

## REPORT

**DATE ISSUED:** April 10, 2026

**REPORT NO:** HDP26-002

**ATTENTION:** Chair and Members of the Board of Directors of  
Housing Development Partners of San Diego  
For the Agenda of April 16, 2026

**SUBJECT:** Approval of a Co-Developer Agreement and Formation of a Limited Partnership and  
Authorization to Proceed with Due Diligence Activities

**STAFF RECOMMENDATION:**

That the Housing Development Partners (HDP) Board of Directors (Board) take the following actions:

- 1) Approve Wakeland Housing and Development Corporation as co-developer for the proposed affordable senior housing development across the parcels at 5202 University Avenue, San Diego, CA 92105, and the adjacent HDP-owned senior housing community at 5207 52nd Place, San Diego, CA 92105 (the Project).
- 2) Authorize HDP to enter into a Property Development Agreement / Co-Developer Agreement with Wakeland Housing and Development Corporation, in substantially the form presented to the HDP Board and as approved by legal counsel.
- 3) Authorize the formation of a California limited partnership with Wakeland Housing and Development Corporation for purposes of pursuing the Project's financing and development, with HDP serving as the Managing General Partner or Managing Member through an affiliated entity, subject to required approvals.
- 4) Authorize HDP to seek and obtain all required approvals from the San Diego Housing Commission (SDHC) for the Project, including but not limited to, approval of all Project components, assumption of agreements, and any required transfer or assignment of the Disposition and Development Agreement (DDA).
- 5) Approve a Formation and Due Diligence Budget in an amount not to exceed \$250,000 and authorize the Senior Vice President and/or Vice President of HDP to expend and commit funds in accordance with the approved Budget. Staff are recommending that HDP advance the Project these funds through a promissory note (Attachment 4) at 5 percent interest that will be repaid at closing.
- 6) Authorize the Senior Vice President and/or Vice President of HDP to execute documents and take actions necessary to implement the foregoing approvals, including execution of consultant agreements and related instruments, all as approved by legal counsel.
- 7) Find that the foregoing transactions are just and reasonable as to HDP for purposes of California Corporations Code Section 5234.

*Please note a Conflict Disclosure Statement at the end of this report.*

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## **SUMMARY**

HDP is seeking authorization to advance entity formation and due diligence efforts for the development of affordable housing for seniors at 5202 University Avenue, San Diego, CA 92105 (the Property), a vacant approximately 0.53-acre parcel adjacent to the HDP-owned Casa Colina del Sol Apartments (Casa Colina), a 75-unit affordable housing property for seniors at 5207 52nd Place, San Diego, CA 92105.

HDP previously acquired the Casa Colina del Sol Apartments in 2003 and performed a limited renovation, financed by 4 percent Low-Income Housing Tax Credits (LIHTC), bonds, and private debt in 2004. In 2019, the project fulfilled its year-15 LIHTC compliance period, and the HDP Board approved the exit and replacement of the project's limited partner with an HDP controlled entity, HDP Casa Colina Management, LLC.

In 2020, the HDP Board approved a re-syndication effort to provide the property with a comprehensive rehabilitation to stabilize the property for the future. Due diligence efforts confirmed an extensive list of physical needs at the property that would benefit from a comprehensive rehabilitation and pointed toward supporting utilities infrastructure for the site that was functionally obsolete and in need of upgrades to keep pace with City and State requirements for energy performance and electrification. However, due to the increasingly scarce and competitive nature of 4 percent LIHTC financing, the project was not deemed sufficiently competitive by the California Debt Limit Allocation Committee (CDLAC). A critical needs assessment confirmed that, while the property had significant long-term capital needs, there were no emergent issues that would render the property unsafe, and it could continue to be safely occupied. As a result, the planned comprehensive rehabilitation was ultimately deemed infeasible due to the extent of the improvements and the lack of available tax credit equity to support the effort.

In response to the inability to advance a meaningful rehabilitation of the property, HDP and SDHC staff evaluated alternative strategies for the site. In 2022, as a part of a cooperative effort between local agencies to use publicly owned land for the development of new affordable housing, staff engaged the County of San Diego in discussions regarding a coordinated redevelopment and densification approach across both the Casa Colina site and the adjacent County-owned property. This strategy is intended to maximize the long-term viability of the site by providing replacement housing for the existing Casa Colina del Sol residents in a new facility, while making the rest of the area on the sites available to future, higher-density affordable housing development. This approach would result in an increase in the overall unit yield for the site through the implementation of a new, more efficient site plan developed to a level of density commensurate with current context.

The initial phase of the Project is intended to deliver new deed-restricted, affordable housing for seniors that will serve as replacement housing for current Casa Colina residents and support long-term redevelopment objectives for the combined sites. The current development concept anticipates one multistory residential building with approximately 90 one-bedroom units, but no less than 75 units, with associated site and amenity improvements, subject to confirmation during due diligence.

The Project is anticipated to be developed as a "by-right" project, utilizing the City of San Diego's density bonus provisions, and, therefore, is not expected to require discretionary entitlements, subject to confirmation during due diligence.

SDHC has entered into a Disposition and Development Agreement (DDA) with the County of San Diego for the transfer and development of the Property. Advancement of the Project, including assumption of agreements and any transfer or assignment of the DDA, is subject to SDHC Board of Commissioners' approval.

Under the DDA, SDHC serves as the initial developer and is responsible for acquiring the Property from the County and advancing development in accordance with defined performance milestones, financing

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requirements, and affordability restrictions. The DDA contemplates a partnership-based development structure and the use of tax credit financing, consistent with standard affordable housing delivery models.

As the Project has advanced, the development approach has transitioned to align with a tax credit financing structure, which requires a qualified nonprofit entity to serve as Managing General Partner. HDP, as a nonprofit affiliate, is therefore positioned to take a lead role in project implementation through formation of a limited partnership ownership structure.

### **Co-Developer Selection and Limited Partnership Formation**

HDP conducted a competitive solicitation process and has selected Wakeland Housing and Development Corporation (Wakeland) to serve as co-developer based on its extensive experience developing affordable multifamily housing, utilizing LIHTC, tax-exempt bonds, and other public financing sources.

Wakeland is a nonprofit affordable housing developer with over 25 years of experience and a track record of delivering approximately 8,700 affordable homes across more than 60 developments statewide.

Wakeland also brings direct experience within the City Heights community, having completed multiple affordable housing developments in the surrounding area, which provides familiarity with local stakeholders and development conditions.

Wakeland's experience with tax credit and bond financing, combined with its integrated development approach, positions the team to effectively advance and deliver the Project.

Approval of the co-developer agreement and formation of a limited partnership with Wakeland are necessary to advance due diligence activities, pursue entitlements and financing preparation, and establish a clear governance structure for coordination of due diligence and planning activities.

Staff will return to present the proposed partnership structure to the HDP Board for additional approvals as financing and development decisions advance.

The recommended actions proposed for HDP Board approval would authorize HDP to:

- Formalize its relationship with Wakeland as co-developer.
- Form a limited partnership entity to support financing and development activities.
- Proceed with planning-level due diligence, design refinement, environmental review and National Environmental Policy Act coordination, and financing preparation.
- Seek required approvals from the SDHC Board of Commissioners for all Project components, including assumption of agreements and transfer of the DDA.
- Approve the not-to-exceed Formation & Due Diligence Budget of up to \$250,000.
- Advance up to \$250,000 to the to-be-formed limited partnership entity, memorialized with a promissory note that carries a 5 percent interest rate that will be repaid at construction finance closing.

The proposed actions are intended to authorize early-stage "seed" funding to initiate partnership formation and due diligence activities and advance the Project into a financeable position. Such funding will primarily support legal costs associated with partnership formation, negotiation of development agreements, and other administrative and due diligence activities necessary to advance the Project.

Any construction or implementation activities would require separate HDP Board approvals, separate authorizations, and separate contractual instruments.

### **Due Diligence Activities Summary**

Due diligence activities include feasibility analysis, refinement of design and scope, coordination of due diligence and environmental review, preparation of entitlement and financing applications, and development

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of a preliminary financing plan and schedule. These activities are intended to inform future HDP Board decisions regarding Project feasibility and delivery.

**Community Engagement and Long-Term Planning Approach**

HDP recognizes the importance of meaningful community engagement as the Project advances, particularly given its location within the City Heights community and proximity to existing Casa Colina residents.

Although the project as conceived may proceed on a by-right basis, as part of the planning and entitlements process, HDP intends to engage local community planning groups, neighborhood stakeholders, and community-based organizations to solicit input and ensure that the Project is responsive to community needs and priorities.

While the initial phase of the Project is focused on delivery of replacement housing and development of the 5202 University Avenue site, HDP and SDHC anticipate a subsequent phase of planning to evaluate broader densification opportunities across the combined sites.

This Phase 2 effort is expected to explore opportunities for preservation and enhancement of existing greenspace and community-facing amenities where feasible, incorporating community input into long-term site planning and design.

**Phased Approval Approach**

Given the complexity of the Project and evolving financing structure, HDP anticipates returning to the HDP Board to request multiple subsequent approvals as the Project advances.

Future requests for approvals are expected to include financing applications, sources and uses, development budgets, and construction-related authorizations.

**Schedule & Key Dates**

The schedule below reflects the current schedule and key dates for the project:

<b>Predevelopment &amp; Development Milestone</b>	<b>Date</b>
Transfer Date of DDA	May–June 2026
Development Financing Plan	November 2026
Submit applications for financing	March 2027
Targeted Close of Financing	TBD, est. 2028
Targeted Completion	TBD, est. 2030

**CONFLICT DISCLOSURE STATEMENT:**

Two San Diego Housing Commissioners (Commissioners), Eugene “Mitch” Mitchell and Ryan Clumpner, and the San Diego Housing Commission’s (Housing Commission) President and Chief Executive Officer (President and CEO), Lisa Jones, are each directors of Housing Development Partners (HDP), a California nonprofit public benefit corporation qualified as an Internal Revenue Code Section 501(c)(3) corporation for federal purposes. Any Commissioner who is also a director of HDP as of the date of this staff report and President and CEO Jones have no conflict of interest as discussed below.

The Commissioners and President and CEO Jones receive no compensation for their service on HDP’s Board of Directors and/or as officers of HDP. Pursuant to the provisions of Government Code Sections 1091.5(a)(7) and 1091.5(a)(8), the Commissioners and President and CEO Jones each have a “non-interest” as described in Government Code Section 1091.5 for purposes of their action on Housing Commission matters associated with this matter, if any. This disclosure shall be incorporated into the record of the Housing Commission.

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San Diego City Councilmember and Housing Authority member, Councilmember Sean Elo-Rivera, is also a Director of HDP. Councilmember Elo-Rivera is not compensated for his service on the HDP Board or as an officer of HDP. As it relates to this matter, as a Housing Authority member, Councilmember Elo-Rivera has a noninterest under California Government Code section 1091.5(a)(9). This disclosure shall be incorporated into the record of the Housing Authority, if and when this matter is heard by the Housing Authority.

Further, because of their non-interests, the Commissioners, as members of the Housing Commission Board of Commissioners, and Councilmember Elo-Rivera, as a member of the Housing Authority, are entitled to vote on this matter and may be counted for quorum.

Further, no HDP Director or officer has a financial interest in this matter that would legally preclude their participation under the provisions of California Government Code section 87100 et. seq.

The Commissioners are not compensated for their services on the board of the Housing Commission, a public agency. Councilmember Elo-Rivera's compensation as a member of the Housing Authority, a public agency, is a non-interest under Government Code section 1091.5(a)(9). Further, Ms. Jones' compensation from a public agency, the Housing Commission, is a noninterest under the provisions of Government Code Section 1091.5(a)(9) as well as for the purposes of Government Code Section 87100 et. seq.

Finally, to the extent that HDP is a public agency for local Ethics Ordinance purposes, neither the Commissioners, Ms. Jones, nor Councilmember Elo-Rivera have any conflicts of interest under the local ethics ordinance that would preclude their actions in this matter or from being counted for quorum purposes.

These disclosures shall be and are hereby documented in the official records of the Housing Commission and Housing Authority.

**MUTUAL DIRECTORS STATEMENT:**

To the extent that Commissioners may be considered to be "directors" of the Housing Commission for purposes of California Corporations Code Section 5234 and, hence, common directors with HDP, a vote on this matter should incorporate a finding that these transactions are just and reasonable as to HDP.

Respectfully submitted,



Josh Hoffman  
Vice President of Real Estate Development  
Housing Development Partners

Approved by,

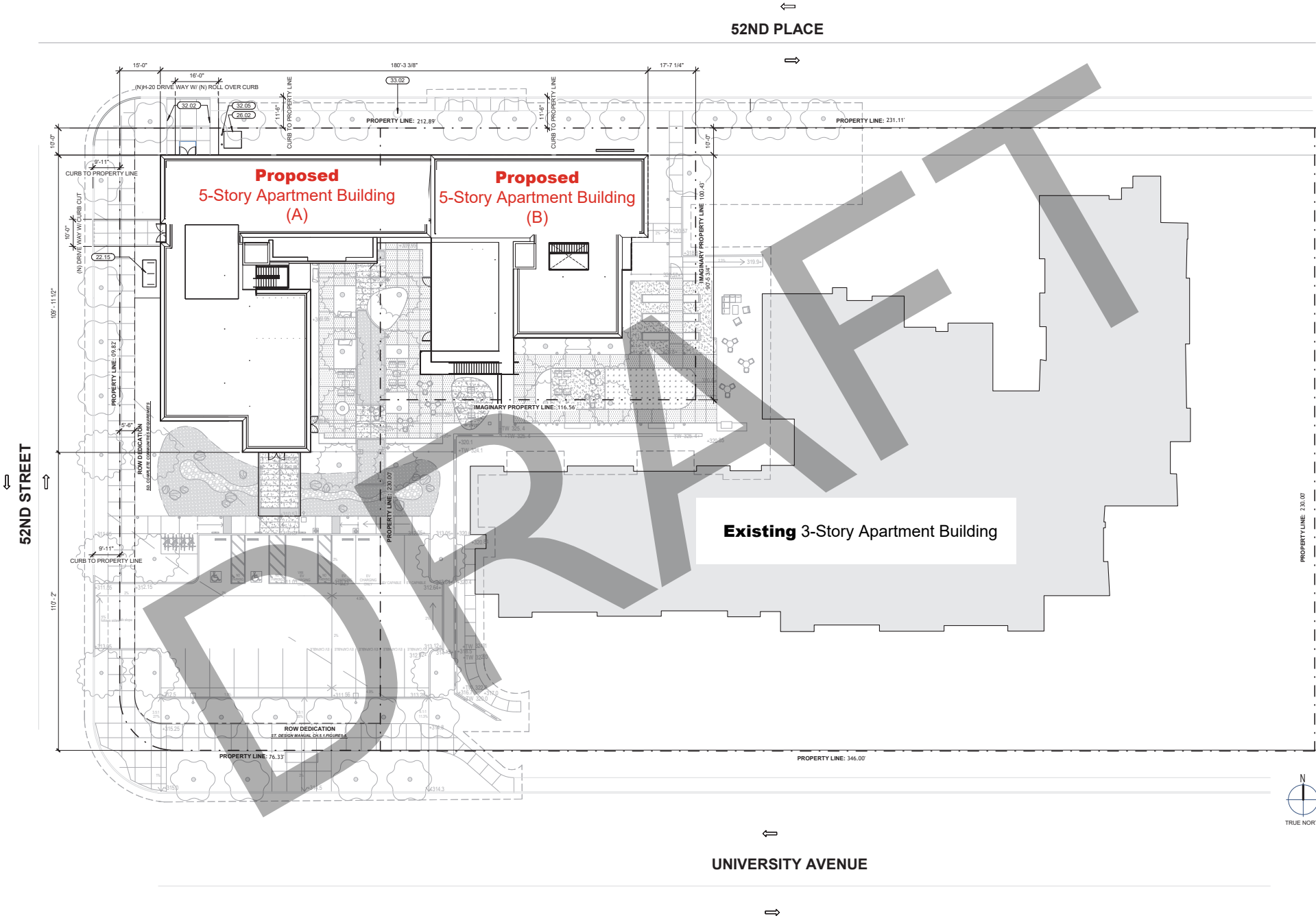


Colin Miller  
Senior Vice President of Real Estate Development  
Housing Development Partners

Attachments:      1) Contract HDP-26-01-01 – Co-Developer Services  
                             2) County Disposition and Development Agreement (DDA)  
                             3) Site Map

Docket materials are available on HDP's website at [www.hdpartners.org](http://www.hdpartners.org)

# Attachment 1



### PROPERTY DEVELOPMENT AGREEMENT

This PROPERTY DEVELOPMENT AGREEMENT (the “Agreement”), dated as of April \_\_\_, 2026 is entered into between HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO, a California nonprofit public benefit corporation (“HDP”), and WAKELAND HOUSING AND DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (“Developer”), with reference to the facts set forth below.

### RECITALS

- A. The San Diego Housing Commission (“Owner”), has entered into a Disposition and Development Agreement dated as of \_\_\_\_\_, 2026 (“DDA”) with the County of San Diego for the transfer of that certain real property (together with any improvements and tangible personal property located thereon) located at 5202 University Avenue, San Diego, California (the “Property”). The DDA sets forth the legal and financial arrangement between SDHC and the selected development team to ensure prompt development within the agreed-upon timelines. Owner desires to assign all rights and obligations under the DDA to HDP.
- B. Owner and HDP intend to construct an affordable senior housing project on the Property (the “Project”) as part of a phase 1 effort to densify the existing adjacent Casa Colina 75-unit senior property (“Casa Colina”). The Project will consist of approximately 90 senior housing units which will house residents currently residing at Casa Colina. Once the Project is complete, this effort will allow for future phased redevelopment of the existing Casa Colina property into new affordable housing with the goal of maximizing the number of affordable housing units on the combined sites.
- C. Developer and HDP are entering into this Agreement to set forth the terms upon which Developer and HDP shall assume the obligations under the DDA and acquire, develop and own the Project through the Partnership (as defined below).

### ARTICLE 1

#### Acquisition of the Property

1.1 Acquisition of the Property. The following is subject to a successful completion of transfer per the DDA. Pursuant to a purchase agreement or purchase option agreement to be negotiated between the Owner and the Partnership, which shall be in form and content acceptable to both HDP and Developer (the “Purchase Agreement”) and subject to the terms and conditions herein, the Partnership shall buy and Owner shall sell the Property. The acquisition of the Property shall occur concurrently with, and is conditioned upon, the closing of the Project’s financing described herein.

1.2 Ownership of Property. Developer shall form a California limited partnership (the “Partnership”) to acquire, develop and operate the Project. The Partnership shall consist of: (1) a limited liability company in which HDP is the sole member, as managing general partner (“HDP MGP”); (2) a limited liability company affiliated with Developer as administrative general partner (“Developer AGP”); (3) a tax credit investor recommended by Developer and approved by HDP (“Tax Credit Investor”), and (4) at the election of the Tax Credit Investor, a special limited partner who is an affiliate of the Tax Credit Investor. It is the intent of the parties that the Developer

AGP shall only serve as the administrative general partner of the Partnership during the acquisition, construction and development of the Project. Subject to the consent of the Project's lenders, investor and any applicable governmental agency, the Developer AGP shall withdraw from the Partnership upon the later of (i) conversion or repayment of the Project's construction financing, or (ii) funding of the final equity installment by the Tax Credit Investor and issuance of IRS Form 8609. Upon such withdrawal from the Partnership, this Agreement shall be terminated, and the parties shall have no further liability or obligations to the others, except with respect to those obligations hereunder or in the Partnership Agreement that expressly survive termination. From and after the withdrawal of the Developer AGP, HDP as the sole general partner of the Partnership shall be solely responsible for the ongoing operation of the Project. The parties acknowledge and agree that in selecting the lender and Tax Credit Investor of the Project, the lender and Tax Credit Investor shall be made aware of the parties' intent that Developer AGP will withdraw from the Partnership upon conversion or repayment of the Project's construction financing and released from the guaranties so that the lender and investor can underwrite HDP appropriately prior to the closing of Project's construction financing.

## **ARTICLE 2**

### **Development Obligations**

2.1 Developer's Development Obligations. Developer shall use commercially reasonable efforts to perform or cause to be performed the following obligations ("Developer's Development Obligations") and shall have authority to take all actions reasonably necessary in connection with the performance of the Developer's Development Obligations; provided, however, the Developer shall meet with HDP regularly and keep HDP apprised in performing Developer's Development Obligations. The Developer's Development Obligations and the HDP Development Obligations (as defined below) shall be interpreted and construed to be consistent with the Roles and Responsibilities set forth on Schedule 1 hereto:

2.1.1 Feasibility Analysis. Conducting a financial feasibility analysis, including preliminary cost projections, preliminary income and expense projections, financial modeling, and an analysis of funding that may be available for the acquisition and development of the Project. Based on the results of the feasibility analysis, Developer shall prepare a predevelopment budget and financing plan for the development of the Project for reasonable approval by HDP that sets forth the scope of development of the Project, proposed development timing, and the proposed financing structure of the acquisition and development of the Project.

2.1.2 Predevelopment Activities. Coordinating predevelopment activities necessary for the financing and development of the Project including, without limitation: (i) applying for any necessary entitlements for the development of the Project, including the receipt of all permits necessary for the development of the Project, (ii) obtaining physical needs assessments, soils reports, environmental reports, appraisals, market studies and other reports for the Project, and (iii) identification, retention of, management of, and cooperation with consultants in connection with the foregoing pre-development activities.

2.1.3 Project Financing. Making commercially reasonable efforts to identify, apply for and manage the closing of financing for the Project, including construction financing, permanent financing, subsidy financing and tax credit equity financing; provided, however, final selection of the lenders and Tax Credit Investor shall be subject to the approval of the HDP, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the

foregoing, HDP's attorney shall serve as Partnership counsel for the closing of the Project financing and shall be primarily responsible for the review and negotiation of the financing documents. Developer shall submit, or cause to be submitted, an application for State of California 4% low-income housing tax credits to the California Tax Credit Allocation Committee ("TCAC") and an application for tax-exempt bond volume cap from the California Debt Limit Allocation Committee ("CDLAC"). Developer shall be the primary point of contact for all communications with TCAC, CDLAC and other regulatory agencies having jurisdiction over the Property.

2.1.4 Forms 8609. Developer shall submit, or cause to be submitted, an application for receipt of IRS Forms 8609, Low-Income Housing Credit Allocation and Certification, together with all documents required to be submitted in connection therewith, to the Internal Revenue Service.

