destined to become a permanent part of the finished structure and all soft costs applicable to development. Builders Risk insurance shall also extend to building materials located at off-site storage areas or in transit in amounts not less than \$50,000 or actual replacement cost value, whichever is greater. The property insurance limit applicable to all property on the site shall be no less than 100% of the actual replacement cost. The maximum deductible for Borrowers Builders Risk protection shall be \$25,000.
- B. Mechanical breakdown (Boiler and Machinery).** For developments which equal or exceed \$5,000,000 in total hard cost, Borrower shall provide and maintain protection against the perils of mechanical breakdown in amounts not less than the building limit.
- C. Flood insurance.** If the project is located in a Special Flood Hazard Area (SFHA), Borrower shall provide and maintain flood insurance in the maximum amount provided by the National Flood Insurance Program (NFIP) or the full replacement cost of the subject property, whichever is less.
- D. Commercial General Liability.** Borrower shall, at all times during the development period, Provide and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage and

personal and advertising injury in an amount not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Borrower shall require its general contractor to provide and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, completed operations and personal and advertising injury in an amount not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

II. INSURANCE POLICY REQUIREMENTS DURING PERMANENT PHASE. At the completion of the development, the Borrower must provide City with a Certificate and evidence of Insurance form (or insurance binder followed by a certificate within thirty (30) days of completion of the construction of the Project) evidencing the required coverage stated below. The insurance policy must be for a term of not less than one year, or Borrower may add the property to an existing insurance policy program placement which maintains an annual anniversary date.

- A. **Property Insurance.** No later than the time at which real or personal property subject to this agreement is at risk, Borrower shall provide and maintain property insurance protecting the project from "Special Form" causes of loss for the actual replacement cost value of such property. Property insured under this section shall provide limits insurance of not less than 100% of the replacement cost value of real property and personal property subject to this agreement and provide a replacement cost value (RCV) option. The property insurance limit applicable to all property on the site shall be no less than 100% of the actual replacement cost. The maximum deductible for Borrower's property insurance protection shall be \$5,000.
- B. **Rental/Business Income.** Borrower shall provide and maintain insurance protecting the project from loss of income (rental or otherwise) for "special form" causes of loss. Period of indemnity for loss of business income shall not be less than 12 consecutive months and provide a limit of coverage not less than 100% of business income projected for the current calendar year.
- C. **Mechanical breakdown (Boiler and Machinery).** For properties with a replacement cost value new greater than \$5,000,000, Borrower shall provide and maintain protection against the perils of mechanical breakdown in amounts not less than the building limit.
- D. **Flood insurance.** If the project is located in a Special Flood Hazard Area (SFHA), Borrower shall provide and maintain flood insurance in the maximum amount provided by the National Flood Insurance Program space (NFIP) or 100% of the replacement cost value of the property subject to this agreement, whichever is less.
- E. **Commercial General Liability.** Borrower shall, at all times during the term of this loan agreement and regulatory agreement, Provide and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property

damage Completed operations and personal and advertising injury in an amount not less than the following:

1. Minimum Amount:

<u>Number of Units</u>	<u>Minimum CGL Limits</u>
1 - 10	\$1,000,000
11 - 30	2,000,000
31 - 60	3,000,000
61 - 80	4,000,000
81 - 100	5,000,000
101 +	7,000,000

2. City may require higher limits for special circumstances, at City's sole discretion and City will provide written notice to the Borrower.
3. If Borrower directly contracts with a contractor or subcontractor, Borrower shall require such contractor or subcontractor to provide and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, completed operations and personal and advertising injury in an amount not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.
4. Borrower shall be a named insured under all required insurance policies. Borrower shall require its insurance underwriters to provide not less than thirty (30) days advance written notice to Lender (ten (10) days written notice for non-payment of premium) prior to cancellation of the policy. If such advance written notice is not available from any of Borrower's insurance underwriters, Borrower shall provide written notice to Lender under the same aforementioned notice requirements.

F. Borrower shall endorse its Commercial General Liability insurance policy to provide additional insured status in favor of the City of Los Angeles, its officers, agencies and employees. The City of Los Angeles shall be indemnified on all insurance documents, including the project name, street name, street address, City and County.

G. Borrower shall endorse all property insurance policies required under this Agreement to name the City of Los Angeles as a loss payee under a Lenders Loss Payable endorsement.

III. Borrower is required to submit evidence of insurance to the City of Los Angeles pursuant to Form Gen. 133 which includes but is not limited to submitting insurance documents through the City of Los Angeles' online insurance compliance system, Tack4LA and to the City of Los Angeles Housing and Community Investment Department of the City of Los Angeles by submitting two (2) certified copies of the policy including the additional insured and cancellation notice endorsements. All Policies must include the following:

- A. **Name Insured:** Borrower
- B. **Additional Insured:** City of Los Angeles, its officers, agencies and employees shall be included as additional insureds.
- C. **Cancellation Clause:** The City must be notified 30 days prior to insurance company's cancellation of policy by certified mail.
- D. **The City should be identified and/or named on all insurance documents as follows, including the project name, street name, street address, city and county:**

**Housing and Community Investment Department
of the City of Los Angeles
P.O. Box 532729
Los Angeles, CA 90053-2729**

EXHIBIT D
PROP. HHH REGULATORY AGREEMENT
[PROGRAM NAME]

ACCESSIBILITY COVENANTS

The Accessibility Covenants (the “Covenants”) herein are attached to the Regulatory Agreement as an exhibit and the Owner hereby agrees to comply with each of the requirements of the City set forth as follows:

Section 1. Definitions. Terms not otherwise defined herein shall have the meanings assigned thereto in the Regulatory Agreement as applicable, provided they do not conflict with the terms defined or referenced herein. The definitions contained in the implementing regulations for Section 504, the Fair Housing Act, and the ADA are incorporated by reference. *See 24 C.F.R. §§ 8.3, 100.20; 28 C.F.R. § 35.104.* The following terms shall have the respective meanings assigned to them in this Section unless the context in which they are used clearly requires otherwise:

“Accessible,” when used with respect to a Housing Unit or a Housing Development, means and refers to full compliance with the requirements of the Accessibility Standards.

“Accessible Housing Development” means a Housing Development that is Accessible, including Accessible public and common use areas, as well as the number and type of Accessible Housing Units that are required to be Accessible by the Covenants.

“Accessible Housing Units” or “Accessible Unit” refers collectively to Housing Units with Mobility Features and Housing Units with Hearing/Vision Features that are Accessible, on an Accessible Route, and in an Accessible Housing Development.

“Accessibility Laws” means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq.; the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131, et seq.; California Government Code Section 11135 et seq.; the federal Fair Housing Act of 1968, as amended (“FHA”), 42 U.S.C. §§ 3601-3620; implementing regulations and design standards for each of the preceding statutes; and the California Building Code. In all instances, the requirements of the Federal Accessibility Laws shall supersede any state or local requirements, unless the state or local requirements are stricter than the Federal requirements.

“Accessibility Standards” means the following compliance standards:

For purposes of Section 504 and the ADA:

- a. For Housing Developments constructed or substantially altered before March 15, 2012:

- i. **The new construction requirements of 24 C.F.R. pt. 8, including 24 C.F.R. §§ 8.4(d), 8.22, 8.26, and 8.32 as well as the new construction requirements of UFAS, or their successor standards.**
- b. **For Housing Developments constructed or substantially altered on or after March 15, 2012:**
 - i. **The Alternative Accessibility Standard; or**
 - ii. **Any future accessibility standard and other regulatory requirements applicable to newly constructed facilities in federally-assisted programs that may be adopted in a final rule issued by the U.S. Department of Housing and Urban Development (“HUD”) pursuant to notice and comment rulemaking under Section 504 so long as such accessibility standard and regulatory requirements do not provide for less accessibility for persons with disabilities than either a or b.**

For purposes of the Fair Housing Act:

- a. **Compliance with the standards set forth in 24 C.F.R. § 100.205, including: the requirements in ANSI A117.1-1998, the Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994, and the Fair Housing Accessibility Act Design Manual, Revised April 1998.**

For purposes of state law:

- a. **The accessibility provisions of the California Building Code Chapters 11A and 11B, or any future accessibility standard and other regulatory requirements applicable to newly constructed facilities adopted as part of the California Building Code; and**
- b. **All applicable building codes in effect for the City of Los Angeles Building and Safety Department.**

“Accessible Route” means and refers to a continuous, unobstructed UFAS-compliant path as prescribed in 24 C.F.R. §§ 8.3 and 8.32 and UFAS § 4.3. As used for purposes of the ADA, an Accessible Route is as described in Chapter 4 of the 2010 Standards for Accessible Design, 28 C.F.R. §§ 35.104, as applied to public entities, except that elevator exceptions do not apply.

“Alternative Accessibility Standard” means and refers to the alternative accessibility standard for new construction set out in HUD’s notice at 79 Fed. Reg. 29,671 (May 23, 2014), when used in conjunction with the new construction requirements of HUD’s regulations at 24 C.F.R. pt. 8, 24

C.F.R. § 8.22, and the new construction requirements of 28 C.F.R. pt. 35, including the 2010 Standards for Accessible Design as defined in 28 C.F.R. § 35.104 and as applied to public entities (excluding any elevator exceptions).

“Assistance Animals” means and refers to animals that work, provide assistance, or perform tasks for the benefit of a person with a disability as well as animals that provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Assistance Animals are not pets and are not subject to a housing provider’s pet policies. Service animals are one type of Assistance Animal. Assistance Animals include animals that are trained and untrained and include dogs and other animals.

“Fair Housing Policy Related to Disability” means the documents containing the policies of the City, as amended periodically, that ensure all Housing Developments be constructed and operated in accordance with all applicable Accessibility Laws, including federal accessibility requirements. The current policies can be accessed on the City’s Accessible Housing Program Website. HUD may require modifications to these policies post-closing.

“Housing Development” or “Development” means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots that (1) received or will receive any Federal financial assistance from or through the City and/or (2) were, are, or will be designed, constructed, altered, operated, administered, or financed in connection with a program administered by the City or by its Subrecipients.

“Housing Unit” means a single unit of residence in the Housing Development that provides spaces for living, bathing, and sleeping, provided such definition shall not be construed to exclude Single Room Occupancy Units. A Housing Unit includes a dwelling unit as that term is used in 24 C.F.R. § 8.22.

“Housing Unit with Hearing/Vision Features” means a Housing Unit that complies with 24 C.F.R. §§ 8.22 and 8.23 and all applicable provisions of UFAS, or the comparable provisions of the Alternative Accessibility Standard including but not limited to § 809 and specifically subsection § 809.5 of the 2010 ADA Standards for Accessible Design, and with the California Building Code Chapters 11A & 11B. Hearing/Vision Features include but are not limited to visual alarms (UFAS §§ 4.34.10, 4.28.3), auxiliary alarms (UFAS §§ 4.34.10, 4.28.4), telephone volume controls and hearing aid compatibility (UFAS § 4.31.5), protections against protruding objects (UFAS § 4.4), stairway requirements (UFAS §§ 4.9, 4.26.4), protections against exposed pipes and surfaces (UFAS §§ 4.19.4, 4.24.6, 4.34.6.5(8)), audible alarms (UFAS § 4.28.2), signage (UFAS § 4.30), push button controls for telephones (UFAS § 4.31.6), consumer information (UFAS § 4.34.4), and range, cooktop, and oven controls (UFAS §§ 4.34.6.6, 4.34.6.7).

“Housing Unit with Mobility Features” means a Housing Unit that is located on an accessible route and complies with 24 C.F.R. §§ 8.22 and 8.23 and all applicable provisions of UFAS, or the comparable provisions of the Alternative Accessibility Standard including but not limited to § 809 and specifically subsections §§ 809.2 through 809.4 of the 2010 ADA Standards, and with the

California Building Code Chapter 11 B. A Housing Unit with Mobility Features can be approached, entered and used by persons with mobility disabilities, including people who use wheelchairs.

“Owner” means and refers to an owner of a Housing Development and such owner’s successors and assigns who (1) has received, receive, or will receive any federal financial assistance from or through the City since July 11, 1988, and/or (2) was, is, or will be the owner of a Housing Development designed, constructed, altered, operated, administered, or financed, in whole or in part, in connection with a program administered in whole or in part by the City since January 26, 1992. An Owner may also be a Subrecipient.

“Property Management Agent” means and refers to a person or entity that manages one or more of the Housing Developments subject to these covenants on behalf of an Owner.

“Reasonable Accommodation” means changes, modifications, exceptions, alterations, or adaptations in rules, policies, practices, programs, activities that may be necessary to (1) provide a person with a disability an equal opportunity to use and enjoy a dwelling, including public and common use areas of a development, (2) participate in, or benefit from, a program (housing or non-housing), service or activity; or (3) avoid discrimination against a person with a disability. Such an accommodation must be granted unless it would (i) pose an undue financial and administrative burden, or (ii) fundamentally alter the essential nature of the program, service, or activity. For purposes of these covenants, a Reasonable Accommodation includes any physical or structural change to a Housing Unit or a public or common use area that would be considered a reasonable modification for purposes of the Fair Housing Act.

“Subrecipient” means and refers to any public or private agency, institution, organization, or other entity or person to which federal financial assistance or financial assistance from or through the City is extended. A Subrecipient also means and refers to a non-federal entity that receives a sub-award from a pass-through entity to carry out part of a federal program, but does not include an individual who is a beneficiary of such program. A Subrecipient may also be a recipient of other federal awards from a federal awarding agency. 2 C.F.R. § 200.93. A Subrecipient may also be an Owner.

“UFAS” means the Uniform Federal Accessibility Standards and refers to a set of scoping requirements and standards for the design and construction of buildings and facilities to ensure that they are readily accessible to and usable by persons with disabilities. See Appendix A to 24 C.F.R. subpart 40 for residential structures and Appendix A to 41 C.F.R. subpart 101-19.6 for general-type buildings (UFAS is also available on-line at <http://www.access-board.gov>).