2.1.5 Design and Construction. Developer shall engage the Project architect. Developer shall recommend for approval by HDP and engage the general contractor ("General Contractor"). Developer shall supervise the preparation of development plans, and the coordination and administration of the Project architect, the general contractor and other contractors, professionals and consultants employed in connection with the Development of the Project. The payment of general contractor fee, overhead and general requirements shall be in an amount not exceeding 14% of the Project's cost of construction in accordance with CTCAC requirements.

2.1.6 Project Management. Developer or Developer's designee, shall provide all project management services with respect to the Project and shall administer the development and financing process, including loan and equity draws from construction, permanent, equity and subsidy financing sources ("Project Management Services"). Developer shall undertake any necessary reporting in connection with the Project Management Services.

2.1.7 Construction Management. Developer shall select, engage and monitor a construction manager to oversee the work of the General Contractor. The identity of the construction manager and the fee paid to the construction manager shall be subject to approval by HDP.

2.1.8 Operations and Property Management. HDP shall select a qualified property management firm to manage the Project on behalf of the Partnership (the "Management Agent"). The Management Agent selected by HDP must be consented to by Developer, the Project lenders, investor and any applicable governmental agency with oversight of the Project. The approved Management Agent shall prepare budgets for the ongoing operation of the Project for review and approval by Developer, and Developer shall oversee the Management Agent in the preparation of marketing, lease-up and management plans.

2.1.9 Relocation. Developer shall recommend for approval by HDP, a relocation consultant to manage the temporary and permanent relocation of tenants during the development process in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 or other applicable laws. Developer shall manage and oversee the relocation consultant and the relocation process.

2.1.10 Administrative General Partner. The Developer AGP shall serve as the administrative general partner of the Partnership as set forth in Section 1.2 above

2.1.11 Community Outreach. Developer shall coordinate community outreach with neighborhood groups, local organizations, abutters and other parties interested in the development of the Project if any discretionary approvals are required from any governmental agencies or if permission is required or desirable from any neighboring property owner for Project staging, material storage or otherwise to facilitate the development of the Project. HDP shall assist Developer, as reasonably requested by Developer, with obtaining approvals necessary for the development of the Project from local government agencies.

2.1.12 Guaranties. Provided that Developer AGP serves as a partner of the Partnership, Developer shall provide the following guaranties to the lenders and investor of the Project (collectively, the “Developer Guaranties”): (i) lien free completion of development of the Project by a date certain, (ii) funding (after the exhausting of any construction contingency) any development deficit resulting from construction cost overruns, (iii) funding any failure to deliver projected tax credits at all or on a timely basis, or the recapture of any projected tax credits, and (iv) non-recourse carve-outs with respect to the Developer AGP (collectively, the “Developer Guaranties”). With respect to Developer and provided that the party who is the beneficiary of such guaranty agrees, the guaranty period under the Developer Guaranties shall commence upon the close of the construction financing for the Project and shall terminate upon the later of: (i) conversion or repayment of the Project’s construction financing, or (ii) funding of the final equity installment by the Tax Credit Investor and receipt of IRS Forms 8609 (“Developer Guaranty Period”). Developer AGP shall withdraw as a partner of the Partnership upon termination of the Developer Guaranty Period, subject to the approval of the Project’s lenders, investor and any applicable governmental agency.

**2.2** HDP’s Development Obligations. HDP shall perform or cause to be performed the following obligations (“HDP Development Obligations”), and shall have authority to take all actions reasonably necessary in connection with the performance of the HDP Development Obligations:

2.2.1 Managing General Partner. The HDP MGP shall serve as the managing general partner of the Partnership. HDP MGP's managing general partner role is intended, in part, to qualify the Project for the welfare tax exemption as defined in Section 214(g) of the Revenue and Tax Code of the State of California. HDP represents that it is a tax-exempt entity under Internal Revenue Code Section 501(c)(3) and will apply for an organization clearance certificate for HDP MGP for welfare tax exemption purposes ("Organization Clearance Certificate"). HDP MGP will apply for a property tax exemption for the Project in a timely manner and will be responsible for keeping all records and filing all documents necessary to maintain the property tax exemption for as long as it, or its affiliate, is the managing general partner of the Partnership.

2.2.2 HDP Construction Management. HDP reserves the right to either perform construction management internally or to retain a construction manager to monitor and report on the work of the General Contractor on HDP's behalf. The cost for internal, external or a combination of to monitor the construction shall be reimbursable as a project expense. The identity of the HDP construction manager and the fee paid to the HDP construction manager shall be subject to consent of the Developer. HDP's performance of or retention of Construction Management services on its own behalf shall not be construed as relieving the Developer of their responsibility to provide construction management and oversight of the general contractor per the roles and responsibilities prescribed above.

2.2.3 Guaranties. HDP shall provide any guaranties required by any lender or investor of the Project after expiration of the Developer Guaranty Period (collectively, the "HDP Guaranties"). Such guaranties shall include: (i) funding any operating deficits, (ii) funding any recapture of tax credits, and (iii) non-recourse carve-outs with respect to HDP MGP.

2.2.4 Cost Overruns. If the costs and expenses incurred by the Developer while completing the scope of work per this Agreement exceed the respective amounts allocated for such items, HDP and Developer shall be responsible for covering the excess costs and expenses per the developer fee split referenced in this agreement as 55% HDP & 45% Developer. This would only apply once the project budget contingency has been exhausted.

### **ARTICLE 3 Developer Fee**

In consideration for performing the Development Obligations hereunder, Developer shall receive 45 (%) of the maximum fee permitted by the applicable rules and regulations of TCAC, CDLAC and the San Diego Housing Commission ("Developer Fee") not to exceed \$2,500,000.00. The remaining Developer Fee (including any deferred Developer Fee) will be paid to HDP in consideration for performing the HDP Development Obligations hereunder. In the event that payment of any portion of the Developer Fee is deferred and payable only from Project cash flow, Developer's portion of the Developer Fee shall be paid prior to payment of HDP's portion of the deferred Developer Fee so that none of Developer's fee is deferred.

## **ARTICLE 4 Cooperation**

HDP and Developer agree that they shall cooperate fully with each other in the performance of their respective Development Obligations. Each shall respond promptly to requests for information from the other and shall provide complete and accurate information as requested by the other. HDP and Developer agree to provide any required approvals or decisions in connection with the Project promptly so as not to unreasonably delay the Project or the performance of the Development Obligations.

## **ARTICLE 5 Termination/Remedies.**

**5.1** Work Product. In the event of any termination of this Agreement, Developer shall assign and deliver to HDP (without any warranty, except the same that has been paid for) all Work Product requested by HDP, which may include all applications and approvals. Work Product shall not include attorney/client privileged communications, internal feasibility studies or analyses or other proprietary information of Developer Provided that Developer is not in a material breach of this Agreement, the assignment and delivery to HDP of the Work Product shall be subject to payment by HDP of reimbursement to Developer for all actual costs paid to third parties for the Work Product. In addition, Developer shall execute and deliver to HDP such instruments as HDP may reasonably request to effect the assignment of the Work Product to HDP.

**5.2** Default and Remedies. If either party shall (i) default in the performance of any of its covenants or obligations under this Agreement, or (ii) make an assignment in contravention of this Agreement (each an “Event of Default”) and such Event of Default shall continue unremedied for a period of thirty (30) days after written notice thereof from the non-defaulting party to the defaulting party, the non-defaulting party may exercise one or more of the following rights and remedies, provided, however, if the Event of Default is of such a nature that it cannot be cured within the 30-day period, and the defaulting party has commenced to cure each Event of Default within the 30-day period, the defaulting party shall have an additional sixty (60) days in which to cure said Event of Default provided it acts in good faith and with due diligence to cure the same (all of which shall be cumulative):

- (a) If Close of Escrow has not occurred, terminate this Agreement. This Agreement shall not be terminable by either party after the Close of Escrow.
- (b) Enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by the defaulting party, of the provisions of this Agreement, including court costs, reasonable attorneys’ fees and other expenses incurred in the enforcement of the obligations of the Developer hereunder.
- (c) Exercise any and all rights and remedies which the non-defaulting party may have under applicable laws.

Notwithstanding the foregoing, in the event that an Event of Default by HDP occurs after the receipt by Developer of the Tax Credit reservation, the cure periods herein shall not apply, and Developer shall have the immediate right to compel HDP's specific performance hereunder.

5.3 Term and Termination. This Agreement shall commence on the date hereof and shall terminate upon the occurrence of any of the following: (1) a reasonable determination by the parties, at any time prior to the Close of Escrow, that the development of the Project is infeasible, (2) the occurrence and continuance of an uncured Event of Default, (3) at Developer's sole and absolute discretion, failure to obtain any competitive subsidy necessary for the financial feasibility of the Project, or (4) performance by Developer of all of its obligations hereunder, as evidenced by receipt of Forms 8609 for each building in the Project, and payment to Developer of all sums owed pursuant to the terms of this Agreement.

## **ARTICLE 6**

### **General Provisions**

6.1 Construction of Agreement. The agreements contained herein shall not be construed in favor of or against either party but shall be construed as if both parties prepared this Agreement thereof.

6.2 Captions. The captions used herein are for convenience only and are not part of this Agreement.

6.3 Governing Law. This Agreement and any documents in the form attached as exhibits hereto shall be governed by and construed under the laws of the State of California. This Agreement shall be deemed made and entered into in San Diego County.

6.4 Time of the Essence. Time is of the essence of each and every provision of this Agreement.

6.5 Successors and Assigns. Except as provided herein, neither party may, voluntarily or by operation of law, assign or otherwise transfer any of its rights or obligations under this Agreement without obtaining the prior written consent of the other party, which consent may be withheld in the sole and absolute discretion of such party. Subject to the foregoing, each and all of the covenants and conditions of this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs, representatives, and assigns of each party.

6.6 Waiver. No waiver by either party of a breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition contained herein. Waiver of any default by either party hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repeated, and no express waiver shall effect a default other than as specified in such waiver.

6.7 Attorney's Fees. In the event any action shall be brought in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including reasonable attorneys' fees as fixed by the court therein.

**6.8** Severability. In the event that any phrase, clause, sentence, paragraph, Section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

**6.9** Gender and Number. In this Agreement (unless the context requires otherwise) the masculine, feminine and neuter genders and the singular and the plural include one another.

**6.10** Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged in this Agreement. The foregoing sentence shall in no way affect the validity of any instruments executed by the parties in the form of the exhibits attached to this Agreement, if any.

**6.11** Notice. All notices permitted or required pursuant to this Agreement shall be in writing and shall be (a) sent by (i) certified mail, return receipt requested, postage prepaid, (ii) facsimile, or by Federal Express or other nationally recognized overnight express courier, or (iii) electronic email communication and (b) addressed to the parties to whom such notices are intended as set forth below. Notices shall be deemed given when actually received (or when delivery is refused) by the intended recipient at the respective addresses set forth below, provided that any notice not received before 5:00 pm (San Diego, California time) on a business day shall be deemed received on the next business day.

If to HDP:

Housing Development Partners of San Diego,  
Inc. 1122 Broadway Suite 300  
San Diego, CA 92101  
Attn: Colin Miller  
Telephone: (619) 578-7429  
Email:  
[cmiller@hdpartner.org](mailto:cmiller@hdpartner.org)

With a copy to:

Irene Kuei, Esq.  
Downs Pham & Kuei LLP  
235 Montgomery St., Suite 1169  
San Francisco, CA 94104  
Telephone: (415) 202-6376  
Email: [ikuei@downspham.com](mailto:ikuei@downspham.com)

If to Developer:

Wakeland Housing and Development Corporation  
1230 Columbia Street, Ste. 950  
San Diego, CA 92101  
Attn: \_\_\_\_\_  
Telephone:  
Email:

**6.12 Modification.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties hereto.

**6.13 No Warranties.** Except as otherwise specifically provided herein, neither Owner nor HDP has made any representations, warranties or agreement by or on behalf of either party to the other party as to any matters concerning the Property. Each party expressly waives any rights of rescission and all other claims for damages or the right to bring a suit for specific performance by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

**6.14 Joint and Several Liability.** If either party consists of more than one person or entity, the liability of each such person signing this Agreement shall be joint and several.

**6.15 Counterparts.** This Agreement may be executed in counterparts, each of which, when taken together, shall constitute a fully executed original.

**6.16 Judicial Reference.** Any and all disputes, claims and controversies arising out of this Agreement or the transactions contemplated thereby shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure Sections 638 et seq. The referee shall be a retired California state court judge with experience in relevant real estate matters. The Parties shall not seek to appoint a referee that may be disqualified pursuant to California Code of Civil Procedure Section 641 or 641.2 without the prior written consent of all Parties. If the parties are unable to agree upon a referee within ten (10) calendar days after one Party serves a written notice of intent for judicial reference upon the other Party or Parties, then the referee will be selected by the court in accordance with California Code of Civil Procedure Section 640(b). The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the California Code of Civil Procedure, the Rules of Court, and California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The referee's statement of decision shall set forth findings of fact and conclusions of law. The decision of the referee shall be entered as a judgment in the court in accordance with the provisions of California Code of Civil Procedure Sections 644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.

**6.17 Exhibits and Schedules.** Any Exhibits attached hereto are incorporated herein by reference.

*[Signatures on the following page]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**HDP**

HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO, INC.,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM:**

**DOWNS PHAM & KUEI LLP AS  
OUTSIDE COUNSEL FOR HDP**

**By: \_\_\_\_\_  
Irene C. Kuei, Esq.**

**Developer**

**WAKELAND HOUSING AND DEVELOPMENT CORPORATION,  
a Californian nonprofit public benefit corporation**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

SCHEDULE 1  
ROLES & RESPONSIBILITIES

		Key:	
		P = Primary	
<b>Roles &amp; Responsibilities</b>		S = Secondary	
		N/A - Not Applicable	
<b>Item</b>	<b>Task</b>	<b>Developer</b>	<b>Housing Development Partners</b>
<b>Outreach</b>			
	Liaison with Community groups, local governmental agencies, and other local institutions	P	S
<b>Existing Financing</b>			
	Review key documents such as promissory notes, mortgages, deeds of trusts, use agreements and regulatory agreements pertaining to the existing project.	P	S
	Identify key issues and assess the impact of regulatory constraints on the financing plan.	P	S
	Lead and point of contact for all matters relating to regulatory agency approvals necessary to implement the financing plan.	P	S

	Prepare and submit materials to regulatory agencies as necessary to facilitate approvals required for funding applications	P	S
<b>New Financing</b>			

	Secure appraisal/market study.	P	S
	Prepare financing plan.	P	S
	Prepare tax credit application(s).	P	S
	Prepare soft funding applications.	P	S
	Negotiate letter of intent with limited partner.	P	S
	Secure permanent and construction financing and negotiate letters of intent in connection with same.	P	S
	Primary point of contact with State Housing Agency.	P	S
	Secure property tax abatement.	S	P
<b>Design/Preconstruction</b>			
	Prepare predevelopment budgets.	P	S
	Prepare project schedules/timelines.	P	S
	Monitor and update predevelopment budgets and project schedules.	P	S
	Secure C.N.A., Phase I, Geotech, and soils reports.	P	S
	Coordinate selection of	P	S

	general contractor		
	Coordinate development of Master Plan with architect	P	S
	Schedule and conduct site visit with C.N.A. provider, contractor, and architect to develop scope of work and discuss program requirements.	P	S
	Oversee design and engineering for Construction Documents and value engineering.	P	S

	Oversee construction value engineering as necessary.	P	S
	Coordinate review and approval of the architect, GC, and engineering contracts.	P	S
	Take lead in working with construction manager	S	P
<b>Entitlements</b>			
	Project qualifies for "By-right" entitlements. Project team may elect to go through multi-disciplinary preliminary review.	P	S
	Coordinate the process of securing local permits by working with the City and design team to satisfy all	P	S

	requirements.		
	Confirm zoning and other use restrictions.	P	S
	Direct and necessary zoning changes, lot splits, or subdivisions.	P	S
	Secure all other required state and local approvals.	P	S
<b>Acquisition</b>			
	Site control for the project is per the executed DDA.	S	P
<b>Services/Community Outreach</b>			
	Coordinate tenant services.	S	S
	Develop budget for project services.	P	S
	Secure commitments for project services.	P	S
	Secure funding for project services.	P	S
<b>Operations/Property Management</b>			

	Development project operating budget.	S	P
	Select property manager.	S	P
	Negotiate management agreement.	P	S
	Oversee development of management plan.	P	S
	Project marketing, lease-up, and management strategy.	P	S

	Ensure adherence for eligibility guidelines and tenant income qualifications.	P	S
	Prepare relocation plan and develop relocation budget.	P	S
<b>Legal</b>			
	Set up new development entity .	P	S
	Negotiate and finalize ownership structures.	P	S
	Set up tax credit partnerships.	P	S
	Negotiate and finalize Limited Partnership Agreement in connection with closing.	S	P
<b>Accounting</b>			
	Coordinate project accounting for pre-development.	P	S
	Coordinate processing of construction draws.	P	S
	Coordinate 10% Cost Certification.	P	S
	Coordinate tax opinions.	P	S
	Coordinate final cost certification.	P	S
	Prepare 8609 package.	P	S
<b>Construction Closing</b>			

	Coordinate and direct the closing activities related to equity, soft loans, and conventional debt closings through its counsel.	P	S
	Manage closing checklists and work with closing attorneys on the property transfer.	P	S
<b>Construction</b>			
	Provide construction management and oversight of the general contractor.	P	S
	Coordinate with Architect & Contractor on all submittals and RFI's.	P	S
	Attend all construction progress meetings.	P	S
	Attend all construction draw meetings.	P	S
	Point in keeping all parties (lenders, syndicator, HFAs) informed as appropriate as to the progress towards construction completion.	P	S
	Monitor construction draws, change orders and construction budget.	P	S

	Work with the management company and the site manager to identify and resolve any operational problems that arise during the construction period.	P	S
	Coordinate relocation activities during construction, consistent with the relocation plan and budget.	P	S

<b>Perm Conversion</b>			
	Coordinate conversion of construction financing to perm, and be point on the loan closing.	P	S

EXHIBIT A    REPORTS AND DOCUMENTS LIST

<u>1</u>	<u>Preliminary Title Report</u>	<u>Issued by Chicago Title</u>
<u>2</u>	<u>ALTA Survey</u>	<u>Issued by Nasland Engineering</u>
<u>3</u>	<u>Soils/Geotechnical Report</u>	<u>Issued by Ninyo &amp; Moore</u>
<u>4</u>	<u>Appraisal</u>	<u>Issued by BTI</u>
<u>5</u>	<u>Phase I and as applicable Phase II</u>	<u>Issued by Ninyo &amp; Moore</u>
<u>6</u>	<u>Storm Drain Scope</u>	<u>Issued by CPL</u>
<u>7</u>	<u>Design Development Plan Set 10.24.24</u>	<u>Issued by LPA Architects along with Nasland Engineering</u>

## **Attachment 3**

### **DISPOSITION AND DEVELOPMENT AGREEMENT (5202 University Avenue)**

**by and between the**

**COUNTY OF SAN DIEGO**

**and**

**SAN DIEGO HOUSING COMMISSION**

**COUNTY OF SAN DIEGO**

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(5202 University Avenue)**

This Disposition and Development Agreement (“**Agreement**”) is dated as of \_\_\_\_\_, 2025, for reference purposes only, and is entered into by and between the County of San Diego, a political subdivision of the State of California (“**County**”), and San Diego Housing Commission (“**Developer**”).

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

**1. PURPOSES.**

The County is the owner of that certain real property located at 5202 University Ave. in San Diego County, California, as described more specifically in Section 2.84 (“**Property**”). The purpose of this Agreement is to provide for the sale and development of the Property as set forth in the Scope of Development (**Exhibit “E”**), which shall be constructed and operated as approximately ninety (90) housing units that are affordable to households of income levels specified in the County Regulatory Agreement (“**Project**”), and as more specifically described in this Agreement. The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of San Diego and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

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

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

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

**2.3 Actual Project Costs.** The actual aggregate cost amount in each of the categories of expenses for the Project set forth in the Project Budget and all other costs related to construction of the Project that are incurred by Developer as determined by a cost certification performed at Developer’s expense by a certified public accountant acceptable to County within six (6) months after issuance of a final Certificate of Occupancy for the entire Project. Actual Project Costs shall not include any costs related to any litigation that might arise with respect to the Project, or any costs that fall outside of the categories in the Project Budget.

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

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

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

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

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

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

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

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

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

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

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

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

2.16 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award,

assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.

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

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

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

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

2.21 **County.** The County of San Diego, a political subdivision of the State of California, and any assignee of or successor to the rights, powers or responsibilities of the County of San Diego.

2.22 **County Parties.** Collectively, County, the County Board of Supervisors, and all County elected or appointed officials, employees, agents, and attorneys.

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

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

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

2.26 **Developer.** SAN DIEGO HOUSING COMMISSION, and its assignees and transferees permitted by this Agreement.

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

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

2.29 **Developer Partnership Agreement.** The agreement of limited partnership organizing and establishing SDHC Joint Venture as a legal entity, as such may be amended and/or restated.

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

2.31 **Director.** County's Director, Department of General Services.

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

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

2.34 **Due Diligence Period.** The time period that commences on the Effective Date and expires at 5:00 p.m. Pacific Standard Time on the date that is Ninety (90) calendar days after the Effective Date. The Due Diligence Period may be extended in the Director's discretion for up to an additional thirty (30) calendar days.

2.35 **Dwelling Unit.** Any one of the approximately ninety (90) residential apartment units in the Project.

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

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

2.38 **Environmental Documents.** The following documents regarding the environmental condition of the Property, which have been provided by County to Developer: Notice of Exemption and supporting documentation including Phase I Environmental Site Assessment and Class 32 Infill Categorical Exemption Report.

2.39 **Environmental Law.** All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of

conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect.

2.40 **Escrow.** An escrow conducted by the Escrow Agent for the disposition of the Property to Developer pursuant to this Agreement.

2.41 **Escrow Agent.** Chicago Title Company, or such other Person mutually agreed upon in writing by both County and Developer.

2.42 **Escrow Closing Date.** The date mutually agreed upon in writing between the Parties for the Close of Escrow, which shall be no later than December 31, 2028, subject to extensions in the Director's discretion of up to an aggregate of one hundred and eight (180) calendar days.