Section 2. Owner Obligations. The Owner represents, warrants, covenants and agrees as follows:

- a. **A State of California Certified Access Specialist (“CASp”) who is a licensed architect or engineer must be identified as part of the development team. A list of CASps can be found at the following link:**

https://www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.aspx. The CASp cannot be the architect of record for the project. The cost of CASp activities and certifications should be included in the application's project budget.

- b. **The Housing Development shall be constructed in accordance with the Accessibility Standards in Section 1 above to ensure accessibility for persons with disabilities. Owner must work with their CASp to ensure that the Housing Development complies with those Accessibility Standards.**
- c. **An accessibility report by a CASp inspector certifying that the Housing Development is in compliance with all applicable Accessibility Standards, as defined in Section 1, above, must be submitted to and approved by HCIDLA at the following phases of the project development:**
 1. **Accessibility Design Review Report and a pdf copy of the plans are due for review by HCIDLA when construction documents have been developed, and prior to the submission of plans to Los Angeles Building and Safety Department;**
 2. **The Accessibility Design Review Report must be approved by HCIDLA before building permits can be issued;**
 3. **Accessibility Progress Inspection Reports conducted after all rough inspections have been signed off by the Los Angeles Building and Safety Department and prior to closing of walls; and**
 4. **The Final Accessibility Report at completion of construction must be approved by HCIDLA before: (a) final retention payment; (b) certificate of occupancy; and (c) final building permit can be signed off by the Los Angeles Building and Safety Department.**
- d. **Applicants/developers/owners must list all applicable accessibility standards on title page of plans, including the designated FHA Safe Harbor for the project, and include the following note: *"This is a publicly funded housing project and must comply with federal accessibility standards and California Building Code Chapters 11A & 11B"*.**
- e. **If the Development is to be rehabilitated, accessibility retrofits of the Housing Development shall take place concurrently with any project rehabilitation in compliance with the Accessibility Standards, including federal accessibility standards.**

- f. **The Accessible Units shall be prioritized for persons with disabilities who have a disability-related need for the accessibility features of the Accessible Unit. If an Accessible Unit is occupied by residents without disabilities, Owner shall require use of a Lease Addendum to require such residents to relocate to a vacant, non-accessible unit of comparable size, finishes, and amenities, at the same Development at the Development's expense, within thirty (30) days of notice by the Owner or Property Management Agent, or the minimum amount of notice required by state law, that there is an eligible applicant or existing resident with a disability who requires the accessibility features of the unit.**
- g. **Eleven percent (11%) of the total Housing Units in the Housing Development shall be constructed and maintained by the Owner as Housing Units with Mobility Features.**
- h. **An additional four percent (4%) of the total Housing Units in the Housing Development shall be constructed and maintained by the Owner as Housing Units with Hearing/Vision Features.**
- i. **The 4% and 11% calculations shall each be based on the total number of Housing Units in the Housing Development. In determining the number of Accessible Units required, any fractions of units shall be rounded up to the next whole number. Required Accessible Units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites, and shall be available in a sufficient range of sizes and amenities so that a qualified individual with a disability has a choice of living arrangements that is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.**
- ji. **While additional Accessible Housing Units may be provided, *i.e.*, up to 20 percent (20%), no more than fifteen percent (15%) of the Housing Units in any Housing Development may be counted toward the Target Number of Accessible Housing Units that the City must provide pursuant to the Voluntary Compliance Agreement (VCA) with the U.S. Department of Housing and Urban Development (HUD) (specifically, no more than eleven percent (11%) of the Housing Units in any Housing Development with Mobility Features and no more than four percent (4%) Housing Units in any Housing Development with Hearing/Vision Features) unless HUD provides specific written authorization.**
- k. **The Accessible Units shall be affordable for households pursuant to the terms of the Loan Agreement Documents and Regulatory Agreement, including any and all amendments, revisions, or modifications.**

- l. The project shall comply with the City's Accessibility Regulations Matrix & Overview, Accessible Design/Construction Compliance Requirements, and the Accessibility Report Requirements, which may be amended from time-to-time.
- m. Owners shall adopt and comply with the City's Fair Housing Policy Related to Disability, as amended.
- n. Owners and property managers (including resident managers and on-site managers) of the Housing Development shall attend the City's Fair Housing for People with Disabilities workshops.
- o. Owners shall register the Housing Development on the City's Online Accessible Housing Registry, provide and update required information about the Housing Development and the Accessible Units, allow people with disabilities to apply for the Accessible Units when they become available and to place themselves on the waiting list for the Accessible Units, and comply with all other requirements of the Online Accessible Housing Registry.
- p. Following reasonable notice to Owner, Owner shall allow the City to conduct periodic on-site inspections of the Housing Development in order to verify compliance with the Accessibility Standards and the City's Fair Housing Policy Related to Disability.
- q. The Housing Development as a whole and all Housing Units shall meet the requirements of the Accessibility Standards as defined in Section 1, above, and any requirements of the City, provided such requirements minimally meet and do not diminish the requirements of the Accessibility Standards.
- r. Owner shall provide a list to the City of all Accessible Units with unit number, bedroom size and type of Accessible Unit ("Housing Unit with Hearing/Vision Features" or "Housing Unit with Mobility Features").

Section 3. Occupancy of Accessible Housing Units. Owner shall follow the requirements of Section 504 and its implementing regulations at 24 C.F.R. Part 8, as well as the City's Fair Housing Policy Related to Disability to assure that information regarding the availability of Accessible Units reaches eligible individuals with disabilities. Owner will take reasonable, nondiscriminatory steps to maximize the utilization of such units by eligible individuals who require the accessibility features of the particular unit. To this end, Owner will take the following steps when an Accessible Unit becomes vacant:

- a. First, Owner will offer the Accessible Unit to a current occupant of the Housing Development who needs the features of an Accessible Unit;

- b. **Second, Owner will offer the Accessible Unit to a current occupant of a Housing Development under common control who needs the features of an Accessible Unit;**
- c. **Third, Owner will offer the Accessible Unit to an eligible, qualified applicant on the waiting list for Accessible Housing Units who needs the features of an Accessible Unit;**
- d. **Fourth, Owner will offer the Accessible Unit to a current tenant of a Covered Housing Development who needs the accessible features of the Accessible Unit and are registered with the Website.**
- e. **Fifth, Owner will offer the unit to qualified applicants who need the accessible features of the Accessible Unit and are registered with the Website.**
- f. **If there are no eligible current tenants or applicants in need of accessible features, then the Owner must conduct targeted outreach and marketing to advertise the unit to qualified individuals who need the accessible features, including listing it as available to individuals who need the accessible features at <http://www.Housing.LACity.org>, distributing the information about the accessible vacancy in accord with the Owner's City approved Property Management Plan, distributing it to the most recent list from the City of organizations that serve people with disabilities, and sending an e-blast to parties on the Housing.LACity.org website Outreach List. All such communications shall take appropriate steps to ensure effective communication with individuals with disabilities by utilizing appropriate auxiliary aids and services, such as the use of accessible websites and emails.**
Outreach efforts to the disability community shall include, but not be limited to, notices and other communications describing the availability of such Accessible Units, specific information regarding the features of Accessible Units, eligibility criteria, and application procedures. These, and additional procedures, are incorporated into the City's Fair Housing Policy Related to Disability, as amended.