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

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

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

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

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

2.47.1 Monetary Default. A Monetary Default that continues for twenty (20) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount or bond, surety or insurance not provided;

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

2.47.3 Bankruptcy or Insolvency. Developer admitting in writing that Developer is unable to pay Developer's debts as they become due or Developer becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after

commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Agreement, the Property or the Project (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);

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

2.47.5 Non-Monetary Default. Any Non-Monetary Default, other than those specifically addressed in Section 2.62 or Section 2.63, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

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

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

2.49 **Good Faith Deposit**. A deposit in the amount of One Hundred Dollars (\$100.00) to provide security for the performance of Developer's obligations under this Agreement, which has been provided to the County prior to execution of this Agreement.

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

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

any household chemical products in normal quantities used for operation and maintenance of the Project in compliance with Law.

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

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

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

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

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

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

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

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

2.60 **Lender.** The holder of any Security Instrument and such holder's successors and assigns.

2.61 **Manager Units.** The Dwelling Units designated for on-site residential managers or maintenance personnel, which shall remain unrestricted in terms of income or affordability levels, and shall not exceed two (2) Dwelling Units.

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

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

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

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

2.66 **Notify.** To give a Notice.

2.67 **Parties.** Collectively, County and Developer.

2.68 **Party.** Individually, either County or Developer, as applicable.

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

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

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

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

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

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

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

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

2.77 **Project.** The approximately ninety (90) multi-family residential apartments with appropriate landscaping, site improvements, and parking (inclusive of the Manager Units) specifically described in the Project Scope attached to this Agreement as **Exhibit "E"**, subject to the terms and conditions of all Approvals.

2.78 **Project Budget.** The proforma, estimated budget set forth in **Exhibit "H"** attached to this Agreement, as may be amended, subject to County approval, to be reflected as the final Project Budget approved by the County in accordance with Section 8.3.5, which is a condition precedent to the Close of Escrow.

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

2.80 **Project Completion Date.** The date that is twenty-four (24) months following the date of the Close of Escrow.

2.81 **Intentionally omitted.**

2.82 **Project Scope.** The scope of development for the Project, attached to this Agreement as **Exhibit "E"**.

2.83 **Intentionally Omitted.**

2.84 **Property.** That certain real property and improvements, if any, described in **Exhibit “A”** attached to this Agreement. The Property generally consists of a vacant lot, Assessor’s Parcel Number 472-390-03-00, as shown on the map included in **Exhibit “A”**.

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

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

2.87 **Regulatory Agreement.** That certain “Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing” to be entered into by and between County and Developer and recorded against the Property at the Close of Escrow, substantially in the form of **Exhibit “C”** attached to this Agreement. The Regulatory Agreement shall be Senior to all Security Instruments, except as explicitly provided in this Agreement.

2.88 **Release of Construction Covenants.** County’s written certification that the Project is complete in accordance with the terms and conditions of this Agreement, substantially in the form of **Exhibit “B”** attached to this Agreement.

2.89 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned or supplemented from time to time, unless and until paid, satisfied and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

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

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

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

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

2.94 **Site.** That certain real property and any improvements legally described in **Exhibit “A”** attached to this Agreement.

2.95 **State.** The State of California.

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

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

2.98 **Tax Credits.** An allocation from CTCAC of State or Federal low-income housing tax credits in the amount specified in the Project Budget to finance a portion of the Total Project Costs, all in accordance with section 42 of the United States Internal Revenue Code of 1986, as amended, all associated United States Internal Revenue Service regulations, State law and all associated CTCAC regulations.

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

2.100 **Title Report.** An ALTA report issued by Chicago Title Company

2.101 **Title Company.** Chicago Title Company, or such other Person mutually agreed upon in writing by both County and Developer.

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

2.103 **Transfer.** Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right, or obligation or of any legal, beneficial, or equitable interest or estate in such property, right, or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right, or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.103, shall be deemed a Transfer by Developer, even though Developer is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and which constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the Person whose Equity Interest is being transferred; (iv) making of a Permitted Security Instrument; (v) transfer(s) of the outstanding Equity Interests in Developer that, in the aggregate, result in transfer of less than forty percent (40%) of the outstanding Equity Interests in Developer; (vi) issuance of previously unissued or new Equity Interests in Developer that increases the amount of outstanding Equity Interests in Developer by less than ten percent (10%); (vii) the admission of a non-profit public benefit corporation as a managing general partner or manager or member of Developer in order for Developer to qualify for the welfare exemption from property taxation provided under California Revenue and Taxation Code section 214(g); (viii) intentionally omitted; (ix) grants of easements required for construction of the Project; (x) actions taken to comply with any Approvals for the Project; (xi) a transfer of a limited partnership interest to a Tax Credit Investor and thereafter by the Tax Credit Investor of its limited partnership interest in Developer to a syndicated equity fund Controlled by the Tax Credit Investor for purposes of syndication of the Tax Credit Equity; (xii) the removal of the general partner of Developer by the Tax Credit Investor in accordance with the Developer Partnership Agreement and replacement of such general partner with a Person approved by the County, which approval shall not be unreasonably withheld; (xiii) the grant and exercise of an option and/or right of first refusal from the Tax Credit Investor to the general partner of Developer in accordance with the Developer Partnership Agreement upon the anticipated exit of the Tax Credit Investor from the partnership on or around the expiration of the Tax Credit compliance period; (xiv) any other transfer approved by the County, which approval shall not be unreasonably withheld.

2.104 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism,

riots, litigation, Government action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

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

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

4.1 **Delivery.** Developer shall deliver the Good Faith Deposit to Escrow Agent prior to or concurrently with the execution of this Agreement.

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

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

#### 5. **DUE DILIGENCE.**

##### 5.1 **Due Diligence**

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

5.1.2 Right of Entry. Developer may access the Property for Due Diligence Investigations under a Right of Entry Permit in the form attached as **Exhibit "J"**.

##### 5.1.3 Review of Title.

(a) *Developer's Title Notice.* Within fifteen (15) Business Days after the Effective Date, Developer shall deliver to County a written Notice confirming Developer's unconditional acceptance of the condition of title to the Property or Developer's disapproval or conditional

approval of specific matters in the Title Report. If Developer fails to timely deliver this title Notice, Developer shall be deemed to disapprove the condition of title to the Property.

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

(c) *Developer's Rejection or Waiver.* If County elects or is deemed to have elected not to address one or more matters set forth in Developer's title Notice to Developer's reasonable satisfaction, then within five (5) Business Days after the earlier of Developer's receipt of County's title response Notice or the expiration of County's deadline to deliver its title response Notice, Developer shall deliver to County a final written Notice: (i) rejecting the condition of title to the Property; or (ii) waiving Developer's disapproval or conditional approval of all such matters set forth in Developer's initial title Notice and unconditionally accepting the condition of title to the Property. If Developer fails to timely deliver the final title Notice, Developer shall be deemed to continue its rejection of the condition of title to the Property.

(d) *Termination of Agreement.* If Developer's title review pursuant to this Section 5.1.3 results in Developer's ultimate disapproval or deemed disapproval of the condition of title to the Property, then either Party shall have the right, in such Party's sole and absolute discretion, to cancel the Escrow and terminate this Agreement by delivering written notice to the other Party and Escrow Agent before the Due Diligence Period expires. Upon delivery of the written Notice of termination, the Parties and Escrow Agent shall proceed in accordance with Section 8.10. If either Party terminates this Agreement in accordance with this Section 5.1.3, such Party shall not incur any resulting liability to the other Party.

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

5.1.5 Due Diligence Completion Notice. Developer shall deliver a Due Diligence Completion Notice to County prior to the end of the Due Diligence Period. If Developer does not

unconditionally accept the condition of the Property by delivery of its Due Diligence Completion Notice indicating such acceptance, prior to the end of the Due Diligence Period, Developer shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by Developer, then either County or Developer shall have the right to terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person, by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 8.10.

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

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

7.1 **Purchase and Sale.** County shall sell the Property to Developer, and Developer shall purchase the Property from County, subject to the Permitted Encumbrances and the terms and conditions of this Agreement for One Hundred and No/100 Dollars (\$100.00). Title to the Property shall be transferred by the Grant Deed attached to this Agreement as **Exhibit "I"**.

7.2 **"AS-IS" Acquisition.** The Close of Escrow shall evidence Developer's unconditional and irrevocable acceptance of the Property in the Property's AS-IS, WHERE-IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, ocean or tidal impacts, shoring or bluff stability or support, subsurface support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Property (active, inactive or abandoned), the suitability of the Property for the Project or other use, the existence or absence of Hazardous Substances affecting the Property and with full knowledge of the physical condition of the Property, the nature of County's interest in and use of the Property, all Laws applicable to the Property and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Property. Developer represents and warrants to County that: (a) Developer will have had ample opportunity to inspect and evaluate the Property and the feasibility of the uses and activities Developer is entitled to conduct on the Property in accordance with this Agreement; (b) Developer is experienced in real estate development; (c) Developer is relying entirely on Developer's experience, expertise and Developer's own inspection of the Property in the Property's current state in proceeding with acquisition of the Property; (d) Developer accepts the Property in the Property's present condition; (e) to the extent that Developer's own expertise with respect to any matter regarding the Property is insufficient to enable Developer to reach an informed conclusion regarding such matter, Developer will engage the services of Persons

qualified to advise Developer with respect to such matters; (f) Developer will receive assurances acceptable to Developer by means independent of County or County's agents of the truth of all facts material to Developer's acquisition of the Property pursuant to this Agreement; and (g) the Property is being acquired by Developer as a result of Developer's own knowledge, inspection and investigation of the Property and not as a result of any representation made by County or County's agents relating to the condition of the Property, unless such statement or representation is expressly and specifically set forth in this Agreement. County expressly and specifically disclaims any express or implied warranties regarding the Property.

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

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


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

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

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

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

Initials of Authorized  
Developer Representative

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

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

7.6 **County Not to Encumber.** County agrees not to place any matters of record against the Property (other than the Regulatory Agreement and any matters arising from County’s issuance, or exercise of any remedy, related to any Approval for the Project and/or this Agreement), prior to the Close of Escrow, without the prior written consent of Developer.

8. **ESCROW.** The purchase and sale of the Property shall take place through the Escrow to be administered by Escrow Agent. The Parties shall cause the Escrow to be opened at the earlier of: (a) the execution of this Agreement and deposit of the Good Faith Deposit by Developer, and (b) a mutually agreed upon date selected by the Parties to allow timely Close of Escrow in accordance with the Performance Schedule. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. This Section 8 constitutes the joint instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Property. Developer and County shall submit such further escrow instructions consistent with the provisions

of this Agreement as may be reasonably required. In the event of any conflict between the provisions of this Agreement and any further escrow instructions, the provisions of this Agreement shall control.

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

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

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

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

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

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

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

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

8.2.3 CEQA Documents. Adoption, approval, or certification of the CEQA Documents required by each Government;

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

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

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

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

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

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

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

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

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

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

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

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

- (a) A copy of the Construction Contract;
- (b) All Insurance Documents;
- (c) A copy of the Developer Partnership Agreement;
- (d) Copies of the Senior Project Loan Documents;

(e) The final Project Budget; and

(f) The Construction Drawings.

8.3.6 CEQA Documents. Adoption, approval or certification of the CEQA Documents by each required Government;

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

8.3.8 Settlement/Closing Statement. County reasonably approves County's Escrow Closing Statement; and

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

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

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

8.4.2 Intentionally Omitted.

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

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

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

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

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

8.5.2 Regulatory Agreement. The Regulatory Agreement signed by the authorized representative(s) of County in recordable form;

8.5.3 Notice of Affordability Restrictions. The Notice of Affordability Restrictions signed by the authorized representative(s) of County in recordable form;

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

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

8.6.1 Recordation and Distribution of Documents. Filing with the Recorder of the County for recording in the official records of the County regarding the Property in the following order of priority at Close of Escrow: (a) the Regulatory Agreement; (b) the Notice of Affordability Restrictions; (c) the Permitted Security Instrument securing the Senior Project Loan; (d) the Permitted Security Instrument securing any Additional Government Financing; and (e) any other documents to be recorded regarding the Property through the Escrow in accordance with the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of the County through the Escrow to County, Developer, and any other Person designated in the written instructions of the Parties to receive a conformed copy of each such document. Each conformed copy of a document filed for recording in the official records of the County shall show all recording information. The Parties intend and agree that this Section 8.6.1 shall establish the relative priorities of the documents and interests to be recorded in the official records of the County through the Escrow, by providing for recordation of Senior interests prior in time to junior interests, in the order provided in this Section 8.6.1.

The Regulatory Agreement shall be Senior to all Security Instruments. However, the Director may, in his or her sole discretion, allow the Permitted Security Instrument securing any Additional Government Financing to be Senior to the Regulatory Agreement when explicitly required by applicable Law or the program regulations of the Additional Government Financing.

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

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

8.7 **Close of Escrow**. The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The County is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of County up to a maximum time period extension of one hundred and eighty (180) calendar days, in the aggregate, in the Director's sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this

Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 8.10. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 8.7, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 8.7 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

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

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

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

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

8.10.2 Return of Funds and Documents. Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow or title order cancellation charges from Escrow

Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Developer or Escrow Agent shall return to County all documents previously delivered by County to Developer or Escrow Agent regarding this Agreement or the Escrow; (b) County or Escrow Agent shall return to Developer all documents previously delivered by Developer to County or Escrow Agent regarding this Agreement or the Escrow; (c) County or Escrow Agent shall, unless otherwise provided in this Agreement, return to Developer the Good Faith Deposit and all funds deposited in Escrow by Developer, less Developer's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to County all funds deposited in Escrow by County, less County's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9.

## 9. PROJECT DEVELOPMENT AND USE.

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

### 9.2 Construction Start and Completion of Project.

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

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

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

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

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

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

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

9.4 **Prevailing Wage.** The Parties agree that the Project is subject to prevailing wage rate requirements pursuant to California Labor Code sections 1720 through 1861. Developer shall pay prevailing wage rates pursuant to California Labor Code sections 1720 through 1861 for construction work performed pursuant to this Agreement.

In addition to and without limiting any other indemnification and related provision of this Agreement, to the fullest extent permitted by law, Developer shall indemnify, protect, defend and hold harmless the County, its officers, employees, contractors, agents and attorneys, with counsel reasonably acceptable to County, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including labor costs, penalties, reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from noncompliance with any requirements under State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq., and all related statutes, regulations, and policies.

The foregoing indemnity shall survive completion of the Project and termination or expiration of this Agreement.

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

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

progress and quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to Developer.

9.7 **Release of Construction Covenants.** Developer may request that County inspect the completed Project and issue a Release of Construction Covenants for the Project following: (1) the issuance of a final Certificate of Occupancy for the Project; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (excluding any outstanding Punchlist Work) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered; (5) evidence reasonably satisfactory to the County that the Property has been developed in accordance with this Agreement, the Scope of Development, and plans approved by the County pursuant to this Agreement; and (6) occurrence of the "Occupancy Date" under the Regulatory Agreement. Following County's receipt of such a written request from Developer for a Release of Construction Covenants, County shall promptly inspect the Project to determine whether or not the Project has been completed in compliance with this Agreement. If County determines that the Project is complete (excluding any outstanding Punchlist Work) and in compliance with this Agreement, County shall issue a Release of Construction Covenants for the Project to Developer. If County determines that the Project is not complete or not in compliance with this Agreement, County shall send Notice to Developer describing with specificity each non-conformity within thirty (30) calendar days following County's receipt of Developer's written request for a Release of Construction Covenants. The Notice shall also contain County's opinion of the action(s) Developer must take to obtain a Release of Construction Covenants from County. If the reason for Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Developer or Punchlist Work, County may issue a Release of Construction Covenants upon the delivery by Developer to County of a bond, irrevocable standby letter of credit or other security reasonably acceptable to County in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by County.

9.8 **Use of the Property.** Developer covenants and agrees for itself, its successors, its assigns, and every successor interest to the Property or any part of the Property, that Developer, such successor, and such assigns shall use the Property only for the uses specified in the Approvals and this Agreement, including all Exhibits to this Agreement, specifically including (i) the Project; (ii) parking; and (iii) all other uses identified in this Agreement and its Exhibits, and the Approvals.

10. **INSURANCE.** Developer shall obtain and maintain, to protect the County Parties against all insurable Claims relating to this Agreement, the Property, and the Project, at the sole cost and expense of Developer, all of the insurance coverage described in **Exhibit "G"** attached to this Agreement (or its then reasonably available equivalent).

## 11. **EXCULPATION AND INDEMNIFICATION.**

11.1 **Exculpation.** To the fullest extent permitted by law, except as otherwise specifically provided in this Agreement, Developer, on its behalf and on behalf of all Developer Parties knowingly and voluntarily assumes the risk of, waives all Claims (in law, equity, or

otherwise) against County Parties arising out of, and agrees that County Parties shall not be liable to Developer Parties for: (a) injury to or death of any person, or (b) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause in connection with this Agreement or the Project; provided, however, that the County Parties shall not be exculpated from liabilities arising out of the gross negligence or willful misconduct of any County Party.

11.1.1 No County Party, other than the County, shall have any personal liability or responsibility for any of the responsibilities or liabilities of County under this Agreement.

11.1.2 Developer acknowledges that the exculpation provisions of this Agreement were negotiated with County, that the consideration for the exculpation provisions is fair and adequate, and that Developer had a fair opportunity to negotiate, accept, reject, modify, or alter the Exculpation Provisions of this Agreement.

11.1.3 The exculpation provisions of this Agreement may not be interpreted or construed as an attempt by County to be relieved of liability arising out of a non-delegable duty on the part of County.

11.1.4 Notwithstanding anything to the contrary here, the release and exculpation in favor of the County Parties hereunder shall not apply to Claims arising from or related to County Parties' gross negligence or willful misconduct.

11.1.5 Waiver of Civil Code Section 1542. With respect to the Exculpation Provisions of this Agreement, Developer waives the benefits of State of California Civil Code Section 1542, which provides:

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

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

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Developer Representative

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11.2 **Developer Indemnity Obligations.** To the fullest extent permitted by law, with counsel reasonably acceptable to County, Developer shall Indemnify the County Parties against any Claim arising from or relating to: (a) any wrongful intentional act or negligence of the

Developer Parties; (b) any Application made by Developer or at Developer's request; (c) any agreements that Developer (or anyone claiming by or through Developer) makes with a Third Person regarding this Agreement, the Property or the Project; (d) any plans or designs for Improvements prepared by or on behalf of Developer Parties, including without limitation, errors or omissions with respect to such plans or designs; (e) any worker's compensation claim or determination relating to any employee of the Developer Parties or their contractors; (f) any Prevailing Wage Action; (g) activities of Developer Parties in connection with this Agreement; and (h) any loss or damage to County resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer under this Agreement; any accident, personal injury, or casualty on the Property resulting from acts or omissions of Developer Parties. In addition, notwithstanding any other provision of this Agreement to the contrary, including Sections 7.3.3 and 11.1, Developer shall Indemnify the County Parties against any Environmental Claim.

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

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

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

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

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

consult with the Indemnitee's separate counsel, subject to applicable conflict of interest and privileged communication limitations.

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

11.5.4 **Settlement.** Any settlement shall procure a complete release of the Indemnitee from the subject Claim, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits any liability. Such settlement shall be subject to reasonable review and approval by the Indemnitee.

## 12. FINANCING.

12.1 **No County Financial Assistance.** County shall be under no obligation to contribute any financial assistance to the construction or operation of the Property or the Project, regardless of Actual Project Costs.

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

12.3 **Additional Government Financing.** The Developer may obtain Additional Government Financing so long as the available proceeds of such Additional Government Financing when combined with the amount of the proceeds of all other financing sources for the Project, Developer will have sufficient funds to pay all of the Total Project Costs.

12.4 **Tax Credit Equity.** After the Effective Date of this Agreement, Developer shall apply for 4% Tax Credits/9% Tax Credits pursuant to the Performance Schedule attached as Exhibit "F". In order to implement the financing of the Project, the Director, in his/her/their sole and absolute discretion, shall have the authority to make all necessary amendments and/or modifications to this Agreement, including its attachments, so long as: (i) such amendments and/or modifications do not result in any increased financial risk to the County and do not materially impair the County's interests; and (ii) such amendments and/or modifications are otherwise consistent with this Agreement. If Developer fails to apply for the required CTCAC application cycle for the Tax Credits in accordance with this Section 12.4, County shall have the right to terminate this Agreement upon fifteen (15) calendar days' Notice to Developer.

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

12.6 **Developer Responsibility for Project Costs.** Developer acknowledges that the Actual Project Costs may exceed the Total Project Costs or the financing or other funding sources available to Developer for construction of the Project. Developer additionally acknowledges that the financing or other funding sources available to Developer for construction of the Project may

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

12.7 **Minor Modifications.** If the Senior Institutional Lender or the Tax Credit Investor requires any reasonable minor modification of this Agreement or other document to be provided under this Agreement in reference to making the Senior Project Loan or providing the Tax Credit Equity, as applicable, then County, Developer and the applicable financing party shall negotiate in good faith regarding any such reasonable minor modification of this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender or the Tax Credit Investor. Notwithstanding the foregoing provisions of this Section 12.7, County shall not be obligated to negotiate regarding any modification that would modify any payment amount, any time period for development or construction of the Project, the duration of or affordability levels or number of affordable units specified in the Regulatory Agreement, or any bond, deposit or other security required under this Agreement or other document to be provided under this Agreement. If any modification of this Agreement is agreed to by County, pursuant to this Section 12.7, then County shall sign such modification and deposit such modification in Escrow. Escrow Agent shall only release such modification upon the closing of the Senior Project Loan. Any modification to this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender shall be expressly subject to a condition precedent that the Senior Project Loan closes.

12.8 **County Authority.** The Director shall have the authority to: (a) make minor non-material modifications to this Agreement; (b) execute all necessary documents and instruments to effectuate and implement the transaction contemplated by this Agreement; (c) take such actions as are necessary, convenient, and/or appropriate to implement this Agreement; and (d) adjust and amend the terms and conditions of this Agreement, as reasonably necessary to implement this Agreement, for consistency with requirements of funding sources or to accommodate market changes that may occur.

12.9 **Only Permitted Encumbrances.** Developer shall not record and shall not allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is a Prohibited Encumbrance. Developer shall remove or cause to be removed any Prohibited Encumbrance made or recorded against the Property or shall assure the complete satisfaction of any such Prohibited Encumbrance to the satisfaction of the Director, in the Director's sole and absolute discretion; provided, however, Developer shall have the right to contest the validity of any tax, assessment, lien or charge in good faith. The covenants of Developer set forth in this Section 12.9 regarding the placement of encumbrances on the Property shall run with the land of the Property and bind successive owners of the Property, until recording of a Release of Construction Covenants for the Project. After completion of construction of the Project, the restrictions on encumbrance under the Regulatory Agreement shall apply.