In the event more than one household has requested an Accessible Unit, Owners shall offer the Accessible Unit to households in order on the appropriate waiting list within each category.

If, after using the process identified above, there are no households who need the features of that Accessible Unit, then Owner may offer the Accessible Unit to the next household on the conventional waiting list. Should that household choose not to occupy the Accessible Unit, they will remain at the same position on the conventional waiting list. If the household chooses to occupy the Accessible Unit, the tenant must sign a lease addendum in the form approved by the City. The lease

addendum requires the household to move to the next available, comparable, conventional unit, when given appropriate notice by the Housing Development that there is an eligible applicant or existing resident with a disability who requires the accessibility features of that Accessible Unit.

For individuals who are required to vacate an Accessible Unit because it is needed by an individual with a disability, Owners will pay the costs of the transfer to a comparable conventional unit, including new utility deposit(s), if required, and reasonable moving expenses.

Section 4. Rental Policies. The Owner shall adopt the City's rental policies that meet the requirements of Section 504, the ADA, the Fair Housing Act, FEHA, and other federal and state laws and regulations as applicable, and of the Fair Housing Policy Related to Disability of the City, as amended. Owner shall develop and utilize a Property Management Plan ("PMP"), approved by the City, which describes affirmative marketing, tenanting, and other procedures to ensure that the Housing Development meets all of the civil rights requirements for individuals with disabilities.

Rental applications will include a section to be filled out by applicants to identify whether they are requesting an Accessible Unit or a Reasonable Accommodation. Applicants will not be required to disclose a disability under any circumstances, and Owner shall seek information to be disclosed limited to only what is necessary to establish the disability-related need for the requested accommodation. If both the disability and disability-related need for the requested accommodation are obvious or already known, no additional information may be sought by the Owner. Applicants and residents may request a Reasonable Accommodation at any time.

Section 5. Residential Rental Property. The Owner hereby represents, covenants, warrants and agrees as follows:

- a. All of the Housing Units in the Housing Development will be similarly constructed units, and each income restricted unit in the project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities, equipped with a cooking range and oven, a sink and a refrigerator. Each of the Accessible Units shall also comply with these requirements. Notwithstanding the foregoing, a unit shall not fail to be treated as a residential unit merely because such unit is a single room occupancy unit within the meaning of Section 42(i)(3)(B)(iv) of the Code even though such housing may provide eating, cooking and sanitation facilities on a shared basis.
- b. All of the Housing Units (which shall not include any manager units) will be available for rental on a continuous basis to members of the general public, and the Owner will not give preference to any particular class or group in renting the housing units in the project, except to the extent that:
(1) Accessible Housing Units shall be made available on a priority basis to persons who need the accessible features, as described in Section 3 above;

(2) any Housing Units are required to be leased or rented to low income tenants or persons [62] years of age and older, (3) the requirements of any regulatory agreement executed between the Owner and HUD or between the Owner and a subordinate lender (including the City), (4) the requirements of any Section 8 Housing Assistance Payments Contract with respect to the project, and (5) any preference Owner may legally provide pursuant to applicable federal and state law.

Section 6. Monitoring Requirements. The City will monitor the initial production and ongoing occupancy of the Accessible Units and the Housing Development to ensure full compliance with the Accessibility Standards, the Fair Housing Policy Related to Disability and the policies in Sections 11-4, above. In order to determine compliance with the Accessibility Standards, Owner shall submit and the City shall review and approve a CASp Inspection Report of the housing development that identifies the necessary and required design elements to make the Housing Units and site accessible for individuals with disabilities. The City shall inspect the construction and/or rehabilitation to verify that the legally required number of Accessible Units have been produced and that the necessary and required design elements have been constructed to make the Housing Units and site accessible for individuals with disabilities and supported by an independent CASp consultant's report.

The City will utilize the Housing Development's City approved PMP and Fair Housing Policy Related to Disability to monitor ongoing occupancy compliance of the Accessible Units and nondiscrimination of individuals with disabilities. Compliance with the policies shall include, but not be limited to, target marketing, establishing and monitoring a waiting list specific to the Accessibility Units, appropriately responding to Reasonable Accommodation requests, implementation of the assistance animal policies, implementation of the policies for re-leasing vacant Accessible Units, and all elements contained in the Fair Housing Policy Related to Disability, as amended.

Section 7. Maintenance of Records. With respect to the Covenants, the owner agrees to keep and maintain books, accounts, reports, files, records, and other documents pursuant to the terms of the Loan Agreement Documents and Regulatory Agreement, including any and all amendments, revisions, or modifications.

Section 8. Notices, Demands, Payments and Communication. Formal notices, demands, payments and communications between the City and the Owner shall be sufficiently given and shall not be given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally pursuant to the Notice provisions in the Loan Agreement.

Section 9. Term of the Covenants. The Covenants shall be recorded upon its execution and shall terminate in accordance with the most restrictive provisions of the Loan Agreement Documents and Regulatory Agreement, including any and all amendments, revisions, or modifications.

Section 10. Covenant to Run with the Land. The Owner hereby subjects the project to the covenants, reservations, and restrictions set forth in the Covenants. The City and the Owner hereby

declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the project. Each and every contract, deed, or other instrument hereafter executed covering or conveying the project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. In particular, this Covenant is subject to the requirements at HUD's Section 504 regulation at 24 C.F.R. § 8.50(c).

Section 11. Default; Enforcement. As part of ensuring compliance with the Accessibility Covenants, the Accessibility Standards, and the Fair Housing Policy Related to Disability, the City or its agent, will conduct periodic on-site visits inspecting the Housing Development, which inspections may include inspecting the Housing Units and common areas, tenant files, logs and other records. Should the Owner fail to comply, the City will first issue an Order to Comply ("Order") stating the element of the Housing Development that is out of compliance, and providing a date by which the Owner must comply. The Order shall give the Owner not more than 30 days to correct the violation, or such additional time as the City may grant if the Owner is taking steps to correct the violation ("Compliance Date"), and diligently pursues such action until the default is corrected, which extension is in the City's sole discretion. The City shall re-inspect the Housing Development within 10 days of the Compliance Date specified in the Order or any extension, however failure to inspect or re-inspect within the time frame does not remove the obligation of the Owner to comply with the Order.