12.10 **County Right to Discharge Prohibited Encumbrances.** After sixty (60) calendar days' Notice to Developer of a Prohibited Encumbrance and provided that Developer has not caused such Prohibited Encumbrance to be removed during such time period or is not diligently pursuing removal of such Prohibited Encumbrance, where removal reasonably requires more than

sixty (60) calendar days, the County shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property and receive reimbursement from Developer for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by the County to discharge a Prohibited Encumbrance that is not reimbursed to the County by Developer within thirty (30) calendar days following Notice that such amount is due shall accrue Default Interest from the date of such Notice, until paid in full. Nothing in this Section 12.10, though, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest does not subject all or any portion of the Property to forfeiture or sale.

### 13. **REMEDIES AND INDEMNITY**

13.1 **Remedies.** Upon the occurrence of a Default by Developer, then after expiration of all notice and cure periods, if any, in addition to all remedies available at law or in equity, without limitation, County shall have the right to terminate this Agreement.

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

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

13.4 **No-Fault Termination by County.** The Close of Escrow is contingent on all Approvals. The Unavoidable Delay provisions and any other provisions of this Agreement notwithstanding, if despite Developer's diligent and good faith efforts, Developer fails to obtain the necessary Approvals within the time set forth in the Performance Schedule, the County may terminate this Agreement with fifteen (15) days' Notice to Developer. If such failure to obtain the necessary approvals is despite Developer's diligent and good faith efforts, and not a result of any lack of diligence or good faith by Developer, such termination would be a no-fault termination so that termination on the above-described basis alone would not trigger Liquidated Damages or retention of the Developer Deposit. Nothing in this paragraph shall be construed as limiting the County's right to retain the Developer Deposit and receive the Liquidated Damages Amount in response to any other uncured Developer Default.

### 14. **GENERAL PROVISIONS**

14.1 **Intentionally Omitted.**

14.2 **Notices, Demands, and Communications between the Parties.** Any and all Notices submitted by any Party to another Party or Escrow Agent or by Escrow Agent to a Party pursuant to or as required by this Agreement shall be proper, if in writing and delivered by personal delivery, sent by a nationally recognized overnight (i.e., one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), by registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient

Party, as designated below in this Section 14.2 or to the Escrow Agent, as designated in writing by the Escrow Agent, or sent by email; provided, however, notice by email shall not be a permitted form of Notice for any Default under this Agreement unless a second copy of such Notice is also delivered in person (by hand or by courier) or sent by registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, on the same day or next Business Day as such email was sent. Notices may be sent in the same manner to such other addresses as either Party or Escrow Agent may from time to time designate by Notice in accordance with this Section 14.2. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is dispatched by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service or two (2) calendar days after the Notice is deposited with the United States Postal Service in accordance with this Section 14.2. Any attorney representing a Party may give any Notice on behalf of such Party. Following admission of a Tax Credit Investor as limited partner of Developer, a copy of any Notice delivered to Developer shall be sent to the Tax Credit Investor at the Tax Credit Investor's address provided to County in writing. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Developer:	San Diego Housing Commission Attn: Josh Hoffman 1122 Broadway, Suite 300 San Diego, CA 92101 joshh@sdhc.org
With a Copy to:	Christensen & Spath LLP 401 West A Street, Suite 2250 San Diego, CA 92101 wfs@candslaw.net
To County:	Department of General Services Attn: Asset Management Division 5560 Overland Ave. #410 San Diego, CA 92123 Angela.jackson- llamas@sdcounty.ca.gov

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

14.4 **Warranty Against Payment of Consideration for Agreement.** Developer represents and warrants to County that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Developer and Third Persons to whom fees are paid for professional services related to planning, design or construction

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

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

**14.5.1 Standards.** There shall be no discrimination against or segregation of any Person or group of Persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property or the Project, nor shall Developer or any Person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property or the Project.

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

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

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

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

to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

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

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

14.11 **Unavoidable Delay; Extension of Time for Performance.**

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

14.11.2 Assumption of Economic Risks. DEVELOPER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF DEVELOPER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF DEVELOPER THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF

EACH AND EVERY ONE OF DEVELOPER'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, DEVELOPER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVES, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. DEVELOPER AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF DEVELOPER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. DEVELOPER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized  
Developer Representative(s)

initial  
W

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

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

14.14 **Developer Assumption of Risks of Legal Challenges.** Developer assumes the risk of delays or damages that may result to Developer from each and every Third Person legal action related to: (a) County's approval of this Agreement, even in the event that an error, omission or abuse of discretion by County is determined to have occurred; or (b) any associated Approvals. If a Third Person files a legal action for which Developer assumes the risk under this Section 14.14, Developer shall have the option to either: (1) prior to the Close of Escrow, cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 8.10; or (2) at any time, Indemnify County against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Should Developer fail to Notify County of Developer's election pursuant to this Section 14.14 at least fifteen (15) days before response to the legal action is required by County, Developer shall be deemed to have elected to cancel the Escrow and terminate this Agreement pursuant to option

“(1)” or “(2),” as applicable, under this Section 14.14, without further Notice to or action by either Party. County shall reasonably cooperate with Developer in defense of County in any legal action subject to this Section 14.14, subject to Developer completely performing Developer’s indemnity obligations for such legal action. Should Developer elect or otherwise be required to Indemnify County regarding a legal action subject to this Section 14.14, but fail to or stop providing such indemnification of County, then County shall have the right to immediately terminate this Agreement or cancel the Escrow (or both) by Notice to Developer and Escrow Agent (in the latter case, if the Escrow is open). Nothing contained in this Section 14.14 is intended to be nor shall be deemed or construed to be an express or implied admission that County may be liable to Developer or any other Person for damages or other relief regarding any alleged or established failure of County to comply with any law. Any legal action that is subject to this Section 14.14 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

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

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

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

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

14.19 **Transfers, Changes in Ownership, Management or Control of Developer, or Assignment.**

14.19.1 Developer acknowledges and agrees that the qualifications and identity of Developer are of particular importance and concern to County. Developer further acknowledges and agrees that County has relied and is relying on the specific qualifications and identity of Developer in entering into this Agreement and County would not have entered into this Agreement, but for the specific qualifications and identity of Developer. As a consequence, before the recordation of a Release of Construction Covenants for the Project, Transfers by Developer are only permitted with the prior written consent of the Director, in Director’s sole and absolute discretion. Developer represents and warrants to County that Developer has not made and agrees that Developer will not create or permit to be made or created any Transfer, except in accordance with this Section 14.19, whether made or created voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 14.19 shall be voidable at the election of County, in the Director’s sole and absolute discretion. Developer acknowledges and agrees that

the restrictions on Transfers set forth in this Section 14.19 are reasonable. Developer agrees to reimburse County for all costs and expenses incurred by County in connection with County’s review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses, up to a maximum amount of \$5,000.

14.19.2 Notwithstanding the foregoing, a Transfer of the leasehold interest in the Property to a limited partnership or joint venture consisting of Housing Development Partners of San Diego, a California nonprofit public benefit corporation, an Affiliate of Developer (“**HDP**”) and an affordable housing developer (“**SDHC Joint Venture**”), acceptable to Developer and County, is acceptable provided that (a) the ground lease is acceptable in form and content to Director, in its sole discretion, which shall include a restriction limiting the Project to affordable housing; (b) Developer and the Project continue to comply, and expressly requires its lessees, assignees, and their respective members, officers, employees, agents, contractors and consultants to comply, with: (i) the provisions of Government Code Section 54221(f)(1)(F)(i) and Article 19, Section 15332 of the CEQA Guidelines, (ii) the terms and conditions of this Agreement, and (iii) the Regulatory Agreement; and (c) the Project will continue to be developed in compliance with the terms of this Agreement and in congruence with the development of the adjacent property, located at 5207 52<sup>nd</sup> Place, San Diego, California, more commonly known as Casa Colina Del Sol, which is also owned and/or managed by HDP.

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

Exhibit A	Site and Property Descriptions
Exhibit B	Release of Construction Covenants
Exhibit C	Regulatory Agreement
Exhibit D	Developer Official Action
Exhibit E	Project Scope
Exhibit F	Performance Schedule
Exhibit G	Insurance Requirements
Exhibit H	Project Estimated Budget
Exhibit I	Grant Deed
Exhibit J	Right of Entry Permit

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

14.22 **Reserved.**

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

Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

14.24 **Counterparts.** This Agreement shall be signed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes 38 pages and 10 exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

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

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

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

**SIGNATURE PAGE  
TO  
DISPOSITION AND DEVELOPMENT AGREEMENT**

**COUNTY:**

COUNTY OF SAN DIEGO,  
a political subdivision of the State of  
California

**DEVELOPER:**

SAN DIEGO HOUSING COMMISSION

By:

\_\_\_\_\_  
MARKO MEDVED, CEM, P.E.,  
Director  
Department of General Services

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

Signed by:  
*Lisa Jones*  
9A95A13DAB3C42C...

Print Name:                     Lisa Jones                    

Print Title:                     President and Chief Executive Officer                    

Approved as to form and legality:

By: \_\_\_\_\_  
Theresa J. Loftsgard  
Senior Deputy County Counsel

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
Christensen & Spath LLP

By: \_\_\_\_\_  
Walter F. Spath III, General Counsel  
San Diego Housing Commission

Signed by:  
*Walter Spath*  
CD14CC058122472...

# EXHIBIT A – PROPERTY DESCRIPTION

## Site Map – 5202 University Avenue



**COUNTY OF SAN DIEGO**  
GENERAL SERVICES

### Subject Parcels

APN: 472-390-03

RPN: 2023-0035

EXHIBIT A – PROPERTY DESCRIPTION

**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF LOT 24, OF LEMON VILLA, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 734, FILED IN THE OFFICE OF THE RECORDER OF SAID SAN DIEGO COUNTY DECEMBER 2, 1892 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF UNIVERSITY AVENUE (60.0 FEET WIDE) WITH THE EASTERLY LINE OF 52ND STREET (60.0 FEET WIDE) AS SAID AVENUE AND STREET ARE LOCATED AND ESTABLISHED AS OF THE DATE OF THIS INSTRUMENT;

THENCE NORTH 0°00'30" WEST ALONG SAID EASTERLY LINE OF 52ND STREET A DISTANCE OF 39.99 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 0°00'30" WEST ALONG SAID EASTERLY LINE OF 52ND STREET A DISTANCE OF 210.01 FEET TO A POINT;

THENCE SOUTH 89°58'30" EAST A DISTANCE OF 100.0 FEET; THENCE SOUTH 0°00'30" EAST A DISTANCE OF 230.0 FEET TO A POINT;

THENCE NORTH 89°58'30" WEST A DISTANCE OF 80.01 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20.0 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°58' A DISTANCE OF 31.40 FEET TO THE TRUE POINT OF BEGINNING.

APN: 472-390-03-00

EXHIBIT B – RELEASE OF CONSTRUCTION COVENANTS

RECORDING REQUESTED BY  
WHEN RECORDED MAIL TO:

San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101

APN: 472-390-03-00

SPACE ABOVE FOR RECORDER’S USE ONLY

**RELEASE OF CONSTRUCTION COVENANTS**

**Disposition and Development Agreement  
(5202 University Avenue)**

In his or her capacity as an authorized representative of the County of San Diego, a political subdivision of the State of California (“**County**”), the undersigned certifies that: (1) County and San Diego Housing Commission (“**Developer**”), are parties to that certain Disposition and Development Agreement, dated as of [Click or tap here to enter text.](#) (“**DDA**”) and that certain Memorandum of Restrictive Covenants and Regulatory Agreement recorded on [Click or tap here to enter text.](#) as Document No. [Click or tap here to enter text.](#) in the Official Records of the County of San Diego (“**Regulatory Agreement**”); and (2) the Project described in the DDA and Regulatory Agreement and required to be constructed pursuant to the DDA and the Regulatory Agreement on that certain real property specifically described in the legal description attached to this Release of Construction Covenants as Exhibit 1 (“**Property**”) is complete, in accordance with the provisions of the DDA and the Regulatory Agreement. The DDA and the Regulatory Agreement are collectively references herein as the “**Agreements**”.

This Release of Construction Covenants constitutes conclusive evidence that Developer’s obligation under the Agreements to construct the Project on the Property has been satisfied. Notwithstanding any other provision of this Release of Construction Covenants, the operating, use, maintenance, non-discrimination, non-segregation, and other terms, provisions, covenants, conditions, restrictions and agreements set forth in the Agreements shall continue in full force and effect and County may enforce any and all such terms, provisions, covenants, conditions, restrictions or agreements. Nothing contained in this Release of Construction Covenants shall waive or modify any term, provision, covenant, condition, restriction or agreement contained in any other document. The DDA is an official record of County and a copy of the Agreement may be inspected in the offices of the County Department of General Services during regular business hours. All terms indicated to be defined terms in this Release of Construction Covenants by initial capitalization, but not specifically defined in this Release of Construction Covenants, shall have the meaning ascribed to the same term, respectively, in the Agreements.

EXHIBIT B – RELEASE OF CONSTRUCTION COVENANTS

This Release of Construction Covenants shall only be evidence of County’s conclusive determination of satisfactory completion of the construction of the Project on the Property in accordance with the terms of the Agreements. This Release of Construction Covenants shall not: (a) constitute a Notice of Completion under California Civil Code section 8182; (b) act to terminate the continuing reservations, covenants, restrictions or conditions contained in the Regulatory Agreement or any other instrument or document recorded against the Property or set forth in the Agreement or otherwise; (c) constitute evidence of the compliance of the Project with any Laws or Approvals; or (d) evidence the satisfaction of any obligation of Developer to County under the Agreement or otherwise, other than Developer’s obligation to construct the Project on the Property in compliance with the terms and conditions of the Agreements. After the recordation of this Release of Construction Covenants for the Project in the official records of the County regarding the Property, any Person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property or the Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the Agreements regarding construction of the Project, but such Person shall be bound by any other reservations, covenants, conditions, restrictions and interests affecting the Property pursuant to the Agreements or otherwise.

ISSUED as of \_\_\_\_\_, 20 \_\_\_\_.

**County:**

County of San Diego,

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

Marko Medved  
Director, Department of General  
Services

Approved as to form and legality:

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

Theresa Loftsgard  
Senior Deputy County Counsel

EXHIBIT B – RELEASE OF CONSTRUCTION COVENANTS

**EXHIBIT 1  
TO  
RELEASE OF CONSTRUCTION COVENANTS  
Disposition and Development Agreement  
(5202 University Avenue)**

**Property Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF LOT 24, OF LEMON VILLA, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 734, FILED IN THE OFFICE OF THE RECORDER OF SAID SAN DIEGO COUNTY DECEMBER 2, 1892 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF UNIVERSITY AVENUE (60.0 FEET WIDE) WITH THE EASTERLY LINE OF 52ND STREET (60.0 FEET WIDE) AS SAID AVENUE AND STREET ARE LOCATED AND ESTABLISHED AS OF THE DATE OF THIS INSTRUMENT;

THENCE NORTH 0°00'30" WEST ALONG SAID EASTERLY LINE OF 52ND STREET A DISTANCE OF 39.99 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 0°00'30" WEST ALONG SAID EASTERLY LINE OF 52ND STREET A DISTANCE OF 210.01 FEET TO A POINT;

THENCE SOUTH 89°58'30" EAST A DISTANCE OF 100.0 FEET; THENCE SOUTH 0°00'30" EAST A DISTANCE OF 230.0 FEET TO A POINT;

THENCE NORTH 89°58'30" WEST A DISTANCE OF 80.01 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20.0 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°58' A DISTANCE OF 31.40 FEET TO THE TRUE POINT OF BEGINNING.

APN: 472-390-03-00

EXHIBIT C – DRAFT REGULATORY AGREEMENT

**MEMORANDUM OF RESTRICTIVE COVENANTS  
AND REGULATORY AGREEMENT**

WHEN RECORDED PLEASE MAIL TO:

County of San Diego  
Housing and Community Development Services  
3989 Ruffin Road  
San Diego, CA 92123-1890  
Attn: Community Development Division

SPACE ABOVE FOR RECORDER'S USE ONLY

**COUNTY OF SAN DIEGO  
MEMORANDUM OF RESTRICTIVE COVENANTS  
AND REGULATORY AGREEMENT**

This Memorandum of Restrictive Covenants and Regulatory Agreement (“**Agreement**”) is dated [Click or tap here to enter text.](#) by and between the County of San Diego, Health and Human Services Agency (“**County**”), and San Diego Housing Commission (“**Developer**”).

a. Developer has acquired, or will acquire, that certain real property identified as Assessor Parcel Number 472-390-03-00, located 5202 University Avenue, San Diego, CA, which is more particularly described in the attached Exhibit “A” (“**Property**”). Pursuant to that certain Disposition and Development Agreement (“**DDA**”) dated [Click or tap here to enter text.](#) by and between County and Developer, for purposes of developing the Property with housing for seniors or families with affordability restrictions, in accordance with the terms of this Agreement (“**Project**”).

b. As an inducement to the County to enter into the DDA, the Developer has agreed to enter into and be regulated and restricted in accordance with this Agreement.

## AGREEMENT

In consideration of the following mutual covenants and undertakings and other good and valuable consideration, the parties contract and agree as follows.

### ARTICLE 1 DEFINITIONS

The following terms shall have the respective meanings set forth below for purposes of this Agreement. Any capitalized term used in this Agreement that is not defined in this Agreement shall have the meaning set forth in the DDA.

**Affordability Period** is the period of time during which the Developer must comply with, and the Property must be operated in accordance with, all requirements of this Agreement, commencing on issuance of a certificate of occupancy (including a temporary certificate of occupancy) for the Project and continuing for a period of 99-years.

**Area Median Income** or **AMI** is the median household income for the area adjusted for household size, as published and updated annually by HUD and as published annually by TCAC. In the event that such income determinations are no longer determined and published by HUD or TCAC or are not updated for a period of at least 24 months from the date of the previous publication, County shall provide Developer with other income determinations that are reasonably similar with respect to previous methods of calculations by TCAC or HUD.

**Eligible Household** is a household, which, at the time of the initial lease:

- i. Has an adjusted income not greater than the Income Limit applicable to the unit within the Project in which such household resides (or, with respect to an applicant household, proposed to reside); and
- ii. Whose lease (or, with respect to an applicant household, proposed lease) with the Developer specifies a Rent that (when increased by the amount of any applicable Utility Allowance) does not exceed the Rent; and
- iii. With respect to an applicant household, is acceptable to the Developer in accordance with the Developer's resident selection criteria.

**HUD** is the United States Department of Housing and Urban Development.

**Income Household** means a household meeting the specific income limit at the time of initial occupancy of a Restricted Unit.

**Income Limit** is the maximum amount of income a household can earn to qualify for Restricted Units as described pursuant to Section 3.1 upon initial occupancy of a given Restricted Unit.

**Regulatory Agreement** or **Agreement** means this Memorandum of Restrictive Covenants and Regulatory Agreement, as may be amended from time to time.

**Rent** is the total of monthly payments by the Tenant of a Restricted Unit for all the following:

- i. Use and occupancy of a Restricted Unit and land and all facilities associated with the Restricted Unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas;
- ii. Any separately charged fees or service charges assessed by the Developer which are required of all tenants of Units in the Project, except security deposits;
- iii. If the Tenant pays utilities directly, Rent shall include a Utility Allowance; and
- iv. Any other interest, taxes, fees or charges for use of the land or associated facilities that are assessed by a public or private entity other than the Developer and paid by the Tenant.

**Restricted Units** means any unit that is subject to Rent and occupancy restrictions herein.

**TCAC** is the California Tax Credit Allocation Committee

**Tenant** is a household legally occupying a Restricted Unit pursuant to a valid lease or rental agreement with Developer.

**Utility Allowance** is the amount designated by the San Diego Housing Commission as a reasonable allowance to cover monthly utility bills or such other utility allowance acceptable to the County, and the County will not unreasonably withhold its consent to an alternate allowance schedule if such schedule reflects reduced utility costs due to energy efficient improvements or appliances.

## **ARTICLE 2 TERM OF AGREEMENT**

### **2.1 TERM OF REGULATORY AGREEMENT**

The term of this Agreement shall commence on recordation of this Agreement and shall continue until the expiration of the Affordability Period.

## **ARTICLE 3 USE, OCCUPANCY AND RENT RESTRICTIONS AND COVENANTS**

### **3.1 OCCUPANCY REQUIREMENTS**

Developer, and its successors and assignees, shall utilize no less than 100% of the units located on the Property (excluding the up to two manager's units) solely as Restricted Units for the purpose of providing affordable housing to Eligible Households in accordance with the provisions of this Agreement. [The target population for approximately 100% of the Restricted Units (but no less than 80%) will be seniors.] [Add language re: # of units for any additional target populations]. Unless otherwise agreed in writing by the parties, up to two units will be reserved for occupancy by a resident manager and will not be restricted as a Restricted Unit. All Tenants of the Restricted Units shall be Eligible Households who are at or below the Income Limit. Developer shall ensure

that all Eligible Households who are selected as Tenants of Restricted Units meet the following income restrictions for the duration of the Affordability Period, unless otherwise approved by the County in writing

- a. Except for the manager’s units, Developer shall ensure that all Restricted Units are occupied by Eligible Households such that the Income Limit of a Restricted Unit does not exceed the following Income Limits: 0 of the Restricted Units will be for 30% Income Households, as defined by TCAC, 18 of the Restricted Units will be available for 31% to 50% Income Households as defined by TCAC, 18 of the Restricted Units will be available to 60% Income Households, and 53 of the Restricted Units will be available to 61% to 80% Income Households as defined by TCAC. At the time of any resyndication of tax credits for the Project in connection with a proposed rehabilitation of the Project (or refinance of existing debt to fund rehabilitation), the County and Developer will meet and confer to consider changes to these Income Limits that may be necessary to ensure that the Project remains financially feasible (which shall include facilitating Developer’s ability to ensure compliance with the true debt test) taking into consideration all Project Expenses (as defined in the DDA), and to accommodate additional financing to ensure reasonable repairs and upkeep of the Project (collectively, the “Resyndication Conditions”). Following such meet and confer, Developer may modify the Income Limits set forth in this Agreement to address the Resyndication Conditions, subject to the approval of the Director (as defined in the DDA), with concurrence from the Director of the Housing and Community Development Services Department, which approval and concurrence shall not be unreasonably withheld or delayed.
- b. At the time of initial occupancy of the Restricted Units and continuing throughout the Affordability Period, Developer shall charge only that Rent permitted hereunder or approved by TCAC for such Restricted Unit at the Income Limit specified in this Agreement (as may be modified in accordance with subsection (a) above).