If the Order is issued and the violation continues to exist after the Compliance Date, then the City shall declare an "Event of Default" and may take any one or more of the following steps:

- a. **Inspection Fee for Non-Compliance.** In the event the Owner fails to comply with the Order within the Compliance Date, the Owner shall be liable for subsequent inspection fees in the amount approved by Council until compliance has been achieved. Failure to pay the assessed inspection fee within 30 days of the date of invoice, will result in a late charge equal to or two times the fees and a collection fee equal to 50 percent of the original fee shall be imposed if any fee imposed is not paid within 30 days of service of notice of the imposition of the fee.

The late fee may be imposed without a hearing but may be appealed to the General Manager of HCID. The appeal shall be made in writing, and shall specify the grounds for the appeal. The appeal shall be filed with HCID within ten calendar days of the issuance of the imposition of the late fees and costs. The General Manager or his designee shall issue a decision within ten calendar days of the filing of the appeal. A copy of the decision shall be served on the person or entity subject to the Order or fee by first class United States mail, postage prepaid, or in person. The City shall have the right to bring legal action in any court to enforce the Order and collect the amount of

outstanding fees and penalties. City may waive the penalty imposed pursuant to this section if City determines that good causes exist for the Owner's failure to pay in a timely manner.

- b. By mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder;
- c. Filing of a complaint or referral to HUD or other appropriate agencies for further enforcement actions;
- d. Have access to and inspect, examine and make copies of all or a portion of the books and records of the Owner pertaining to the project, in order to ensure compliance with all provisions of the Covenants, including records relating to the accessibility of the Accessible Units; and
- e. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

Section 12. Compliance with Accessibility Requirements. The Owner hereby certifies that it and its property manager and any agent, contractor and subcontractor will comply with the Accessibility Standards as defined, and the policies described in Sections 2-5. The Owner and any contractor and subcontractor will provide Reasonable Accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services, and activities in accordance with each of the applicable and stricter of the requirements of the ADA, the 2010 ADA Standards for Accessible Design, the ADAAG, Section 504, UFAS, the Fair Housing Act, the Fair Housing Act Design and Construction Requirements, federal regulations implementing the ADA, Section 504, and the Fair Housing Act, California Government Code 11135 *et seq.*, the California Building Code Chapters 11A and 11B, and all subsequent amendments to those laws. The Owner and any contractor and subcontractor will not discriminate against persons with disabilities or against persons due to their relationship or association with a person with a disability. Any contract and subcontract entered into by the Owner, relating to the Covenants and the Project, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

Section 13. Governing Law. The Covenants shall be governed by the laws of the State of California.

Section 14. Parties Bound. The provisions of the Covenants shall be binding upon and inure to the benefit of the City and Owner and their respective successors and assigns.

Section 15. Severability. Every provision of the Covenants is intended to be severable. If any provision of the Covenants shall be held invalid, illegal, or unenforceable by a court of

competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 16. Waiver. Any waiver by the City of any obligation in the Covenants shall be in writing; however, the City cannot waive the requirement to comply with federal and state law. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Owner or to pursue any remedy allowed under the Covenants or applicable law. Any extension of time granted to Owner to perform any obligation under the Covenants shall not operate as a waiver or release from any of its obligations under the Covenants. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 17. Modifications. There shall be no amendment or modification of the Covenants without the prior written approval of the City. Any amendment or modification of the Covenants shall be by a written instrument executed by the City and the parties to the Covenants and the Regulatory Agreement or their successors in title, and duly recorded in the real property records of the County of Los Angeles, California. Modifications or amendments to the Covenants may occur by operation of law or other agreements binding the City and the parties to the Covenants and the Regulatory Agreement.

Section 18. Conflicts. If the provisions of the Covenants are inconsistent with the provisions of the Regulatory Agreement, the Loan Documents, or any other documents which affect the Property, the more restrictive covenants or restrictions shall control.

Section 19. Recording and Filing. The Owner shall cause the Covenants to be recorded and filed in the real property records of the County of Los Angeles and in such other places as the City may reasonably request. However, failure to record the Covenants by the Owner shall not relieve Owner of any of the obligations specified herein.

**EXHIBIT L
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF ASSIGNMENT OF ARCHITECT'S CONTRACT
AND PLANS AND SPECIFICATIONS AND PERMITS
(With Architect's Consent and Certificate) [TO BE EXECUTED IN CONJUNCTION
WITH EACH PROJECT LOAN AGREEMENT]**

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged [BORROWER NAME], L.P., a California limited partnership (the "Borrower"), as security for the obligations incurred and to be incurred by Borrower pursuant to the Project Loan Agreement dated _____, 2019 (the "Loan Agreement") between Borrower and the City of Los Angeles, a municipal corporation ("City"), relating to the financing of Construction and Permanent costs on certain real property located in the City of Los Angeles, County of Los Angeles, California (the "Site"), as described in the Loan Agreement, hereby assigns and transfers to the City of Los Angeles ("City"), its successors and assigns, all of (1) Borrower's rights in and to those certain Plans and Specifications together with all amendments, modifications, supplements, general conditions and addenda thereto relating to the Site, prepared pursuant to the Loan Agreement (the "Plans") by _____ ("Architect"), (2) Borrower's right, title and interest in that certain agreement dated _____, 2019, between Borrower and Architect, a true and complete copy of which is attached hereto and incorporated herein by reference as Exhibit A (the "Contract"), and (3) all permits to be obtained by or for the benefit of Borrower relating to the Plans or the Project ("Permits"). Architect consents to this Assignment, and has executed the Consent and Certificate attached hereto as Exhibit B and incorporated herein by this reference.

Neither this Assignment nor any action or actions on the part of the City shall constitute an assumption by the City of any of Borrower's obligations under the Contract unless and until the City shall have given written notice to Architect of its election to complete construction of the Project following a default by Borrower under the Loan Agreement. Borrower shall continue to be liable for all obligations under the Contract and Borrower hereby agrees to perform each and all such obligations. In the event of a default under the Loan Agreement, the City may elect to reassign its rights to the Plans, the Permits and the specifications under the Contract to any person or entity selected by the City to complete the Project. Such person or entity shall succeed to all of the rights of Borrower thereunder without the necessity of any consent from Borrower or Architect and the City shall have no liability for any failure of such person or entity to perform the obligations under the Contract. Provided, however, that in the event the City reassigns its rights to the Plans to another person or entity, the Architect's name shall not be used in connection therewith unless the Architect so approves in writing.

Borrower hereby represents and warrants to the City that (1) the Contract is in full force and effect with no defaults thereunder by either Borrower or Architect, (2) no event has occurred that would constitute a default under the Contract upon the giving of notice or the lapse of time or both, and (3) Borrower has made no previous assignment of, and granted no security interest in, its rights to the Plans, the Permits or the specifications under the Contract. Borrower agrees that (a) it will not assign, transfer or encumber its rights to the Plans, the Permits or under the Contract so long as any obligation under the Loan Agreement remains unsatisfied, (b) it will not agree to any amendment of the Contract without the prior written consent of the City, (c) it will not terminate the Contract or accept a surrender thereof, or waive, excuse, condone or in any manner release or discharge Architect off or from the obligations and agreements by Architect to be performed thereunder, in the manner and at the place and time specified therein without the prior written consent of the City, and (d) it will indemnify the City against any liabilities, losses, costs and expenses, including reasonable attorneys' fees, which may be incurred by the City as a result of the exercise of its rights under this Assignment.

The City shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower or otherwise such action as the City may at the time or from time to time determine to be necessary to cure any default under the Contract, to protect the rights of Borrower or the City thereunder, or enforce all rights of Borrower under the Contract, Borrower hereby irrevocably constitutes and appoints the City its true and lawful attorney in Borrower's name or in the City's name or otherwise to take all such action. The exercise of the City's rights hereunder shall not constitute a waiver of any of the remedies of the City under the Loan Agreement or any other document or agreement or otherwise existing at law or otherwise.

[Remainder of page intentionally left blank.]

[Signatures begin on next page.]

IN WITNESS WHEREOF, Borrower has caused this Assignment of Architect's Contract and Plans and Specifications and Permits to be executed by their duly authorized representatives.

Borrower:

[BORROWER NAME], a California limited partnership

[BORROWER SIGNATURE BLOCKS]

**EXHIBIT A
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF ASSIGNMENT OF ARCHITECT'S CONTRACT
AND PLANS AND SPECIFICATIONS AND PERMITS
(With Architect's Consent and Certificate)**

ARCHITECT'S CONTRACT

[To Be Added]

**EXHIBIT B
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF ASSIGNMENT OF ARCHITECT'S CONTRACT
AND PLANS AND SPECIFICATIONS AND PERMITS
(With Architect's Consent and Certificate)**

**CONSENT AND CERTIFICATE [TO BE EXECUTED IN CONJUNCTION WITH
EACH PROJECT LOAN AGREEMENT]**

Pursuant to that certain assignment of Architect's Contract and Plans and Specifications and Permits (the "Assignment") executed by [BORROWER NAME], L.P., a California limited partnership ("Borrower") on _____, 2019, the undersigned, as Architect, hereby consents to the assignment by Borrower of the Plans (all defined terms herein shall have the meaning defined in the Assignment), the Permits and the Contract to the City of Los Angeles, a municipal corporation and charter city ("the City"), and to each and all of the terms and conditions of such attached assignment and confirms to the City that (a) the Contract constitutes the entire agreement between the undersigned and Borrower relating to the Project, (b) the Contract is in full force and effect with no defaults thereunder, (c) no event has occurred that would constitute a default under the Contract upon the giving of notice or the lapse of time or both, (d) no material modification shall be made in the Contract without the prior written consent of the City, (e) the undersigned agrees to be bound by the provisions of the Loan Agreement restricting the ability of Borrower to make changes in the Plans without the prior written consent of the City, (f) the undersigned is not aware of any prior assignment of the Plans, the Permits or the Contract by Borrower, and (g) a complete copy of the Plans and all Permits will be delivered to the City. The undersigned agrees that in the event of any default by Borrower under the Contract, the undersigned will give written notice to the City thereof and the City shall have the right, but not the obligation, to cure said default within sixty (60) days from the City's receipt of such notice.

The undersigned further agrees that in the event the City becomes the owner of the Project, or undertakes to complete construction thereof, or assigns its rights to the Plans, the Permits and the specifications under the Contract to another person or entity, or otherwise requires the use of the Plans, the Permits and the specifications, the City, its successors and assigns are authorized to use the Plans, the Permits and the specifications without additional cost or expense beyond that stated in the Contract, all rights under the Contract otherwise exercisable by Borrower may be exercised by the City or such successor or assign, and the undersigned will perform its obligations in conformity with the Contract for the benefit of the City, its successors or assigns.

In order to induce the City to enter into the Loan Agreement and make the advances contemplated therein, the undersigned certifies to the City as follows:

- (a) As represented in the Plans, the Development will comply with (1) all statues, rules, regulations and ordinances of all governmental agencies having jurisdiction over the Project, including, without limitation, those relating to zoning, building, pollution control and energy use; (2) all applicable covenants, conditions and restrictions affecting the Site and the Project, and (3) the requirements of the appropriate board of fire underwriters.
- (b) Construction of the Project in accordance with the Plans will not result in any encroachment on any adjoining property or on any surface easement.
- (c) The Plans will include (1) any recommendations contained in any soil or other geological test performed on the Site, and (2) parking for cars sufficient to meet the requirements of all applicable statutes, rules, regulations, ordinances, tract map conditions and leases.
- (d) The undersigned is duly licensed to conduct its business in the jurisdiction where its services are to be performed and will maintain such license in full force and effect throughout the term of the Contract.

The City shall have the right at any time to use all plans, specifications and drawings from the Project prepared by or for the undersigned for the Project, including, without limitation, the Plans, and the ideas, designs and concepts contained therein, without payment of any additional fees or charges to the undersigned for such use.

The undersigned hereby assigns to the City all of the undersigned's right, title and interest in, to and under all subcontracts which are now or hereafter entered into by the undersigned in furtherance of its obligations under the Contract; provided, however, that until a default occurs by the undersigned under the Contract, the City shall not exercise any rights in the subcontracts which are hereby assigned.

The undersigned acknowledges that the City is relying on, among other things, the Consent, confirmations, agreements and assurances provided herein in entering into the Loan Agreement and agreeing to advance funds thereunder to Borrower for construction of the Project.

DATED: _____

ARCHITECT:

By: _____
 Title _____

**EXHIBIT M
PROP HHH MOU
[PROGRAM NAME]**

**FORM OF SCHEDULE OF PERFORMANCE [TO BE EXECUTED IN CONJUNCTION
WITH EACH PROJECT LOAN AGREEMENT]**

The Project timeline is as follows:

ITEM

DATE

**EXHIBIT N
PROP HHH MOU
[PROGRAM NAME]**

FORM OF AFFORDABILITY RESTRICTIONS AND MAXIMUM RENTS

The affordability of the Project shall be maintained as follows:

- F. ~~[X]~~ (X) units shall at all times be occupied or held vacant and available for use as permanent supportive housing for Homeless individuals. The Program Sponsor expects studios to comprise the total PSH count.
- G. In addition, [X] units which are Restricted Units shall at all times be occupied or held vacant and available for rental by X% Income Households.
- H. Income determination shall be made at the time of initial occupancy of a unit by a tenant.
- I. All units are described and limited as set forth in this Exhibit N.

EXHIBIT O
PROP HHH MOU
[PROGRAM NAME]

**SECTION 3 CLAUSE [TO BE EXECUTED IN CONJUNCTION WITH EACH
PROJECT LOAN AGREEMENT]**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (I) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian Organizations and Indian-Owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7 (b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7 (b).

The Contractor/Subcontractor/Service Provider by this signature affixed hereto declares under penalty of perjury: Contractor/Subcontractor/Service Provider has read City requirements contained within the Project Loan Documents and Exhibits and accepts all its requirements contained therein for all of his/her operations within the City of Los Angeles.