**3.2 MAXIMUM OCCUPANCY**

Maximum Occupancy of Restricted Units shall be according to the chart below, but shall be subject to compliance with fair housing laws in all respects:

	Studio	One Bedroom	Two Bedroom	Three Bedroom
Maximum	2	4	6	8

**3.3 RENT RESTRICTIONS**

For all Restricted Units, Tenants shall be charged no more Rent than allowed under Section 3.1(b).

**3.4 RESIDENT SELECTION AND ELIGIBILITY PROCEDURES**

Developer shall select Eligible Households in accordance with the procedure set forth in the Management Plan (defined in Section 7.1). If a local preference is required or authorized by Project

financing, such local preference shall also be considered when selecting Eligible Households, except that such local preferences shall be implemented consistent with all fair housing laws and regulations.

At initial lease up and during the Affordability Period, Developer or its agents or employees shall make all efforts to ensure all Restricted Units are occupied by Eligible Households, and document the same as outlined in the Management Plan.

### **3.5 LEASE AND OCCUPANCY PROCEDURES**

Each Eligible Household selected to occupy a Restricted Unit shall enter into a written occupancy agreement (“**Tenant Lease**”) with the Developer, the form of which shall have been approved by the County and which shall contain provisions required by this Agreement. The County’s right to review and approve the Tenant Lease shall be limited to confirming that the Tenant Lease is consistent with the terms and conditions of this Agreement and the DDA. The Tenant Lease shall provide for, among other things, good cause eviction and appeal and grievance procedures, all of which shall be in accordance with all applicable laws and regulations.

- a. Developer shall establish reasonable rules of conduct and occupancy that shall be consistent with local, state and federal laws. The rules shall be in writing and shall be given to each Tenant. Except as required by law, any amendment shall be effective no less than 30 days after giving written notice thereof to each Tenant.
- b. Tenant Leases and the landlord-tenant relationship shall be subject to all applicable local, State, and Federal laws and the provisions of this Agreement.

### **3.6 TERMINATION OF TENANT LEASES**

Any termination of occupancy rights, and the payment of Rent and refund of any unused Rent shall be in accordance with applicable California law and the provisions of the Tenant Lease, and any Project funding source.

### **3.7 REPLACEMENT CHARGES**

The charges to Tenants covering damages to the Project or the Property attributable to the Tenant or his or her household shall be based on Developer’s actual expenses paid to repair such damage which costs shall be evidenced to the Tenant at the time such charges are made.

## **ARTICLE 4 OPERATION OF PROJECT**

### **4.1 RESIDENTIAL USE**

The Restricted Units shall be used only for residential purposes consistent with this Agreement, and the Restricted Units shall be operated and maintained as rental residences for the Affordability Period. No part of the Restricted Units shall be operated as transient housing in which the term of

occupancy is less than thirty (30) days, nor shall the Developer convert or apply to convert the Project to residential condominium or cooperative ownership or to a community apartment project or sell residential condominium or cooperative conversion rights in the Project or the rights to convert the Project to residential condominium or cooperative ownership or as a community apartment project. Nothing herein will prevent the Developer from subdividing the Property as required to effectuate the bifurcated ownership of the improvements for purposes of tax credit financing as authorized in the DDA.

#### **4.2 RELIGIOUS AND SECULAR ACTIVITIES**

- a. On the Property or the Project, Developer, its agents, and employees may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the funding or services funded herein, nor may Developer use these funds for the acquisition, construction, or rehabilitation of such structures to the extent that these structures are used for inherently religious activities.
- b. The Project will be used exclusively by Developer for secular purposes and will be available to all persons regardless of religious affiliation. There will be no religious or membership criteria for Tenants of the Project.

#### **4.3 DEVELOPER RESPONSIBILITIES**

Developer shall provide administrative, fiscal, and management services, employ staff (or retain a management company) and purchase, rent, and use supplies and materials as needed to operate, maintain, and protect the Project in accordance with this Agreement.

### **ARTICLE 5 COMPLIANCE WITH THE LAW**

#### **5.1 COMPLIANCE WITH LAWS AND REGULATIONS**

Developer agrees that at all times its acts regarding the Project shall be in conformity with all applicable local, state, and federal laws and regulations. Developer further agrees to comply with, and ensure the Project shall comply with, the provisions of Government Code Section 54221(f)(1)(F)(i) and Article 19, Section 15332 of the CEQA Guidelines at all times during the term of this Agreement.

#### **5.2. DEVELOPER'S PERMITS AND LICENSE**

Developer shall obtain and maintain, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation applicable to the Project required in order to comply with all applicable laws. The County reserves the right to reasonably request and review all such applications, permits, and licenses.

### **5.3 BOARD OF SUPERVISOR POLICIES**

Developer represents that it is familiar, and shall use its best efforts to comply, with all applicable County Board of Supervisors Policies, including but not limited to B-53, B-67, C-17, and C-25 to the extent applicable to the Project.

### **5.4 DEBARMENT AND SUSPENSION**

The Developer's general contractor for the initial construction of the Project and its property management company shall not be debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any county, state, or Federal Department or agency and Developer hereby certifies to the best of its knowledge with respect to each:

5.4.1 that it has not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen Property;

5.4.2 that it is not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and

5.4.3 that it has not within a 3-year period preceding this Agreement had one or more public transaction (Federal, State, or local) terminated for cause or default.

### **5.5 DISPLAY OF FRAUD HOTLINE POSTER(S)**

As a material term and condition of this Agreement, Developer shall:

5.5.1 Prominently display in the Project public office area, if any, County of San Diego Office of Ethics and Compliance Ethics Hotline posters;

5.5.2 As of the date of execution of this Agreement, posters may be downloaded from the County Office of Ethics and Compliance at <https://www.sandiegocounty.gov/content/sdc/cao/oec.html>;

5.5.3 Additionally, if Developer maintains a company website as a method of providing information to employees, Developer shall display an electronic version of the poster(s) at the website; and

5.5.4 If Developer has implemented a business ethics and conduct awareness program, including a reporting mechanism, Developer need not display the County poster.

## **ARTICLE 6 OPERATING BUDGET AND RESERVES**

### **6.1 FISCAL YEAR**

The fiscal year for the Project shall be the same as the calendar year and commences on January 1 of each year after the issuance of a certificate of occupancy (including a temporary certificate of occupancy) and conclude on December 31 of each year.

### **6.2 REQUIRED RESERVES**

Developer will maintain reserves as required by TCAC and the Project's tax credit investor and lenders.

### **6.3 FEES**

Commencing on date of initial occupancy of any Restricted Unit and subsequently on the anniversary date of such initial occupancy each year, Developer shall pay to the County the compliance monitoring costs associated with this agreement ("Annual Monitoring Cost"). County will provide an invoice to the Developer for the Annual Monitoring Costs. Developer shall follow instructions on the annual invoice to provide payment to the County. The Annual Monitoring Cost during the Affordability Period shall be \$4,000 with a 1% escalation each year. Fees may be amended from time to time by the County to correspond with the Consumer Price Index.

### **6.5 NO COUNTY FINANCIAL ASSISTANCE**

Except as may be subsequently documented and agreed upon by Developer and the County, Developer acknowledges that the County will not provide financial assistance to Developer in the form of operational or capital subsidies for the Project. If Project Income, including those rents charged pursuant to this Agreement and the DDA, are insufficient to cover operating, maintenance, and capital costs, Developer agrees to assume full financial responsibility for the operating and maintenance of the Project throughout the term of this Agreement.

## **ARTICLE 7 MANAGEMENT AND MAINTENANCE**

### **7.1 MANAGEMENT PLAN**

Developer is responsible for operating the Project in accordance with the Management Plan submitted by the Developer (the "Management Plan") and approved by County, which approval shall not be unreasonably withheld, conditioned, or delayed. All amendments to the Management Plan require prior written approval of the County. The Management Plan shall include at least the following:

- i. Detailed actions to be taken by Developer to affirmatively market and rent all Restricted Units in a manner which ensures equal access to all persons in any category protected by

- federal, state, or local laws governing discrimination, and without regard to any arbitrary factor;
- ii. Specify reasonable criteria for determination of resident eligibility consistent with this Agreement;
  - iii. Require that Eligible Households be selected based on the order of application, special preferences, lottery, or other reasonable method approved by County, which approval shall not be unreasonably withheld or delayed and outlined in this Agreement;
  - iv. Require eligible applicants to be notified of eligibility and, based on turnover history, be notified of when a Restricted Unit may be available;
  - v. Require ineligible applicants to be notified in writing of the reason for their ineligibility;
  - vi. Specify procedures through which applicants deemed to be ineligible may appeal this determination;
  - vii. Prohibit discrimination against any prospective resident in violation of any state, federal, or local law governing discrimination in rental housing; and
  - viii. Address other selection issues provided for in the requirements of funding sources, the DDA, and this Agreement.

## **7.2. MAINTENANCE OF PROJECT**

Developer is specifically responsible for all maintenance, repair, and management functions including, without limitation, the following: selection of residents, occupancy standards, complaint and grievance proceedings, if any, evictions, if any, collection of rents and security deposits, routine and extraordinary repairs, and replacement of capital items.

Developer shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes and the Management Plan.

- a. Developer may contract with a management agent approved by the County for the performance of the services or duties outlined in this Agreement. However, such an arrangement does not relieve Developer of responsibility for proper performance of these duties. County agrees that Developer may contract with CICM Management, Inc. and/or ConAm Management Corporation. Such a contract shall be subject to prior written approval by the County, which approval shall not be unreasonably withheld, conditioned or delayed, and shall contain a provision allowing Developer to terminate the contract without penalty upon 30 days' written notice. Upon a determination by the County and written notice to Developer that the management agent performing the functions required in this Agreement has failed to operate the Project in accordance with this Agreement and the approved Management Plan, Developer shall if required by the County in writing and after meeting and conferring with the County about possible alternate and appropriate

strategies for Project compliance, exercise such right to termination forthwith and shall make immediate arrangements, which shall be subject to County approval, for continuing performance of the functions required by this Agreement and the Management Plan.

- b. Failure of Developer or its management agent to operate the Project in accordance with this Agreement shall be a violation subject to the provisions of Article 11.
- c. Developer agrees to assume full financial and management responsibility for all operating and maintenance costs, including all repairs, corrections and replacements necessary to maintain and preserve the Project in a safe and sanitary condition in accordance with standards prescribed by the County, all obligations of this Agreement, and all applicable local, state and federal laws and regulations.

## **ARTICLE 8 USE OF DOCUMENTS AND REPORTS**

### **8.1 CONFIDENTIALITY**

Developer agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulations and pursuant to this Agreement, Developer agrees to only disclose confidential records where the holder of the privilege, whether the County or a third party, provides written permission authorizing the disclosure. Notwithstanding the foregoing, Developer and the County each understand and acknowledge that one another must disclose certain records pursuant to the California Public Records Act (the “Act”).

### **8.2 PUBLICATION, REPRODUCTION OR USE OF MATERIALS**

County may publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared by Developer under this Agreement, provided that the County will not disclose any of information that is not required, in County’s reasonable judgment, to be disclosed under the Act or court order.

### **8.3 REPORTING REQUIREMENTS.**

Developer shall promptly provide the County with a copy of any final annual audit of the Project which is not more than five (5) years old, when and as required by the DDA. As reiterated in Section 9.2, Developer will also promptly provide County with such information as may be reasonably requested by County to determine compliance with this Agreement.

## **ARTICLE 9 AUDIT AND INSPECTION OF PROJECT RECORDS**

### **9.1 PROJECT RECORDS**

Developer shall maintain the following records for at least five years after creation or for a longer period when required by law.

- a. Records that demonstrate that the Project meets the Property standards set forth herein;
- b. Records that demonstrate that the Project meets the requirements of this Agreement for the required Affordability Period for each Restricted Unit; and
- c. Records that demonstrate compliance with the requirements of this Agreement for Tenant and participant protections.

## **9.2 AUDITS AND INSPECTIONS**

At any time during the term of this Agreement, and following 48 hours prior written notice to Developer, the County or its designee may enter and inspect the physical premises and inspect all accounting and resident records pertaining to the Developer's compliance with this Agreement. Upon a minimum 48-hour request by the County, Developer shall notify residents of upcoming inspections of their units or records in accordance with California State law. The County may perform or cause to be performed audits of any and all phases of the Developer's activities related to the Project. If Developer has not otherwise prepared an audit in any given year, the County may request that Developer prepare an audit. Provided that such audit is reasonably required for the County to verify Developer's compliance with this Agreement, Developer will prepare such audit at its own expense and provide a copy of the audit to the County. The County may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Developer shall promptly provide such information. Upon request of the County, Developer will submit to the County certified copies of conflict of interest statements.

## **ARTICLE 10 INDEMNITY**

The indemnification, defense, and hold harmless provisions of the DDA shall apply with equal force to the provisions of and activities of Developer Parties and County Parties under this Agreement.

## **ARTICLE 11 ENFORCEMENT**

### **11.1 ENFORCEMENT OF REGULATORY AGREEMENT**

Developer shall carry out all of the provisions of this Agreement and all of the covenants in the Agreement shall run with the Property. Any subsequent owner(s) shall assume all rights and responsibilities under this Agreement and be bound by the same. The covenants set forth in this Agreement shall apply without regard to the term of any loan or mortgage or the transfer of ownership.

## **11.2 VIOLATION OF REGULATORY AGREEMENT BY DEVELOPER**

In the event of the material violation of any of the provisions of this Regulatory Agreement by the Developer, the County shall give written notice thereof to the Developer and Developer's Tax Credit Investor of violation by specifying (a) the nature of the event or deficiency giving rise to the violation and (b) a date, which shall not be less than thirty (30) days from the mailing of the notice by which such action to cure must be accomplished or if such breach is not reasonably susceptible of cure within such (30) day period, then within such additional time as is reasonably necessary to cure such failure, provided Developer has commenced cure within the initial thirty (30) day period and diligently pursues such cure to completion. A copy of any notice of breach or default under this Regulatory Agreement shall be delivered to the Developer as described in the "Notices" section of this Regulatory Agreement, as it may be amended from time to time or in any subordination agreement entered into by the County recorded on the Property's chain of title in the Office of the County Assessor-Recorder,

a. After a default is declared the County shall have the right and be entitled to exercise rights or remedies under this Regulatory Agreement and DDA.

b. The County agrees that the Developer shall not be considered in default or breach until the expiration of the notice and cure periods, if any, provided to the Developer. Developer agrees that the statute of limitations for filing suit or seeking any relief through courts or administrative processes is tolled during any notice and cure period or extension thereof provided by County in writing pursuant to this Regulatory Agreement. The County agrees to accept a cure tendered by the Tax Credit Investor of the Developer on the same terms as if such cure had been tendered by the Developer. After the expiration of all applicable notice and cure periods as specified here, the County may, without further notice, declare in writing a default under this Regulatory Agreement effective on the date of such declaration of default and, upon any such declaration of default, the County may apply to any court, state or federal, for specific performance of this Regulatory Agreement; for the appointment of a receiver to take over and operate the Project or Property in accordance with the terms of this Regulatory Agreement, or for such other relief as may be appropriate, it being agreed by the Developer that the injury to the County arising from a default under any of the terms of this Regulatory Agreement would be irreparable and that it would be extremely difficult to ascertain the amount of compensation to the County which afford adequate relief in light of the purposes and policies of this Regulatory Agreement.

Nothing in this Article shall limit the County's ability to seek any other remedies authorized by law or equity.

## **11.3 COVENANTS RUN WITH THE LAND**

In accordance with California Civil Code Section 1461, *et seq.*, all conditions, covenants and restrictions contained in this Regulatory Agreement are covenants running with the land. Developer and County acknowledge and agree that the covenants and restrictions in this Agreement directly benefit the Property and benefits property that County owns or will own (including, without limitation, underlying interests in streets) and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent

permitted by law and equity, binding for the benefit and in favor of, and enforceable by County and its successors and assigns, against Developer, its successors and assigns, to or of the Property, or any portion of it or any interest in it, and any party in possession or occupancy of the Property or any portion of it. In addition, County shall be deemed the beneficiary of this restriction both for and in its own right and for the purposes of protecting the interests of the citizens of the County of San Diego, and the covenants, conditions, and restrictions shall run in favor of County without regard to whether County remains the owner of any real property near the Property.

#### **11.4 BREACH OF DISPOSITION AND DEVELOPMENT AGREEMENT**

In addition to any other enforcement provisions herein, a breach by Developer under this Agreement after the passage of applicable notice and cure periods shall be considered a breach of the DDA.

### **ARTICLE 12 GENERAL PROVISIONS**

#### **12.1 PARTIAL INVALIDITY**

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

#### **12.2 BINDING ON SUCCESSORS**

This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in the office or interest, and assigns.

#### **12.3 RECORDING AGREEMENT**

This Agreement and any amendments thereof, shall, at the expense of Developer, be acknowledged by each of the parties and promptly recorded or referenced by Developer or its successor in the official records of the county in which the Project is situated.

#### **12.4 ELECTION OF REMEDIES**

The remedies of the County hereunder or under any other instrument providing for or evidencing the financial assistance provided herein are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the County of any one or more of its other remedies.

#### **12.5 WAIVER**

No waiver by the County of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

## **12.6 CAPTIONS**

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Regulatory Agreement.

## **12.7 GOVERNING LAW AND VENUE**

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Venue shall only be proper in the state or federal court in which the Property are located, to wit, San Diego County Superior Court or the United States District Court for the Southern District of California.

## **12.8 AMENDMENTS TO LAWS AND REGULATIONS**

If the Federal, State, County, or other governments with jurisdiction over the area where the Property is located approve laws or regulations with more stringent requirements than are described in this Agreement, Developer shall comply with the more stringent requirements.

## **12.9 INTENTIONALLY OMITTED**

## **12.10 NOTICES**

Written notices and other written communications by and between the parties hereto shall be addressed as follows unless and until a party hereto has in writing, communicated a different address to the other party hereto.

**Developer:**

San Diego Housing Commission  
[INSERT NOTICE ADDRESS]

**County:**

County of San Diego  
Housing and Community Development  
Services  
3989 Ruffin Road  
San Diego, CA 92123

## **12.11 SENIORITY**

This Agreement shall be recorded in senior position with respect to all security interests encumbering the Premises in connection with Project financing, and in no event shall this Agreement be subordinated to any such interest, except as may be required by law (including the published government agency policies or regulations) in connection with Project financing provided by a government agency.

## **12.12 AMENDMENTS**

This Agreement shall not be altered or amended except by writing executed between the authorized representative(s) of the parties to this Agreement and recorded in the Office of the Recorder of San Diego County, California.

### 12.13 COUNTERPARTS; DUE EXECUTION

This Agreement may be executed in any number of counterparts and each such counterpart will be deemed to be an original, but all of which, when taken together, will constitute one agreement.

### 12.14 INDEMNIFICATION AND WAIVER

- a. Developer agrees to indemnify the County, the County Board of Supervisors, and all County elected or appointed officials, employees, agents, and attorneys (collectively, the “**County Parties**”), and to hold the County Parties harmless from any losses, damages, liabilities, claims, actions, judgments, court costs, and legal or other expenses (including attorneys’ fees) of every name, kind and description, which the County Parties may incur as a direct or indirect consequence of:
  - i. any act or omission by Developer, any subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Project or Property; or
  - ii. the presence of Hazardous Substances at the Project or on the Property. Developer shall pay immediately upon the County’s demand any amounts owing under this indemnity together with interest thereon from the date the indebtedness arises until paid, at the rate of eight percent (8%) per annum. The duty of Developer to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Developer shall indemnify and hold harmless the County Parties regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary, on the part of the County Parties, the Developer, or their respective agents, officers, employees, contractors, subcontractors, or affiliates; provided, however, that Developer’s duty to indemnify and hold harmless hereunder shall not extend to liability arising from the sole negligence or willful misconduct of the County. Developer’s duty to indemnify the County Parties shall survive the term of the DDA and this Agreement.
- b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the County Parties relative to this Agreement, the Project, or the Property.
- c. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims that the creditor or releasing

party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

To the extent of the release set forth in this Section 12.13, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Initials of Authorized  
Developer Representative

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

**COUNTY:**

County of San Diego Health and Human Services Agency

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

PATRICIA DANON  
Chief Operations Officer

APPROVED AS TO FORM AND LEGALITY

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

JANE RHEE  
Senior Deputy County Counsel

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**DEVELOPER:**

SAN DIEGO HOUSING COMMISSION

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

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

Print Title: \_\_\_\_\_

**[NOTARY ACKNOWLEDGMENTS CONTINUED ON FOLLOWING PAGES]**

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

State of California        )  
  )  
County of **San Diego**        )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

State of California        )  
  )  
County of **San Diego**        )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_



SAN DIEGO  
HOUSING  
COMMISSION

Board, Executive & Policy Department

## MEMORANDUM

**To:** Executive Leadership Team and Vice Presidents  
**From:** Jeff Davis, Deputy Chief Executive Officer  
**Date:** January 2, 2025  
**Subject:** Procurement Operations - Designation of Authority 2025 Update

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The San Diego Housing Commission's (Commission) Statement of Procurement Policy assigns the responsibility for the supervision and management of all procurement for the Commission to the President and Chief Executive Officer and the majority of the associated operational duties to the President and Chief Executive Officer who may designate staff to carry out those duties. Effective immediately, the following individuals are hereby delegated the authority to carry out the duties listed below:

**Contract Execution Authority** -All contracts must be signed by authorized staff, General/Special Counsel (for form and legality except for the Contract Option Exercise Notice) and Procurement (process verification). The President and Chief Executive Officer designates the Deputy Chief Executive Officer as the authorized approver of LLC contracts and agreements unless emergency circumstances require this duty to be delegated to other authorized staff.

Attachment 1 provides the updated designated authority levels for contracts and related documents. The designation of authority rests in the position, not the person holding the position. Intentionally breaking up transactions into smaller amounts to bring them to a lower signature authority level is prohibited.

**Sole Source Contracts** - All non-competitive procurements must comply with the Statement of Procurement Policy §9.1-9.3.5. Sole source justifications must be reviewed and approved by the Vice President/Sr. Vice President of the requesting department and submitted to the Procurement Department for approval. Non- competitive Bid Request (sole source) forms are available on SmartHub in the Procurement Department's site under forms. The Legal Contracts Analyst is the designated staff to concur with the justification and final approval is designated to the Director of Procurement Operations.