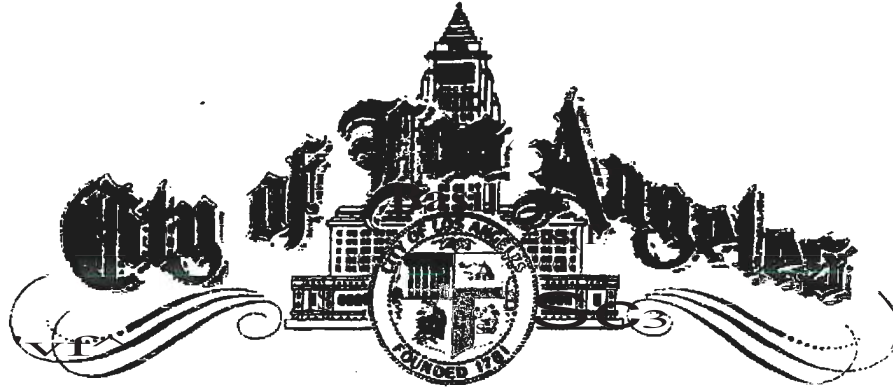
Signature Print Name and Title

Signature Print Name and Title

Signature Print Name and Title

Date: _____

**EXHIBIT P
PROP HHH MOU
STREAMLINING HOUSING SOLUTIONS
MAYOR'S EXECUTIVE DIRECTIVE 2001-26**



CITY HALL
LOS ANGELES, CALIFORNIA 90012
(213) 847-2400

OFFICE OF THE MAYOR

RICHARD J. RIORDAN
MAYOR

EXECUTIVE DIRECTIVE NO. 2001-26

February 8, 2001

**TO: THE HEADS OF ALL DEPARTMENTS, OFFICES
AND COMMISSIONS OF CITY GOVERNMENT**

**SUBJECT: CITY OF LOS ANGELES MINORITY, WOMEN
AND OTHER BUSINESS ENTERPRISE PROGRAM**

Effective immediately, each department (Awarding Authority) which issues invitations for bids or requests for proposals (RFPs) for work to be performed under contracts awarded by the City of Los Angeles shall implement this directive by utilizing the outreach program set forth herein.

It is the policy of the City of Los Angeles to provide Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs) and all Other Business Enterprises (OBEs) an equal opportunity to participate in the performance of all city contracts. This policy applies to all City Departments, Proprietary Departments, and Boards and Commissions, which may, by their authority, award construction, procurement, and personal service contracts.

The Mayor's Office of Economic Development (MOED) shall have the primary responsibility for coordinating and managing city business development and outreach efforts designed to enhance business opportunities for minority, women, and other business enterprises, including small local businesses.

In coordination with the Mayor's Office of Economic Development, the heads of all departments of city government shall be responsible for developing, managing, and implementing the MBE, WBE, and OBE policy and program. Departments are required

¹ For the purposes of this Executive Directive, "minority group member" shall be synonymous with "minority person" as defined in the code of Federal Regulations, 49CFR, Part 26.

to submit a quarterly report covering the activities and their outcomes relating to the efforts undertaken by the respective Departments to implement the minority, women, and other business enterprise program outlined in this Directive.

All Awarding Authorities which issue invitations for bids or RFPs for work to be performed under contracts valued at \$100,000 or more shall require bidders or proposers to conduct the City's "Good Faith Effort," unless otherwise determined by MOED. The aforementioned policy shall be implemented as outlined in the City of Los Angeles Minority, Women and Other Business Enterprise Program.

**CITY OF LOS ANGELES MINORITY, WOMEN AND
OTHER BUSINESS ENTERPRISE PROGRAM**

Departmental Responsibilities

The department heads will assign to the Purchasing Agent, Contract Administrators, Contract Compliance Officers and/or Affirmative Action Officers the responsibility for developing, managing, and implementing the MBE, WBE and OBE policy and program on a day-to-day basis. In order to implement effectively this policy the following program areas will be incorporated within the body of each individual departmental plan:

1. Development of information and communication outreach programs on contracting and bidding procedures, along with the timely dissemination of contract and bid information to both public and private business assistance centers, Chambers of Commerce, Minority and Women Business and Trade Associations.
2. Development of effective vendor databases and directories, which will include but not be limited to, qualified minority, women-owned, and other businesses, business assistance agencies, capital providers, bonding and insurance providers, and certification providers, which will be made available to all buyers, storekeepers with purchasing authority, and all other departmental personnel with authority to solicit bids and enter into negotiated personal service contracts.
3. Development and maintenance of listings of MBEs, WBEs, and OBEs to be made available to all prime contractors, vendors, and suppliers who seek to comply with contract requirements and/or subcontracts and joint venture opportunities. The listing shall include, but not limited to; the name, address, telephone number, ethnicity and gender of owner, and the service, commodity or goods provided, sold or manufactured.
4. Participation in minority trade fairs and other outside activities related to the development of minority, women and other vendors.

5. **Provide information to MBE, WBEs and OBEs on projected department contractual needs, conduct pre-bid and post conferences, permit MBEs, WBEs, and OBEs to review and evaluate successful bid documents of similar contracting or procurement opportunities.**
6. **Evaluate and verify, as necessary, the eligibility of all firms and joint ventures who claim to be minority or women-owned in coordination with the City of Los Angeles' certification entity and/or any other certification entity that has a reciprocal certification agreement with the City of Los Angeles.**
7. **Develop and implement workshops for buyers, storekeepers, and any departmental personnel with authority to negotiate construction, procurement, and personal service contracts, on how to do business with minority, women-owned and other business enterprises.**
8. **All bids, RFPs, and construction notices, whenever possible, be published in widely circulated newspapers, trade associations and business publications, including those which focus on minority and women business communities, and through the utilization of radio and any other electronic media.**
9. **The Small, Local Business Program (10% Preference) shall be utilized to further encourage and strengthen the bidding opportunities for small local businesses.**
10. **All purchasing authorities and/or department designees, with the authority to negotiate contracts, shall maintain such records, and provide such reports as are necessary to ensure full compliance with this policy.**
11. **All bids and RFPs will give notice that the City requires a good faith outreach effort by contractors, suppliers, and vendors to subcontract with minority, women and other contractors, suppliers, and vendors in their performance of City contracts.**
12. **The "Good Faith Effort" requirement shall be applied in all city procurement, personal services and construction contracts valued in excess of \$100,000, unless otherwise determined by MOED. All Awarding Authorities shall notify MOED of the anticipated levels of MBE and WBE participation for each contract.**
13. **Other government entities may not have Good Faith Effort programs that meet the city's standards for business development or outreach. In the event that the city participates ("piggybacks") onto an existing contract of another government entity or association of government entities, the city shall first evaluate the host contract to determine the extent and effect of**

the other entity's outreach and business development requirements. The results of the required evaluation shall be communicated to the Mayor's Office of Economic Development as part of the request for approval of any resulting contract by the Mayor's Office.