***NOTE: Per §9.1 of the Statement of Procurement Policy, SDHC contracts may be awarded to any agency or non- profit organization qualified under Section 501(c)(3) without advertising or conducting a competitive process.***

**Bid Protests** - The Director of Procurement Operations is the staff designated to conduct the bid protest review process in accordance with the Statement of Procurement Policy.

**Contract Claims and Disputes** - The Director of Procurement Operations is the staff designated to process contractual claims and disputes in accordance with the Statement of Procurement Policy.

The current Administrative Regulation will be updated to incorporate the attached authority levels. This memorandum supersedes all prior procurement related designations of authority.

Rev: 1/2025



Jeff Davis  
Deputy Chief Executive Officer

### AUTHORITY LEVELS

Action	Commodity	Authority Level*	Position/Function	Finance Review/ Sign-off Required
<b>Initiate Solicitation Requests</b>	All	Any Dollar Amount	All	
<b>Approve Solicitation Requests</b>				
	All	Up to \$100,000	VP	
		Up to \$150,000	Sr. VP	
		Up to \$200,000	Executive Vice President	
		Unlimited**	President & CEO/Deputy Chief Executive Officer	
<b>Execute Contract Form Including LLC Agreements**</b>				
	All	Up to \$100,000	VP	
		Up to \$150,000	Sr. VP	
		Up to \$200,000	Executive Vice President	
		Unlimited & in accordance with Housing Commission Board and/or Housing Authority approvals**	President & CEO/Deputy Chief Executive Officer	
<b>Approve Purchase Orders</b>				
	All	Up to \$5,000	Manager/Supervisor	X
		Up to \$50,000	Director	
		Up to \$150,000	VP	X
		Up to \$200,000	Sr. VP	X
		Up to \$250,000	Executive Vice President	
		Unlimited & in accordance with Housing Commission Board and/or Housing Authority approvals**	President & CEO/Deputy Chief Executive Officer	X
<b>Approve Invoice Payment</b>				
	All	Up to \$50,000	Director	
		Up to \$150,000	VP	
		Up to \$250,000	Sr. VP	
		Up to \$350,000	Executive Vice President	
		Unlimited & in accordance with Housing Commission Board and/or Housing Authority approvals**	President & CEO/Deputy Chief Executive Officer	
<b>Approve Requests for Reimbursements</b>				
	All	Up to \$50,000	Program Managers	X
		Up to \$150,000	Director/VP	X
		Up to \$250,000	Sr. VP	X
		Unlimited & in accordance with Housing Commission Board and/or Housing Authority approvals**	President & CEO/Deputy Chief Executive Officer	X

\*May approve at higher level if acting as designee in the absence of higher level authority designee.

\*\* The President and Chief Executive Officer designates the Deputy Chief Executive Officer as the authorized approver of LLC contracts and agreements unless emergency circumstances require this duty to be delegated to other authorized staff.

NOTE: The Deputy Chief Executive Officer is the authorized approver and signatory of all no cost access agreements, such as right of entry permits, and license agreements.

**Procurement Process Verification Signature Authority**

<b>Action</b>	<b>Procurement Manager *</b>	<b>Director of Procurement Operations</b>	<b>Deputy chief Executive Officer</b>
Contracts and Agreements up to \$50K	X	X	
All Contracts including LLC Contracts		X	
All no cost access agreements such as permits, right of entry permits and license agreements			X

\*May verify at higher level if acting as designee in the absence of higher-level authority designee.

***NOTE: Duly approved and executed contracts must be signed by the authorized staff, General/Special Counsel (form and legality) and Procurement (process verification).***

***NOTE: The Deputy Chief Executive Officer is the authorized approver and signatory of all no cost access agreements, such as right of entry permits, and license agreements.***



**SAN DIEGO  
HOUSING  
COMMISSION**

**Item 102**

## EXECUTIVE SUMMARY

MEETING DATE: September 15, 2023

HCR23-104

SUBJECT: Authorization to Accept the Distribution of State Budget Allocation of Grant Funds – University Avenue Densification Pilot and Multidisciplinary Outreach Program

COUNCIL DISTRICT: 9

ORIGINATING DEPARTMENT: Compliance and Equity Assurance

CONTACT/PHONE NUMBER: Debra Fischle-Faulk (619) 578-7411

**REQUESTED ACTION:**

Authorize and direct the San Diego Housing Commission (Housing Commission) staff to accept and expend \$2,750,000 in Grant Funds that were allocated in the California State Budget through the California Department of Housing and Community Development (Department) in accordance with the state Budget Act of 2023 (Assembly Bill 102) and to amend the Housing Commission’s Fiscal Year (FY) 2024 budget in the amount of \$2,750,000 in accordance with the authority delegated to the Housing Commission in Housing Authority of the City of San Diego Resolution HA-1569. The allocated state funding will support the Housing Commission’s University Avenue Densification Pilot Project and the Multidisciplinary Outreach Team.

**EXECUTIVE SUMMARY OF KEY FACTORS:**

- On July 10, 2023, California Governor Gavin Newsom signed into law Assembly Bill 102. The approved state budget included allocations directly to the Housing Commission for two programs.
- The state budget allocated \$2,000,000 to the Housing Commission to support completing predevelopment to increase density at Casa Colina, an existing Housing Commission-owned, 75-unit affordable rental housing development for seniors in the historically underserved City Heights community of the City of San Diego.
- This is part of the Housing Commission’s broader preliminary efforts to explore increasing density throughout its real estate portfolio to produce additional affordable housing in the City of San Diego.
- The state budget allocated \$750,000 to address existing gaps in the homelessness response system by expanding a currently deployed Multidisciplinary Outreach Team that works directly with individuals living on the street.
- Utilizing a street-based case management and supportive service model, the program’s objective is to serve individuals and families who are among the most vulnerable and are experiencing unsheltered homelessness.
- The state budget allocation funds are anticipated to be distributed in early Calendar Year 2024.
- The funds were not included in the Housing Commission’s proposed Fiscal Year (FY) 2024 budget, which the Housing Authority of the City of San Diego approved on June 12, 2023. If the Housing Commission is authorized to accept and expend the funds, it will increase the FY 2024 funding sources and uses available by \$2,750,0000 to support the proposed projects.



SAN DIEGO  
HOUSING  
COMMISSION

Item 102

# REPORT

**DATE ISSUED:** September 7, 2023

**REPORT NO:** HCR23-104

**ATTENTION:** Chair and Members of the San Diego Housing Commission  
For the Agenda of September 15, 2023

**SUBJECT:** Authorization to Accept the Distribution of State Budget Allocation of Grant Funds –  
University Avenue Densification Pilot and Multidisciplinary Outreach Program

**COUNCIL DISTRICT:** 9

### REQUESTED ACTION

Authorize and direct the San Diego Housing Commission (Housing Commission) staff to accept and expend \$2,750,000 in Grant Funds that were allocated in the California State Budget through the California Department of Housing and Community Development (Department) in accordance with the state Budget Act of 2023 (Assembly Bill 102) and to amend the Housing Commission’s Fiscal Year (FY) 2024 budget in the amount of \$2,750,000 in accordance with the authority delegated to the Housing Commission in Housing Authority of the City of San Diego Resolution HA-1569. The allocated state funding will support the Housing Commission’s University Avenue Densification Pilot Project and the Multidisciplinary Outreach Team.

### STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions:

- 1) Find and determine that pursuant to Housing Authority of the City of San Diego (Housing Authority) Resolution HA-1569, the California State Budget funds allocated to the Housing Commission in the amount of \$2,000,000 for the University Avenue (Casa Colina Phase I) Densification Pilot Project and \$750,000 for the Multidisciplinary Outreach Team in the state Budget Act of 2023 (Assembly Bill 102) are consistent with the Housing Commission’s mission and goals previously approved by the Housing Authority of San Diego, and therefore, these grants are subject to the provisions of Resolution HA-1569, which authorizes the Housing Commission’s receipt and expenditure of the grant funds and to make any required revisions to the Housing Commission’s budget.
- 2) Authorize the Housing Commission to accept and expend \$2,000,000 in grant funds that were allocated in the California State Budget through the California Department of Housing and Community Development (Department) in accordance with Assembly Bill 102 toward the University Avenue (Casa Colina Phase I) Densification Pilot Program, contingent upon receipt of the funds from the Department.
- 3) Authorize the Housing Commission to accept and expend \$750,000 in grant funds that were allocated in the California State Budget through the Department in accordance with Assembly

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Authorization to Accept the Distribution of State Budget Allocation Funds – University Avenue Densification Pilot and Multidisciplinary Outreach Team

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Bill 102 toward the Multidisciplinary Outreach Program, contingent upon receipt of the funds from the Department.

- 4) Increase the Housing Commission’s budgets for the University Avenue Densification Pilot Project by \$2,000,000 and the Multidisciplinary Outreach Program by \$750,000.
- 5) Authorize the Housing Commission’s President and Chief Executive Officer (President & CEO), or designee, to execute all documents and instruments that are necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions as are necessary and/or appropriate to implement these approvals provided that a copy of the documents, signed as to form by General Counsel, are submitted to each Housing Commissioner.

### **SUMMARY**

On July 10, 2023, California Governor Gavin Newsom signed into law Assembly Bill 102. The approved state budget included allocations directly to the Housing Commission for two programs:

- University Avenue (Casa Colina Phase I) Densification Pilot Project  
The state budget allocated \$2,000,000 to the Housing Commission to support completing predevelopment to increase density at Casa Colina, an existing Housing Commission-owned, 75-unit affordable rental housing development for seniors in the historically underserved City Heights community of the City of San Diego.

This is part of the Housing Commission’s broader preliminary efforts to explore increasing density throughout its real estate portfolio to produce additional affordable housing in the City of San Diego.

This pilot project will highlight the importance of collaboration with other jurisdictions. Increasing density of affordable housing sites in the Housing Commission’s portfolio utilizes Mayor Todd Gloria’s Housing Action Package 2.0 proposal, written in partnership with the Housing Commission, which allows for increased density on public agency-owned parcels.

Combining the existing site with land owned by the County of San Diego would provide a successful example of regional partnerships and use of public land for additional affordable housing development. Together, these sites consist of 2.34 acres. Housing Commission staff continues to work with the County of San Diego regarding establishing terms for an agreement on the process to acquire and allow for the densification of the County-owned parcel.

Across the Housing Commission’s real estate portfolio, increasing density will achieve state policy priorities, such as climate action and adaptation policies, including electrification, and provide opportunities for both preservation of existing units and creation of middle-income housing.

On October 3, 2022, at the first joint meeting of the County of San Diego Board of Supervisors (County Board) and the San Diego City Council (City Council) in more than 20 years, the County Board and City Council each adopted a joint resolution supporting the densification of Housing Commission properties as a way to increase the availability of affordable homes (City Council Resolution R-314357).

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Authorization to Accept the Distribution of State Budget Allocation Funds – University Avenue Densification Pilot and Multidisciplinary Outreach Team

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- Multidisciplinary Outreach Program

The state budget allocated \$750,000 to address existing gaps in the homelessness response system by expanding a currently deployed Multidisciplinary Outreach Team that works directly with individuals living on the street. Utilizing a street-based case management and supportive service model, the program’s objective is to serve individuals and families who are among the most vulnerable and are experiencing unsheltered homelessness.

The Multidisciplinary Outreach Program’s (Program) emphasis is on diverting individuals from the crisis response system and fostering connections to permanent and other longer-term housing, while meeting basic needs and providing connections to shelter and specialized supportive services, such as behavioral health and primary care resources to support physical and mental health stabilization.

People Assisting the Homeless (PATH) operates the Program. PATH collaborates and subcontracts with Father Joe’s Villages (FJV) for the healthcare component. The Program utilizes an integrated multidisciplinary team that includes a nurse practitioner, four clinical outreach specialists, a medical assistant/outreach worker, two peer support specialists, and a part-time substance abuse counselor.

**AFFORDABLE HOUSING IMPACT**

University Avenue (Casa Colina Phase I) Densification Pilot Project

The City of San Diego has been working to increase density on publicly owned parcels to increase affordable housing development, especially close to transit. This pilot project will preserve existing affordable rental housing and increase the supply of new affordable rental housing units.

Multidisciplinary Outreach Program

As San Diegans continue to live in a City-declared housing emergency “shelter crisis,” the need for immediate housing assistance is critical to the well-being of community members. The Program serves this purpose by connecting unsheltered individuals and families with shelter resources and supportive services. Individuals participating in this program represent some of San Diego’s most vulnerable citizens, as 100 percent of participants are homeless, with low-to-moderate income.

**FISCAL CONSIDERATIONS**

The state budget allocation funds are anticipated to be distributed in early Calendar Year 2024. The funds were not included in the Housing Commission’s proposed Fiscal Year (FY) 2024 budget, which the Housing Authority of the City of San Diego approved on June 12, 2023. If the Housing Commission is authorized to accept and expend the funds, it will increase the FY 2024 funding sources and uses available by \$2,750,0000 to support the proposed projects.

<b>San Diego Housing Commission – Casa Colina Phase I Densification Pilot</b>	
<b>Source</b>	<b>Amount</b>
FY 2024 State Budget Allocation	Up to \$2,000,000
<b>Uses</b>	<b>Amount</b>
Increase density of public agency land	Up to \$2,000,000
<b>San Diego Housing Commission – Multidisciplinary Outreach Program Team</b>	
<b>Source</b>	<b>Amount</b>
FY 2024 State Budget Allocation	Up to \$750,000
<b>Uses</b>	<b>Amount</b>

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Authorization to Accept the Distribution of State Budget Allocation Funds – University Avenue Densification Pilot and Multidisciplinary Outreach Team

Page 4

Expand currently deployed Multidisciplinary Outreach Team	Up to \$750,000
<b>TOTAL SOURCES</b>	Up to \$2,750,000
<b>TOTAL USES</b>	Up to \$2,750,000

**COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS**

The allocations of state funding were included in state Budget Act of 2023 (Assembly Bill 102). State Assemblymember Brian Maienschein advocated inclusion of \$750,000 for the Multidisciplinary Outreach Program, and State Senate President pro Tempore Toni Atkins advocated inclusion of \$2,000,000 for the University Avenue (Casa Colina Phase I) Densification Pilot Project in the state budget.

**HOUSING COMMISSION STRATEGIC PLAN**

This item relates to Strategic Priority Areas No. 1 and No.4 in the Housing Commission Strategic Plan for Fiscal Year (FY) 2022-2024:

- No.1: Increasing and Preserving Housing Solutions.
- No.4: Advancing Homelessness Solutions – Supporting the City of San Diego Community Action Plan on Homelessness.

**EQUAL OPPORTUNITY CONTRACTING AND EQUITY ASSURANCE**

The Housing Commission’s Strategic Plan for Fiscal Year (FY) 2022-2024 includes the following statement regarding the Housing Commission’s commitment to equity and inclusivity: “At SDHC, we are about people.

SDHC embraces diverse approaches and points of view to improve our programs, projects and policies.

- We believe in delivering programs and services in innovative and inclusive ways.
- We are committed to advancing equity and inclusion both internally and externally.”

**KEY STAKEHOLDERS and PROJECTED IMPACTS**

*University Avenue (Casa Colina Phase I) Densification Pilot Project*

The stakeholders include the existing residents of Casa Colina, community stakeholders, the County of San Diego, and the Housing Commission’s nonprofit affiliate, Housing Development Partners. The project is anticipated to have a positive impact on the community, as it will contribute to the quality of the surrounding neighborhood and create new transit-oriented rental homes.

*Multidisciplinary Outreach Program*

Stakeholders for this project include community stakeholders, PATH as the sub-recipient administering the program, and individuals experiencing homelessness. The program is expected to have a positive impact on the community as it will provide services for individuals experiencing unsheltered homelessness.

**ENVIRONMENTAL REVIEW**

California Environmental Quality Act

Accepting and expending state funds is not a project as defined by the California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5) as an administrative activity of government that will not result in direct or indirect physical changes in the environment. Predevelopment activities for the University Avenue Densification Pilot Project are categorically exempt from the requirements of CEQA

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Authorization to Accept the Distribution of State Budget Allocation Funds – University Avenue Densification Pilot and Multidisciplinary Outreach Team

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pursuant to CEQA Guidelines Section 15061 (b)(3) (Common Sense). The Common Sense Exemption is applicable where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Predevelopment activities would not, on their own accord, cause a significant effect on the environment. Predevelopment activities for the University Avenue Densification Pilot Project are also categorically exempt from the requirements of the CEQA pursuant to Guidelines Section 15304 (Minor Alterations to Land), which consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. The Multidisciplinary Outreach Program is categorically exempt from the requirements of the CEQA pursuant to Guidelines Section 15301 (Existing Facilities), which allows the operation, repair, maintenance permitting, leasing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The program aims to provide healthcare and place individuals and families experiencing unsheltered homelessness in existing housing.

National Environmental Policy Act

Processing under the National Environmental Policy Act is not required as no federal funds are involved in the proposed activities.

Respectfully submitted,

*Debra Fischle-Faulk*

Debra Fischle-Faulk  
Senior Vice President  
Compliance & Equity Assurance

Approved by,

*Jeff Davis*

Jeff Davis  
Interim President & Chief Executive Officer  
San Diego Housing Commission

Hard copies are available for review during business hours at the information desk in the main lobby of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101. Docket materials are also available in the “Governance & Legislative Affairs” section of the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).



SAN DIEGO  
HOUSING  
COMMISSION

# MINUTES

**SAN DIEGO HOUSING COMMISSION  
MINUTES OF THE REGULAR MEETING  
SEPTEMBER 15, 2023  
SMART CORNER  
4<sup>TH</sup> FLOOR CONFERENCE ROOM  
1122 BROADWAY  
SAN DIEGO, CA 92101**

## **ATTENDANCE**

Present:

Chair Eugene “Mitch” Mitchell  
Vice Chair Ryan Clumpner  
Commissioner Johanna Hester  
Commissioner Kellee Hubbard  
Commissioner Antoine “Tony” Jackson  
Interim President & CEO Jeff Davis  
General Counsel Chuck Christensen

Not present:

Commissioner Melinda K. Vásquez

## **10 CALL TO ORDER**

Chair Mitchell called the Regular Meeting to order at 9:08a.m.

## **20 NON-AGENDA PUBLIC COMMENT**

Joy Sunyata spoke about housing legislation from the State of California.

## **30 COMMISSIONER COMMENTS**

Vice Chair Clumper asked about the average number of shelter beds available at the start of each day for the past month; what time of day those available beds are full, on average; and what percentage of people seeking accommodations received it in the past month. Housing Commission Executive Vice President of Strategic Initiatives Lisa Jones stated that for the month of August, shelters are at 98 percent occupancy, with approximately 10 to 15 shelter beds available at the start of each day; they are generally full before 11 a.m.; and during August 2023, approximately 23% of those referred to shelters were placed in shelters. Vice Chair Clumper thanked Ms. Jones for the monthly reminder of the severe shortage of shelter.

Commissioner Hester asked how the occupancy rate is calculated. Executive Vice President of Strategic Initiatives Lisa Jones stated that a shelter bed availability rate is calculated at about 8 a.m. each day from the bed counts of all City of San Diego-funded homelessness shelters. Occupancy for



## Regular Meeting Minutes of September 15, 2023

August ranged from 97 to 99 percent during the month of August. Commissioner Hester thanked Ms. Jones for tracking homelessness shelter occupancy.

Chair Mitchell thanked the organizations that have supported the Housing Commission's applications for State of California Homekey Program funds and asked staff for an update on the status of those applications. Executive Vice President of Real Estate Emily S. Jacobs stated that the applications submitted in May 2023 for Abbott Street and Ramada Inn (to be known as Pacific Village) have successfully completed "threshold review," and the Housing Commission anticipated receiving a final funding determination in the next two weeks. She further stated that the Housing Commission anticipated receiving threshold review comments from the State of California in the next 30 to 45 days for the applications the Housing Commission submitted in July for two Extended Stay America hotel properties, with a final funding determination from the state after completion of the threshold review.

Chair Mitchell also asked staff whether the Board could receive additional information regarding the viability of a proposal for the creation of Sunbreak Ranch Homeless Transition Center. Ms. Jones stated Housing Commission staff has not heard a presentation directly from the proponents of the facility, but staff could conduct research and request information to bring back the Housing Commission Board.

## **40 REPORT BY THE INTERIM PRESIDENT & CHIEF EXECUTIVE OFFICER**

### **SDHC Homeownership Advisor Announcement**

The Housing Commission announced the launch of a dedicated phone line and email address to connect potential first-time homebuyers of color with the Housing Commission's Homeownership Advisor, a new position to help households learn more about the types of assistance available to potential homebuyers. The Housing Commission distributed a news release about how to connect with the Homeownership Advisor and will be sharing suggested social media posts in English and Spanish with Commissioners, Councilmembers' offices and community organizations to ask them to help raise awareness. First-time homebuyers can call (619) 578-7788 or email [homeownership@sdhc.org](mailto:homeownership@sdhc.org).

### **SDHC Notices of Funding Availability**

The Housing Commission announced on August 29, 2023, its annual Notices of Funding Availability, with a total of up to \$29 million in funding. The affordable housing NOFA makes available up to \$19 million to create housing units affordable for households earning up to 60% of San Diego's Area Median Income (AMI). The permanent supportive housing NOFA makes available up to \$10 million and up to 100 Veterans Affairs Supportive Housing (VASH) vouchers to create new affordable rental housing with supportive services in the City of San Diego for people experiencing homelessness. NOFA applications are due by October 31, 2023. After reviews and preliminary determinations are made, recommendations for loans will be presented to the Housing Commission's Board of Commissioners for consideration. The Housing Commission anticipates the available funding will support the creation of approximately 190 new affordable housing units and 190 new permanent supportive housing units. These units would add to the more than 23,000 affordable housing units in service in the City in which the Housing Commission has participated.



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### **\$45 Million State Grant Awarded to Housing Commission**

Additional affordable housing units would be developed through the State of California's aware of a \$45 million grant to the Housing Commission. California Governor Gavin Newsom announced the Catalytic Infill Infrastructure Grant program's statewide awards in August, and Mayor Todd Gloria and the Housing Commission announced the grant awarded to the Housing Commission on August 30, 2023. The Housing Commission's Board of Commissioners authorized the Housing Commission to apply for the grant on April 6, 2023. The grant will support the development of more than 1,180 affordable homes in downtown San Diego in Council District 3 and south San Diego in Council District 8. These units would be affordable for households with very low income and moderate income.

### **The Helm Grand Opening**

Vice Chair Clumpner represented the Housing Commission at the grand opening of the affordable housing development known as The Helm on August 17, 2023. Mayor Todd Gloria, Councilmember Stephen Whitburn, California Chief Deputy Treasurer Patrick Henning, and Affirmed Housing President Jimmy Silverwood also spoke at this event. This development transformed a parking lot in the Cortez Hill neighborhood into 77 affordable studios and one manager's unit. More than 40% of the units (32 units) are set aside for San Diegans with extremely low income (up to 30% of AMI). An additional four units are affordable for residents with up to 60% of AMI, and 41 units are affordable for households with up to 80% of AMI. The Housing Commission awarded 32 rental housing vouchers and a \$4.2 million loan to support the development of The Helm.

### **Cortez Hill Apartments Groundbreaking**

On August 18, 2023, the Cortez Hill Apartments affordable housing development celebrated its groundbreaking. Chair Mitchell spoke at the groundbreaking. Mayor Gloria, Councilmember Whitburn, California Chief Deputy Treasurer Henning and Community HousingWorks CEO Sean Spear also participated. When it is completed, Cortez Hill Apartments will provide 87 affordable rental housing units for people with income of 30% to 40% of AMI. Fourteen units will be for people experiencing chronic homelessness, and 73 units will provide homes for people with extremely low income but not experiencing homelessness. The Housing Commission awarded 87 rental housing vouchers to help pay rent for the residents at this property. The Housing Commission's Board of Commissioners also approved a loan of up to \$5 million toward this development. The Housing Commission's Board and the Housing Authority of the City of San Diego also authorized tax-exempt and taxable Multifamily Housing Revenue Bonds to make this development possible.

### **Family Shelter Opening**

A former motel in Barrio Logan is now the site of a new shelter program for families experiencing homelessness. Mayor Gloria and Vice Chair Clumpner announced the new shelter at a news conference at the site in August. The Housing Commission contracts with Alpha Project to operate this shelter. The Housing Commission's Board of Commissioners approved the contract at its July 21, 2023, meeting. The City's Homelessness Strategies and Solutions Department administers the site lease. The first families to reside at the shelter moved there in August from the Bridge Shelter at Golden Hall. Shelter residents will receive supportive services such as case management and help to locate permanent or longer-term housing, childcare and employment. The program will also provide basic services, such as



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three meals per day, private restrooms, laundry facilities, telephone access, messaging services and mail services.

**Procurement Department Award**

For the seventh year in a row, the Housing Commission has received an Achievement of Excellence in Procurement Award from the National Procurement Institute, Inc. This prestigious national award honors organizations that receive a high score based on standardized criteria that measure innovation, professionalism, productivity, e-procurement and leadership attributes of the organization.

**50     APPROVAL OF THE MINUTES**

Motion by Commissioner Hester to approve the July 21, 2023, Regular Meeting Minutes, July 21, 2023, Special Meeting Minutes and the July 25, 2023, Special Meeting Minutes. Seconded by Commissioner Jackson and passed by a vote of 5-0.

**CONSENT AGENDA**

Motion by Commissioner Jackson to approve Item 100 on consent. Seconded by Commissioner Hester and passed by a vote of 5-0

**100     HCR23-097   Amendment to Trash and Recycling Services Contract**

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions:

- 1) Approve the yearly increase of \$374,010.31 to the agreement for trash and recycling services with Allied Waste Systems, Inc., doing business as Republic Services of San Diego, for trash and recycling collection services. The yearly increase consists of \$218,620.08 to add organics, \$119,400.07 as a 20% contingency, and \$35,990.16 service changes for the Calle Primera and Alaquinas Drive properties. The total contract amount in the third and fourth option years will not exceed \$716,400.43 per year.
- 2) Approve an increase of \$37,819.36 in the Fiscal Year 2024 approved property expense budget.
- 3) Authorize the President and Chief Executive Officer (President & CEO), or designee, to substitute the funding sources with other available funding sources provided the total program/project budget amount after substitution does not exceed the approved total budget, should the operational need arise or should such actions be to the benefit of the Housing Commission and its mission.
- 4) Authorize the President & CEO, or designee, to execute all documents and instruments that are necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and take such actions as are necessary and/or appropriate to implement these



Regular Meeting Minutes of September 15, 2023

approvals, provided that a copy of the documents, signed as to form by General Counsel, is submitted to each Housing Commissioner.

**DISCUSSION AGENDA**

**101 HCR23-092 Proposed Revisions to the City of San Diego First-Time Homebuyer Program**

Sujata Raman, Vice President, Single-Family Housing Finance, Real Estate Division, presented the request for approval.

Motion by Vice Chair Clumpner to take the staff-recommended actions. Seconded by Commissioner Hester and passed by a vote of 5-0.

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions and recommend that the Housing Authority of the City of San Diego (Housing Authority) take the following actions:

**Housing Commission Board**

- 1) Approve three modifications to the City of San Diego First-Time Homebuyer Program's Deferred Loan Program:
  - a. Change the minimum required buyer down payment from 3 percent of the purchase price to a minimum of 1 percent of the purchase price.
  - b. Increase the maximum Debt-to-Income Ratio from 45 percent to up to 50 percent.
  - c. Increase the Housing Commission's First-Time Homebuyer deferred loan assistance from up to 22% to up to 25% of the purchase price of the property.
- 2) Authorize the President and Chief Executive Officer (President & CEO), or designee, to execute all documents and instruments that are necessary and/or appropriate to implement these approvals, in a form and format approved by General Counsel, and to take such actions necessary and/or appropriate to implement these approvals, provided that a copy of the documents, signed as to form by General Counsel, is submitted to each Housing Commissioner.

**Housing Authority**

- 1) Approve the proposed amendments to the Housing Commission Policy PO-LM-600.101 Housing Program Lending Authority, as described in this report and shown in Attachments 1 and 2, to revise the policy to reflect program updates to address current housing market conditions and continue to assist individuals and families in purchasing their first home.
- 2) Authorize the Housing Commission's President & CEO, or designee, to execute the approved amended policy PO-LM-600.101 Housing Program Lending Authority, in a form and format approved by General Counsel, and to take such actions necessary and appropriate to implement these approvals. Housing Commission staff will notify the Housing Authority and the City



Regular Meeting Minutes of September 15, 2023

Attorney’s Office about any subsequent amendments or modifications to the documents, and other required documents, including amendments to any documents.

**102 HCR23-104 Authorization to Accept the Distribution of State Budget Allocation of Grant Funds – University Avenue Densification Pilot and Multidisciplinary Outreach Program**

Debra Fischle-Faulk, Senior Vice President, Compliance & Equity Assurance, presented the request for approval.

Joy Sunyata spoke in favor.

Motion by Commissioner Hester to take the staff-recommended actions. Seconded by Commissioner Hubbard and passed by a vote of 5-0.

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions:

- 1) Find and determine that pursuant to Housing Authority of the City of San Diego (Housing Authority) Resolution HA-1569, the California State Budget funds allocated to the Housing Commission in the amount of \$2,000,000 for the University Avenue (Casa Colina Phase I) Densification Pilot Project and \$750,000 for the Multidisciplinary Outreach Team in the state Budget Act of 2023 (Assembly Bill 102) are consistent with the Housing Commission’s mission and goals previously approved by the Housing Authority of San Diego, and therefore, these grants are subject to the provisions of Resolution HA-1569, which authorizes the Housing Commission’s receipt and expenditure of the grant funds and to make any required revisions to the Housing Commission’s budget.
- 2) Authorize the Housing Commission to accept and expend \$2,000,000 in grant funds that were allocated in the California State Budget through the California Department of Housing and Community Development (Department) in accordance with Assembly Bill 102 toward the University Avenue (Casa Colina Phase I) Densification Pilot Program, contingent upon receipt of the funds from the Department.
- 3) Authorize the Housing Commission to accept and expend \$750,000 in grant funds that were allocated in the California State Budget through the Department in accordance with Assembly Bill 102 toward the Multidisciplinary Outreach Program, contingent upon receipt of the funds from the Department.
- 4) Increase the Housing Commission’s budgets for the University Avenue Densification Pilot Project by \$2,000,000 and the Multidisciplinary Outreach Program by \$750,000.
- 5) Authorize the Housing Commission’s President and Chief Executive Officer (President & CEO), or designee, to execute all documents and instruments that are necessary and/or



Regular Meeting Minutes of September 15, 2023

appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions as are necessary and/or appropriate to implement these approvals provided that a copy of the documents, signed as to form by General Counsel, are submitted to each Housing Commissioner.

**103 HCR23-098 Approve the San Diego Housing Commission’s Calendar Year 2024 State and Federal Advocacy and Legislative Engagement Guide**

Lisa Jones, Executive Vice President, Strategic Initiatives, San Diego Housing Commission, and Michael Gunning, Chief Strategy Officer, and Holly Fraumeni De Jesús, Partner, Lighthouse Public Affairs, presented the request for approval.

Motion by Vice Chair Clumpner to take the staff-recommended actions. Seconded by Commissioner Jackson and passed by a vote of 5-0.

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) approve the Calendar Year 2024 State and Federal Advocacy and Legislative Engagement Guide.

**104 HCR23-096 Final Bond Authorization and Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing and Resolution for Harrington Heights, Formerly Known as 13th & Broadway**

Colin Miller, Senior Vice President, Housing Finance and Property Management, Real Estate Division, and Jennifer Kreutter, Vice President, Multifamily Housing Finance, Real Estate Division, presented the request for approval.

Joy Sunyata spoke in favor.

Motion by Commissioner Hubbard to take the staff-recommended actions. Seconded by Commissioner Hester and passed by a vote of 5-0.

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions and recommend that the Housing Authority of the City of San Diego (Housing Authority) and San Diego City Council (City Council) take the following actions:

**Housing Commission Board**

- 1) Hold a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing approving the Housing Authority’s issuance of tax-exempt Multifamily Housing Revenue Bonds in an amount not to exceed \$68,700,000 to fund 13th & Broadway CIC, LP’s acquisition and new construction of Harrington Heights, a new affordable rental housing development at 1320 Broadway, San Diego, CA 92101, which will consist of 270 units that will remain affordable for 55 years for households with income of 25 percent to 50 percent of San Diego’s Area Median Income (AMI). Of the 270 units, 65 will be set aside for individuals experiencing literal and chronic homelessness, 10 will be



## Regular Meeting Minutes of September 15, 2023

set aside for veterans experiencing homelessness, and 40 will be set aside for individuals with low income. There will be three unrestricted managers' units.

### **Housing Authority**

- 1) Authorize the issuance of tax-exempt Multifamily Housing Revenue Bonds in an aggregate amount not to exceed \$68,700,000 and taxable bonds in an amount not to exceed \$37,000,000 to fund 13th & Broadway CIC, LP's acquisition and new construction of Harrington Heights, a new affordable rental housing development to be located at 1320 Broadway, San Diego, CA 92101, which will consist of 270 units that will remain affordable for 55 years for households with income of 25 percent to 50 percent of San Diego's Area Median Income (AMI). Of the 270 units, 65 will be set aside for individuals experiencing literal and chronic homelessness, 10 will be set aside for veterans experiencing homelessness, and 40 will be set aside for individuals with low income. There will be three unrestricted managers' units.
- 2) Authorize the Housing Commission President and Chief Executive Officer (President and CEO), or designee, to execute any and all documents that are necessary to effectuate the transaction and implement these approvals in a form approved by the General Counsel of the Housing Authority and of the Housing Commission and the Bond Counsel, and to take such actions as are necessary, convenient, and/or appropriate to implement these approvals upon advice of the General Counsel and/or the Bond Counsel.

### **City Council**

- 1) Adopt a Tax Equity and Fiscal Responsibility Act (TEFRA) resolution approving the issuance of tax-exempt Multifamily Housing Revenue Bonds in an amount not to exceed \$68,700,000 to facilitate the development of Harrington Heights a new affordable rental housing development at 1320 Broadway, San Diego, CA 92101, which will consist of 270 units that will remain affordable for 55 years for households with income of 25 percent to 50 percent of San Diego's Area Median Income (AMI). Of the 270 units, 65 will be set aside for individuals experiencing literal and chronic homelessness, 10 will be set aside for veterans experiencing homelessness, and 40 will be set aside for individuals with low income. There will be three unrestricted managers' units.

## **105 HCR23-095 Final Bond Authorization and Tax Equity and Fiscal Responsibility Act Hearing and Resolution for Iris at San Ysidro Apartments**

Colin Miller, Senior Vice President, Housing Finance and Property Management, Real Estate Division, and Jennifer Kreutter, Vice President, Multifamily Housing Finance, Real Estate Division, presented the request for approval.

Joy Sunyata spoke in favor.

Motion by Commissioner Hubbard to take the staff-recommended actions. Seconded by Commissioner Jackson and passed by a vote of 5-0.



## Regular Meeting Minutes of September 15, 2023

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions and recommend that the Housing Authority of the City of San Diego (Housing Authority) and San Diego City Council (City Council) take the following actions:

### **Housing Commission Board**

- 1) Hold a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing approving the Housing Authority's issuance of a tax-exempt Multifamily Housing Revenue Bonds in an amount not to exceed \$31,500,000 to fund Iris at San Ysidro, LP's acquisition and new construction of Iris at San Ysidro, a new affordable rental housing development at 1663 Dairy Mart Road, San Ysidro, CA 92173, which will consist of 99 units that will remain affordable for 55 years for households with income of 25 percent to 60 percent of San Diego's Area Median Income (AMI), including 15 units through the County of San Diego's No Place Like Home program reserved for individuals with a serious mental illness who are at risk of homelessness or experiencing homelessness or chronic homelessness, and one unrestricted manager's unit.

### **Housing Authority**

- 1) Authorize the issuance of tax-exempt Multifamily Housing Revenue Bonds in an aggregate amount not to exceed \$31,500,000 and taxable bonds in an amount not to exceed \$9,000,000 to fund Iris at San Ysidro, LP's acquisition and new construction of Iris at San Ysidro, a new affordable rental housing development at 1663 Dairy Mart Road, San Ysidro, CA 92173, which will consist of 99 units that will remain affordable for 55 years for households with income of 25 percent to 60 percent of San Diego's Area Median Income (AMI), including 15 units through the County of San Diego's No Place Like Home program reserved for individuals with a serious mental illness who are at risk of homelessness or experiencing homelessness or chronic homelessness, and one unrestricted manager's unit.
- 2) Authorize the Housing Commission's President and Chief Executive Officer (President and CEO), or designee, to execute any and all documents that are necessary to effectuate the transaction and implement these approvals in a form approved by the General Counsel of the Housing Authority and of the Housing Commission and the Bond Counsel, and to take such actions as are necessary, convenient, and/or appropriate to implement these approvals upon advice of the General Counsel and/or the Bond Counsel. Housing Commission staff will notify the Housing Authority and the City Attorney's Office about any subsequent amendments or modifications to the transaction, and other required documents, including amendments to any documents.

### **City Council**

- 1) Adopt a Tax Equity and Fiscal Responsibility Act resolution approving the issuance of tax-exempt Multifamily Housing Revenue Bonds in an amount not to exceed \$31,500,000 to facilitate the development of Iris at San Ysidro, a new affordable rental housing development at 1663 Dairy Mart Road, San Ysidro, CA 92173, which will consist of 99 units that will remain affordable for 55 years for households with income of 25 percent to 60 percent of San Diego's Area Median Income (AMI), including 15 units through the County of San Diego's No Place Like Home program reserved for individuals with a serious mental illness who are at risk of



Regular Meeting Minutes of September 15, 2023

homelessness or experiencing homelessness or chronic homelessness,, and one unrestricted manager’s unit.

Commissioner Hester left the meeting.

**106 HCR23-094 Final Bond Authorization and Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing and Resolution for SkyLINE Apartments**

Colin Miller, Senior Vice President, Housing Finance and Property Management, Real Estate Division, and Jennifer Kreutter, Vice President, Multifamily Housing Finance, Real Estate Division, presented the request for approval.

Joy Sunyata spoke in favor.

Motion by Vice Chair Clumpner to take the staff-recommended actions. Seconded by Commissioner Jackson and passed by a vote of 4-0.

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions and recommend that the Housing Authority of the City of San Diego (Housing Authority) and the City Council of the City of San Diego (City Council) take the following actions:

**Housing Commission**

- 1) Hold a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing approving the Housing Authority’s issuance of a tax-exempt Multifamily Housing Revenue Bonds in an aggregate amount not to exceed \$42,476,918 to fund Bernardo Family Housing LP’s construction of SkyLINE Apartments (SkyLINE), a new affordable rental housing development at 16785-16787 West Bernardo Drive in the Rancho Bernardo neighborhood, which will consist of 99 units that will remain affordable for 55 years for individuals and families earning 30 percent to 55 percent of the San Diego Area Median Income (AMI) and one manager’s unit.

**Housing Authority**

- 1) Authorize the issuance of tax-exempt Multifamily Housing Revenue Bonds in an aggregate amount not to exceed \$42,476,918 and taxable bonds in an amount not to exceed \$21,000,000 to fund Bernardo Family Housing LP’s construction of SkyLINE Apartments (SkyLINE), a new affordable rental housing development at 16785-16787 West Bernardo Drive in the Rancho Bernardo neighborhood, which will consist of 99 units that will remain affordable for 55 years for individuals and families earning 30 percent to 55 percent of the San Diego Area Median Income (AMI) and one manager’s unit.
- 2) Authorize the Housing Commission’s President and Chief Executive Officer (President and CEO), or designee, to execute any and all documents that are necessary to effectuate the transaction and implement these approvals in a form approved by the General Counsel of the Housing Authority and of the Housing Commission and the Bond Counsel, and to take such actions as are necessary, convenient, and/or appropriate to implement these approvals upon advice of the General Counsel and/or the Bond Counsel.



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**City Council**

- 1) Adopt a resolution approving the issuance of tax-exempt Multifamily Housing Revenue Bonds in an amount up to \$42,476,918 to facilitate the development of SkyLINE Apartments (SkyLINE), a new affordable rental housing development at 16785-16787 West Bernardo Drive in the Rancho Bernardo neighborhood, which will consist of 99 units that will remain affordable for 55 years for individuals and families earning 30 percent to 55 percent of the San Diego Area Median Income (AMI) and one manager’s unit.

**CLOSED SESSION**

The San Diego Housing Commission convened in closed session on Friday, September 15, 2023, at 11:09 a.m. with the following agenda:

- I. Announcement by Counsel of the Matters to be discussed in Closed Session and the basis upon which each will be discussed, as referenced within the Brown Act.
- II. Public Testimony and Comment, if any, concerning any matter on the Closed Session Agenda.

There were no public comments.

- III. Commissioner comments, if any.

There were no Commissioner comments

- IV. Commission will convene in closed session to consider the following agenda:

- A. CONFERENCE WITH LEGAL COUNSEL – Anticipated Litigation

Initiation of litigation pursuant to § 54956.9(c):  
(One Matter)

Statement by Counsel:

General Counsel will seek authorization to file a lawsuit to enforce the obligations under the terms of the Single-Room Occupancy (SRO) Ordinance.

- V. Announcement of Actions Taken in Closed Session.  
The Housing Commission met in closed session to discuss the matters that were the subject of the Closed Session agenda and gave unanimous instruction and direction to Counsel to pursue the matters that were discussed in Closed Session.

**ADJOURNMENT**

Chair Mitchell adjourned the Regular Meeting at 11:31 a.m.



Regular Meeting Minutes of September 15, 2023

Respectfully submitted,

*Scott Marshall*

Scott Marshall  
Vice President  
Communications and Government Relations  
San Diego Housing Commission

Approved by,

*Jeff Davis*

Jeff Davis  
Interim President & Chief Executive Officer  
San Diego Housing Commission

EXHIBIT E – PROJECT SCOPE

A. Developer Responsibilities

1. General

This is the Scope of Development attached to the Disposition and Development Agreement (“DDA”) by and between the County of San Diego (“County”) and Developer pertaining to the Property. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

The Improvements to be constructed by Developer on the Property shall be of high architectural quality, well landscaped, and effectively and aesthetically designed. The shape, scale, exterior design, and exterior finish of the Improvements must visually as well as physically relate to the adjacent properties. Developer shall be responsible for providing parking appropriate and necessary for the proposed development of the Property along with appropriate landscaping, all in accordance with applicable City requirements or current code.

Developer’s plans, drawings and proposals submitted to the County for approval shall describe in reasonable detail the architectural character intended for the Improvements.

2. Improvements

Notwithstanding the generality of Section 1, above, the Developer shall construct, or cause to be constructed on the Property, approximately 90 affordable apartments (“Development”) which shall be owned by a limited partnership and is currently anticipated to include: (i) a total of approximately 90 Affordable Units and one employee unit (“Employee Unit”), (ii) no less than 800 square feet of indoor community space, approximately 3,500 square feet of outdoor open space (“Outdoor Space”), and (iii) approximately 26 parking spaces.

The following is a summary of the scope of development for the Development as currently anticipated, which shall be updated from time to time by the Developer as it finalizes its construction plans and financing sources, subject to County approval.

Site Area	31,657 SF / .72 AC
Height Limit	85 ft.
Type of Housing	Affordable Rental Apartments
Total Number of Units / Total Above Grade Square Footage	90 Units / 61,321 SF
Types of Units	90 one-bedrooms
Parking Spaces	Approximately 26 spaces
Assessor’s Parcel No.	472-390-03 and 472-390-20

\*\*Types of Units may be modified if required by TCAC or other public project lenders, subject to the County’s approval.

3. Green Building

The Project shall be built to GreenPoint Gold or greater standards, or equivalent. The Project will be fully electric. Costs for the proposed green building features, including photovoltaic panels, are incorporated into the Project Budget.

4. Parking

The Development shall include approximately 26 parking spaces or a lesser number of spaces as permitted by the San Diego Municipal Code subject to County approval and provided that any such modifications are consistent with all applicable City building and planning approvals. All spaces shall be designed to City of San Diego requirements. Visitor and/or public parking spaces shall be identified with appropriate signage.

5. Required Permits/Compliance with Laws

The Property shall be developed in accordance with all applicable laws or current code.