Mayor's Office of Economic Development Responsibilities

Departments shall seek assistance from the Mayor's Office of Economic Development to implement the previously stated departmental responsibilities. MOED has the responsibility of providing the respective Departments, covered by this directive, with the following services, including but not limited to:

1. Strategic implementation of City MBE, WBE, OBE and small local business outreach and business development efforts.
2. Technical expertise in the areas of MBE, WBE and OBE outreach program design, development and implementation.
3. Information relating to compliance with Federal and State business outreach regulations.
4. Technical expertise in coordinating outreach efforts with minority, women, and other professional associations, trade groups, business assistance centers and related organizations.
5. Technical expertise in the development of the necessary databases, directories, and reports relating to MBE, WBE and OBE program compliance.
6. The Good Faith Effort requirement does not apply to contracts valued at \$100,000 or less, but that fact shall not prevent MOED from providing to departments, at its discretion, outreach and other services authorized under this directive, with respect to such contracts.
7. Such other assistance as may be necessary in connection with the implementation of this directive by the Departments.

Quarterly Reports

Departments shall submit a Quarterly Report to MOED covering the activities relating to the efforts undertaken by the Departments to implement the MBE, WBE and OBE outreach program. The Report shall include data on construction, procurement and personal services contracts and be due 15 calendar days after the close of each calendar quarter, commencing with the quarter ending March 31, 2001. The Report shall include, but not be limited to:

1. A summary of all contract dollars and number of contracts awarded during the quarter to prime contractors and subcontractors, with a breakdown of awards to MBE, WBE and OBE firms. The data shall be further summarized by ethnic categories as determined by MOED.
2. A list of all contracts awarded or contract amendments awarded during the quarter. Each contract shall list the name of the prime contractor and each subcontractor on the project and include award date, contract term, contract type, award amount, contact person, ethnicity, gender, city, state, zip, telephone and fax number.
3. The number of business and contracting opportunity seminars, conferences, and other related events participated in by the Department.
4. All significant efforts undertaken to implement the various elements of the MBE, WBE and OBE Program outlined in this Directive.
5. Any and all other data or Departmental information relating to business development or business outreach as may be requested by MOED to further program development.

Good Faith Effort Policy and Documentation

Bidders and proposers shall assist the city in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including MBEs, WBEs, and OBEs have an equal opportunity to compete for and participate in city contracts. As outlined below, the following indicators and point scale will be used to determine the bidder's and proposer's compliance with the Good Faith Effort requirements:

- (1) The bidder's or proposer's efforts to obtain participation by MBEs, WBEs, and OBEs can reasonably be expected by the Awarding Authority to produce a level of participation by interested subcontractors, including _____ percent MBE and _____ percent WBE as established by the Awarding Authority.

0 Points

- (2) The bidder or proposer attended pre-solicitation or pre-bid meetings, if any, scheduled by the Awarding Authority to inform all bidders or proposers of the requirements for the project for which the contract will be awarded. The Awarding Authority may waive this requirement if the bidder or proposer certifies it is informed as to those project requirements.

10 Points

- (3) The bidder or proposer identified and selected specific items of the project for which the contract will be awarded to be performed by subcontractors

to provide an opportunity for participation by MBEs, WBEs, and OBEs. The bidder or proposer shall, when economically feasible, divide total contract requirements into small portions or quantities to permit maximum participation of MBEs, WBEs, and OBEs.

10 Points

- (4) The bidder or proposer advertised for bids or proposals from interested business enterprises no less than 10 calendar days prior to the submission of bids or proposals, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media specified by the Awarding Authority.

9 Points

- (5) The bidder or proposer provided written notice of its interest in bidding on the contract to those business enterprises, including MBEs and WBEs, having an interest in participating in such contracts. All notices of interest shall be provided not less than 10 calendar days prior to the date the bids or proposals were required to be submitted. In all instances, the bidder or proposer must document that invitations for subcontracting bids were sent to available MBEs, WBEs, and OBEs for each item of work to be performed. The Mayor's Office of Economic Development shall be available to help identify interested MBEs, WBEs, and OBEs.

15 Points

- (6) The bidder or proposer documented efforts to follow-up initial solicitations of interest by contacting business enterprises to determine with certainty whether the enterprises were interested in performing specific portions of the project not less than three calendar days prior to the date the bids or proposals were required to be submitted.

10 Points

- (7) The bidder or proposer provided interested business enterprises with information about the plans, specifications and requirements for the selected subcontracting work.

5 Points

- (8) The bidder or proposer requested assistance from organizations that provide assistance in the recruitment and placement of MBEs, WBEs, and OBEs not less than 15 calendar days prior to the submission of bids or proposals.

10 Points

- (9) The bidder or proposer negotiated in good faith with interested MBEs, WBEs, and OBEs and did not unjustifiably reject as unsatisfactory bids or proposals prepared by a business enterprise, as determined by the Awarding Authority. As documentation the bidder or proposer must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for MBEs, WBEs and OBEs.

26 Points

- (10) The bidder or proposer documented efforts to advise and assist interested MBEs, WBEs, and OBEs in obtaining bonds, lines of credit, or insurance required by the Awarding Authority or contractor.

5 Points


An Awarding Authority's determination of the adequacy of a bidder's or proposer's Good Faith Effort must be based on due consideration of all indicators of good faith as set forth above. Achievement of anticipated levels of participation in indicator (1), above, may only be used as one of the ten indicia of whether a bidder or proposer has met the Good Faith Effort to recruit MBEs, WBEs, and OBEs. If the Awarding Authority has established anticipated levels of participation for MBE and WBE subcontractors, failure to meet those levels shall not by itself be the basis for disqualification of the bidder or proposer.

Each indicator is to be graded on a Pass/Fail basis. Either full credit or no credit will be awarded. No partial credit is to be given. A minimum of 75 of 100 evaluation points are required to establish compliance with the Good Faith Effort requirements. The Good Faith Effort is required even if the bidder has achieved the anticipated MBE and WBE participation levels. The Good Faith Effort also is required even if the bidder is a certified Minority or Woman Business Enterprise.

In the event that an Awarding Authority is considering awarding to other than the lowest bidder, or not awarding a contract to a proposer, because the bidder or proposer is determined to be non-responsive for failure to comply with the Good Faith Effort requirements set forth above, the Awarding Authority shall, if requested, and prior to the award of the contract, afford the bidder or proposer the opportunity to present evidence to the Awarding Authority in a public hearing of the bidder's or proposer's compliance with the Good Faith Efforts in making its outreach. In no case shall an Awarding Authority deny award of a contract to a bidder or proposer pursuant to this program, if the bidder or proposer complies with the Good Faith Effort but fails to meet the anticipated levels of participation.

Nothing herein restricts the discretion of the Awarding Authority to reject all bids or proposals in accordance with provisions of the City Charter or Administrative Code.

The directions set forth herein shall take effect immediately, and all Awarding Authorities, including the city's proprietary departments, shall modify their implementation programs to the extent such programs are inconsistent with this Executive Directive.



Richard J. Riordan
Mayor

Supersedes Executive Directive 1-B (Bradley Series), dated March 29, 1983, and 1-C (Bradley Series), dated March 6, 1989.