## EXHIBIT F – PERFORMANCE SCHEDULE

### I. DESIGN, ENTITLEMENTS

1. Submission – Basic Concept. Developer shall prepare and submit to County the basic concept and site plan for the Property and the preliminary elevations of the Senior and Family buildings visible to public view (approximately 20% of schematic designs).  
Within ninety (90) days following the effective date of the DDA.
2. Approve - Basic Concept. County shall approve or disapprove the basic concept and site plan for the Property and the preliminary elevations of the buildings visible to public view (approximately 20% of schematic designs).  
Within fifteen (15) business days after receipt by County.
3. Submission - Schematic Drawings. Developer shall prepare and submit to County the schematic drawings for the Property.  
Within one-hundred twenty (120) days of the date the developer has secured all Sources of Financing except Low Income Housing Tax Credit financing and tax-exempt bonds for each Phase.
4. Approval – Schematic Drawings. County shall approve or disapprove the schematic drawings for the Property.  
Within fifteen (15) business days after receipt by County.
5. Submission – 50% Construction Drawings and Preliminary Landscaping Plans. Developer shall prepare and submit to County 50% construction drawings and preliminary landscaping plans for each Project.  
Within sixty (60) days after receiving an award of Low-Income Housing Tax Credits or state Low Income Housing Tax Credits and tax-exempt bonds for each Phase.

6. Approval – 50% Construction Drawings and Preliminary Landscaping Plans. County shall approve or disapprove the 50% construction drawings and preliminary landscaping plans for each Project. Within thirty (30) days after receipt by County.
7. Submission - Final Construction Drawings and Final Landscaping Plans. Developer shall prepare and submit the final construction drawings and the final landscaping plans for each Project. Thirty (30) business days prior to Closing for each Phase.
8. Approval - Final Construction Drawings and Final Landscaping Plans. County shall approve or disapprove the final construction drawings and the final landscaping plans for each Project. Within fifteen (15) days after receipt by County and in any event prior to Closing for each Phase.

## II. FINANCING

As set forth in Section 12 of the DDA, the sources of funding and timelines set forth in this Section II may be updated from time to time by Developer with the consent of the County.

1. Applications for Project Based Section 8 Contract (if applicable) and gap financing with San Diego Housing Commission (“SDHC”) and application for gap financing with the County of San Diego. First NOFA round following the Effective Date in which a Phase in the Development will be eligible to apply and be competitive for said financing under the NOFA guidelines.
2. Applications for Affordable Housing Sustainable Communities (AHSC) and/or Transit Oriented Development (TOD) and/or Multi-family Housing Program (MHP) Funding from California Department of Housing and Community Development (“HCD”). First NOFA round that a Phase will be eligible to apply and be competitive for said financing under the NOFA guidelines after the Effective Date, and, if local funds are required for a Phase to be competitive for said program, following the receipt of local commitments of funds.
3. Applications for other federal, state, county, city, or private funds which may become available and discoverable in public notices. First application round that each Phase will be eligible to apply and be reasonably competitive to win said financing after the Effective Date, and if required to be competitive for said

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| 4. <u>Applications for 9% Tax Credit Financing (if applicable).</u> Developer shall submit its application for 9% tax credit financing to the California Tax Credit Allocation Committee (“TCAC”).   | program, following the receipt of local commitments of funds for all other gap financing for the Phase.   |
| 5. <u>Applications for 4% Federal and State Tax Credit Financing.</u> Developer shall submit its application for 4% tax credit financing to the California Tax Credit Allocation Committee (“TCAC”). | First application round following the Phase’s receipt of commitments for all gap financing for the Phase.   |
| 6. <u>Applications for Tax-Exempt Bonds.</u> Developer shall submit its application for tax-exempt bonds from the California Debt Limit Allocation Committee (CDLAC).                                | First application round following each Phase’s receipt of commitments for all gap financing for the Phase.  |
| 7. <u>Application for Affordable Housing Program (AHP) Funding.</u> Developer shall submit its application for AHP funding.  | In conjunction with applications for tax credits in #5 above.   |
| 8. <u>Closing/Construction Financing Event.</u> Developer shall have satisfied all conditions precedent to Close of Escrow for the Property, as required by the DDA.                                 | First NOFA round following the Effective Date for which each Phase will be eligible and reasonably competitive to win, and if local funds are required to be competitive for said program, following the receipt of local commitments of funds for all other gap financing for the Phase. |

III. DEVELOPMENT

- |   |  |
|---|--|
| 1. <u>Commencement of Construction.</u> Developer shall commence construction of each Phase as required by the DDA. | Within thirty (30) days of each Closing. |
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2. Completion of Construction. Developer shall achieve completion of the Project in accordance with the DDA.

Within thirty-six (36) months after commencement of construction of the final Phase.
  
3. Management Plan. Developer shall submit a Property Management Plan for each Phase County approval pursuant to the County Regulatory Agreement.

At least ninety (90) days prior to completion of each Phase.
  
4. Approval of Property Management Plan. County shall approve or disapprove the Property Management Plan for each Phase.

Within ten (10) days after receipt of such submission by County.

EXHIBIT G – INSURANCE REQUIREMENTS

**INSURANCE REQUIREMENTS - PRE-CONSTRUCTION PERIOD**

**Insurance Requirements**

Without limiting Developer’s indemnification obligations to County, Developer shall provide at its sole expense and shall maintain for the duration of this agreement, or as may be further required herein, insurance of the types and coverage limits described in this Attachment, which includes insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Lessee, his agents, representatives, employees or subcontractors

Within ten (10) business days prior to the Effective Date, Developer shall submit to County certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that the Developer has obtained for the Pre-Construction Period, insurance in the following forms of coverage and minimum amounts specified from insurance carriers with a Best’s Rating of not less than A, VII or a company of equal financial stability approved in writing by County Risk Management.

**1. Minimum Scope and Limit of Insurance**

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit \$4,000,000.
- B. **Automobile Liability** covering all owned, non-owned, hired auto Insurance Services Office form CA0001, with limit no less than \$1,000,000 each accident for bodily injury and property damage.
- C. **Workers’ Compensation**, as required by State of California and Employer’s Liability Insurance, with limits no less than \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.
- D. **Professional Liability** appropriate to the professional services provided by Developer under this Agreement, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. This coverage shall be maintained for a minimum of five years following termination or completion of Developer’s work pursuant to the Agreement.

If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

**2. Self-Insured Retentions**

Self-insured retentions must be declared to and approved by County Risk Management. County may require the Developer to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. Any and all deductibles and SIRs shall be the sole responsibility of Developer

or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. County may deduct from any amounts otherwise due Developer to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. County reserves the right to obtain a copy of any policies and endorsements for verification.

### 3. Other Insurance Provisions

The General Liability and Auto Liability policies are to contain, or be endorsed to contain, the following provisions:

- A. **Additional Insured Endorsement.** The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees, and volunteers of the County, individually and collectively, are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).
- B. **Primary Insurance Endorsement.** For any claims related to this Agreement, Developer's insurance coverage, including any excess liability policies, shall be primary and non-contributory at least as broad as ISO CG 20 01 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees, and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.
- C. **Notice of Cancellation.** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

## General Provisions

### 4. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

### 5. Umbrella or Excess Policy

Developer may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Developer's primary and excess liability policies are exhausted.

## **6. Evidence of Insurance**

Prior to commencement of this Agreement, but in no event later than the effective date of the Agreement, Developer shall furnish the County with a copy of the policy declaration and endorsement pages along with the certificates of insurance and amendatory endorsements effecting coverage required by this clause. Policy declaration and endorsement pages shall be included with renewal certificates and amendatory endorsements submissions and shall be furnished to County within thirty days of the expiration of the term of any required policy. Developer shall permit County at all reasonable times to inspect any required policies of insurance. The Agreement/Project Number should be noted in the “Description of Operations” box located near the bottom of the form. Additionally, the “Certificate Holder” box should designate the address of the responsible department or department representative to ensure the documents are received by the appropriate party.

## **7. Failure to Obtain or Maintain Insurance; County’s Remedies**

Developer’s failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by such insurance shall constitute a material breach of the Agreement, and County may, at its option, terminate the Agreement for any such default by Developer.

## **8. No Limitation of Obligations**

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Developer, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Developer pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

## **9. Review of Coverage**

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Developer to obtain insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

## **10. Self-Insurance**

Developer may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. Developer shall only be permitted to utilize such self-insurance if in the opinion of County Risk Management, Developer’s (i) net worth, and (ii) reserves for payment of claims of liability against Developer, are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. Developer’s utilization of self-insurance shall not in any way limit liabilities assumed by Developer under the Agreement.

## **11. Claims Made Coverage**

If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Developer’s commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
- B. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

- C. If insurance is terminated for any reason, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the Developer must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

### **12. Subcontractors’ Insurance**

Developer shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Developer shall ensure the Developer is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13. If any subcontractor’s coverage does not comply with the foregoing provisions, Developer shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys’ fees, incurred by County as a result of subcontractor’s failure to maintain required coverage.

### **13. Duration of Coverage**

CGL & excess liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the contract of work.

### **14. Waiver of Subrogation**

Developer hereby grants to County a waiver of its rights of subrogation which any insurer of Developer may acquire against County by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the Developer for all work performed by the Developer, its employees, agents, and subcontractors.

EXHIBIT G - INSURANCE REQUIREMENTS

Sources:	Total	Per Unit	% of Total
PERM LOAN	\$11,832,308	\$134,458	17.7%
LIHTC EQUITY	\$25,698,168	\$292,025	38.5%
SOFT LOAN #1	\$0	\$0	0.0%
SOFT LOAN #2	\$0	\$0	0.0%
PreDev Grant Funding	\$2,850,000	\$32,386	4.3%
SELLER NOTE (SOFT)	\$0	\$0	0.0%
DEFERRED DEVELOPER FEE	\$5,840,445	\$66,369	8.7%
<b>GAP FUNDING REQUIRED</b>	<b>\$20,566,649</b>	<b>\$233,712</b>	<b>30.8%</b>
<b>Total Sources</b>	<b>\$66,787,570</b>	<b>\$758,950</b>	<b>100%</b>
Uses:	Total	Per Unit	% of Total
BUILDING ACQUISITION	\$0	\$0	0.0%
LAND	\$50,000	\$568	0.1%
HARD COSTS	\$49,208,000	\$559,182	73.7%
PERMITS & FEES	\$492,080	\$5,592	0.7%
ARCHITECT & ENGINEERING	\$3,272,000	\$37,182	4.9%
THIRD PARTY REPORTS	\$123,657	\$1,405	0.2%
FINANCING	\$2,297,711	\$26,110	3.4%
RESERVES	\$883,107	\$10,035	1.3%
BOND AND TAX CREDIT	\$349,852	\$3,976	0.5%
OTHER SOFT COSTS	\$1,770,718	\$20,122	2.7%
DEVELOPER FEE	\$8,340,445	\$94,778	12.5%
<b>Total Uses</b>	<b>\$66,787,570</b>	<b>\$758,950</b>	<b>100%</b>

EXHIBIT I – GRANT DEED

OFFICIAL BUSINESS

Document entitled to free recording per California Government Code section 6103.

**Recording Requested By:**

San Diego Housing Commission  
1122 Broadway  
San Diego, California 92101

**When recorded mail to and mail tax statements to:**

San Diego Housing Commission  
1122 Broadway  
San Diego, California 92101

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH IN THE DDA (AS DEFINED HEREINBELOW) AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the COUNTY OF SAN DIEGO, a political subdivision of the State of California (“Grantor”) hereby grants to SAN DIEGO HOUSING COMMISSION (“Grantee”), the real property described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference (“Property”), subject to the following.

1. Grantor excepts and reserves any existing public right of way on any street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property;
2. The Property is conveyed in accordance with and subject to the Disposition and Development Agreement (“DDA”) entered into by and between Grantor and Grantee on \_\_\_\_\_, 2024, which is a public record on file in the offices of the Clerk of the County of San Diego as Document No. \_\_\_\_\_, and is hereby incorporated as though fully set forth herein; and
3. The Property is conveyed subject to that certain Restrictive Covenants and Regulatory Agreement between Grantor and Grantee recorded substantially concurrently herewith.
4. After the expiration of the term of the Regulatory Agreement, one hundred percent of the total number of residential units developed on the Property (excluding any onsite manager or staff unit(s)) shall be used in perpetuity for housing “persons and families of low or moderate income” as such term is defined in Section 50093 of the California Health and Safety Code (or any successor statute or regulation), unless otherwise required by another State or Federal funding source.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of \_\_\_\_\_, 20\_\_.

Grantor:

COUNTY OF SAN DIEGO,  
a political subdivision of the State of California

By: \_\_\_\_\_  
Marko Medved, Director  
Department of General Services

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_  
Theresa Loftsgard  
Senior Deputy County Counsel

*[signatures continue on next page.]*

The Grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

GRANTEE:

SAN DIEGO HOUSING COMMISSION

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)

(Affix Seal)



EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF LOT 24, OF LEMON VILLA, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 734, FILED IN THE OFFICE OF THE RECORDER OF SAID SAN DIEGO COUNTY DECEMBER 2, 1892 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF UNIVERSITY AVENUE (60.0 FEET WIDE) WITH THE EASTERLY LINE OF 52ND STREET (60.0 FEET WIDE) AS SAID AVENUE AND STREET ARE LOCATED AND ESTABLISHED AS OF THE DATE OF THIS INSTRUMENT;

THENCE NORTH 0°00'30" WEST ALONG SAID EASTERLY LINE OF 52ND STREET A DISTANCE OF 39.99 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 0°00'30" WEST ALONG SAID EASTERLY LINE OF 52ND STREET A DISTANCE OF 210.01 FEET TO A POINT;

THENCE SOUTH 89°58'30" EAST A DISTANCE OF 100.0 FEET; THENCE SOUTH 0°00'30" EAST A DISTANCE OF 230.0 FEET TO A POINT;

THENCE NORTH 89°58'30" WEST A DISTANCE OF 80.01 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20.0 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°58' A DISTANCE OF 31.40 FEET TO THE TRUE POINT OF BEGINNING.

Assessor's Parcel No: 472-390-03

## EXHIBIT J – RIGHT OF ENTRY PERMIT

### RIGHT OF ENTRY PERMIT

This Right of Entry Permit (“Permit”), dated [REDACTED], 2025, for purposes of reference only, is entered into between the County of San Diego, a political subdivision of the State of California (“County”) and San Diego Housing Commission (“Permittee”), with reference to the following facts:

#### RECITALS

- A. County owns that certain real property located at 5202 University Avenue in the City Heights Area of the City of San Diego with Assessor Parcel Number 472-390-03-00 (“Property”).
- B. Concurrently herewith County and Permittee are entering into an Disposition and Development Agreement (“DDA”), which authorizes Permittee to conduct due diligence investigations for the purposes of future development of the Property as set forth in the DDA.
- C. To allow Permittee onto the Property to conduct said investigations, County and Permittee are entering into this Right of Entry Permit.

Now, therefore, for valuable consideration, the sufficiency of which is acknowledged, County and Permittee agree as follows:

#### CONDITIONS OF PERMIT

1. Permit Area. County grants the Permittee and its representatives, consultants and attorneys a right of entry over the Property, as further described in EXHIBIT “A” PERMIT AREA attached to this Permit (“Permit Area”).
2. Permitted Use. Permittee representatives, consultants and attorneys shall use the Permit Area for conducting due diligence investigations for the purposes of future development of the Property (“Permitted Use”), subject to the terms and conditions set forth in this Permit, and for no other purpose. County does not warrant the legality of the Permittee’s intended use of the Permit Area.
3. Acceptance of Provisions. Permittee understands and agrees that the performance of any work under this Permit shall constitute an acceptance of the provisions of this Permit.
4. No Precedent Established. This Permit is granted with the understanding that this Permit is not to be considered as establishing any precedent on the question of expediency or permitting any certain kind of encroachment to be erected or right-of-entry within County properties.

This Permit is to be strictly construed and no use other than the Permitted Use stated in this Permit is authorized. This Permit is not transferable, but may be utilized by the Permittee's representatives, consultants and attorneys.

5. Term. The term ("Term") of this Permit shall begin on the date of execution by County's Director, Department of General Services ("Commencement Date") and expire coterminous with the DDA. County's Director, Department of General Services ("Director") may at its sole discretion cancel the Term of this Permit at any time by giving forty-eight hours written notice to Permittee.

6. Notice Prior to Starting Work. Before starting any work authorized as a Permitted Use under this Permit, Permittee shall notify the Director in writing or by email. The notice shall be given at least twenty-four (24) hours in advance of the time the work is to commence.

7. Inspections; Permit on Site. County, its employees, agents or representatives may enter and inspect the Permit Area at any time during the Term to verify Permittee's compliance with the terms and conditions of this Permit. Permittee shall have on record a fully executed copy of this Permit during the Term. Permittee or Permittee Parties must provide a copy of this Permit to any representative of County on demand within a reasonable time.

8. Permits From Other Agencies. Permittee shall secure the written order or consent for any work from any other public agency having jurisdiction over the Permit Area, if any. This Permit shall be suspended until any necessary written order or consent is obtained by Permittee.

9. Permit Fee. The Permit Fee is waived for this License.

10. Access. Permittee shall not obstruct the flow of vehicular traffic or impede access to the Property.

11. Performance of Work. Permittee shall take all actions necessary to ensure that all work associated with the issuance of this Permit is conducted in a safe and prudent manner. All work associated with the issuance of this Permit shall be performed to the satisfaction of County.

12. Compliance With Laws. Permittee shall comply with all federal, state and local laws, statutes, ordinances, rules or regulations, including the California Environmental Quality Act, that apply to Permittee's use of the Permit Area. Permittee shall indemnify County from any action resulting from a determination of the legality of its use of the Permit Area in addition to and in accord with the indemnity provisions described in Section 15 Indemnification of this Permit.

13. Maintenance and Restoration of Permit Area. Permittee shall exercise reasonable care to immediately repair any injury to any portion of the Permit Area directly caused by the Permittee or Permittee Parties. If Permittee fails to restore the Permit Area as provided herein, County may perform the restoration work and bill the Permittee for the work. Permittee shall reimburse County for the cost of the work, plus administrative expenses, within thirty (30) days of receiving a bill for the work from County.

14. Insurance. Within ten (10) business days prior to the Commencement Date, Permittee shall

submit to County certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that Permittee has obtained for the Term of this Permit, at its sole expense, insurance in the following forms of coverage and minimum amounts specified from insurance carriers with a Best's Rating of not less than A, VII or a company of equal financial stability approved in writing by County's Risk Management Division.

a. An occurrence policy of Commercial General Liability insurance including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability insuring Permittee against liability for bodily injury, personal injury or property damage arising out of or in connection with Permittee, their agents, representatives, employees or subcontractors performance of work or service under this Permit of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. The County of San Diego, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to Permittee's insurance (at least as broad as ISO form **CG 2012**).

b. Certificates of insurance provided by Permittee must evidence that the insurer providing the policy will give County written notice of cancellation in accordance with the policy provisions.

If Permittee maintains broader coverage and/or higher limits than the minimums shown above, County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Permittee. As a requirement of this Permit, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to County. County shall retain the right to review the coverage, form and amount of insurance required in this Permit and may require Permittee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required. County retains the right to demand a certified copy of any insurance policy required in this Permit after fifteen (15) days' notice. Permittee may fulfill some or all of the insurance requirements contained in this Permit under a plan of self-insurance. Permittee shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, Permittee's (i) net worth, and (ii) reserves for payment of the claims of liability against Permittee are sufficient to adequately compensate for the lack of other insurance coverage required by this Permit. Permittee's utilization of self-insurance shall not in any way limit liabilities assumed by Permittee under this Permit.

15. Indemnification. Permittee shall defend, indemnify, and save harmless County, its elected officials, officers, agents, and employees from and against any and all claims (whether valid or alleged), demands, and liabilities for loss of any kind or nature which County, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Permit or with the occupancy and use of the Permit Area by Permittee, its invitees, visitors, or any other persons; except with respect to any claims, demands, or liabilities arising out of the gross negligence or willful misconduct of any of the County, its elected officials, officers, agents, or employees. Permittee shall pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by County on account of any claims, demands, or liabilities.

16. Hazardous Substances. Permittee shall be solely responsible for fully complying with all present or future federal, state and local laws, statutes, regulations, ordinances, policies, guidelines and orders of any governmental entity regarding contaminated soils, hazardous materials or environmental clean-up, regardless of whether or not the obligation to comply is on the landowner.

17. Continuing Liability. The expiration or earlier termination of this Permit shall not release Permittee from any liability or obligation under this Permit from any acts or omissions of Permittee that occurred prior to the expiration or earlier termination of this Permit.

18. No Implied Easement. Nothing in this Permit shall be construed to grant Permittee an easement by implication, prescription, or any other operation of law, or to extend the Term of this Permit past the expiration date.

19. Notices. Any notice (“Notice” or “Notices”) required or permitted to be given pursuant to this Permit shall be written and shall be effective (i) when personally delivered to an officer or an authorized representative of the other party, (ii) sent by the United States Postal Service, postage prepaid, (iii) sent by courier delivery service, (iv) sent by email, or (iv) sent by the United States Postal Service, postage prepaid sent to the following addresses:

If to County: County of San Diego  
Department of General Services  
Real Estate Services Division  
5560 Overland Avenue  
Suite 410  
San Diego, CA 92123

If to Permittee: San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Attn: Josh Hoffman  
joshh@sdhc.org

Notices mailed by the United States Postal Service or sent by a courier delivery service shall be deemed to have been given, delivered and received three (3) business days after the date the Notice or other communication is postmarked by the United States Postal Service or dated by the courier delivery service. All other Notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written Notice delivered pursuant to this section, at any time designate a different address to which Notices shall be sent.

20. Supersedure. Upon the Commencement Date, this Permit shall supersede any other permit made or issued for the Permit Area between County and Permittee.

21. Business Days. The term “business days” as used in this Permit means any calendar day other than a Saturday, Sunday, or official County holiday.

22. Entire Agreement. This Permit constitutes the entire agreement between County and

Permittee with respect to the subject matter of this Permit, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

23. Signatures; Effectiveness. County and Permittee have executed this Permit as of the day and year written below. This Permit shall be effective as of the Commencement Date.

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

“Permittee”

San Diego Housing Commission

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

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

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

Print Title: \_\_\_\_\_

“County”

County of San Diego,  
a political subdivision of the State of California

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

\_\_\_\_\_  
Marko Medved, P.E., CEM, Director  
Department of General Services

**EXHIBIT "A"**  
**PERMIT AREA**

**Site Map – 5202 University Avenue**



	<b>COUNTY OF SAN DIEGO</b> GENERAL SERVICES	<b>Subject Parcels</b>
		APN: 472-390-03
		RPN: 2023-0035