



EXECUTIVE SUMMARY

HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: September 18, 2020

HCR20-078

SUBJECT: Final Bond Authorization for The Orchard at Hilltop Family Housing

COUNCIL DISTRICT(S): 4

ORIGINATING DEPARTMENT: Real Estate

CONTACT/PHONE NUMBER: Colin Miller (619) 578-7429

REQUESTED ACTION:

Authorize the issuance of up to \$27,885,943 of Housing Authority of the City of San Diego tax-exempt and up to \$3,500,000 of taxable Multifamily Housing Revenue Bonds to fund the acquisition and new construction of The Orchard at Hilltop Family Housing, formerly known as Hilltop & Euclid Family Housing, a 113-unit affordable rental housing development to be located at 922-944 Euclid Avenue, San Diego, CA 92114, which will consist of 111 units that will remain affordable for 55 years and two managers' units.

EXECUTIVE SUMMARY OF KEY FACTORS:

- The Orchard at Hilltop will consist of 113 new units: 14 studios, 23 one-bedroom units, 36 two-bedroom units, 20 three-bedroom units, 18 four-bedroom units and two managers' units. Affordability will range from 30 to 60 percent of San Diego's Area Medium Income.
- The developer Affirmed Housing Group, an experienced developer.
- On January 2, 2020, the Housing Commission Board of Commissioners approved a residual receipts loan of up to \$8,550,000 for the development.
- Total development cost is estimated at \$54,305,415 (\$480,579/unit).
- The Housing Commission has committed 25 federal project-based housing vouchers to the development.
- The use of federal project-based housing vouchers requires payment of Davis-Bacon prevailing wages.
- The development site is vacant, so no relocation assistance is necessary.
- The California Debt Limit Allocation Committee (CDLAC) has approved a \$27,885,943 bond allocation.
- If approved, construction can start in October 2020 and complete by summer 2022



REPORT

DATE ISSUED: September 15, 2020

REPORT NO: HCR20-078

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of September 18, 2020

SUBJECT: Final Bond Authorization for The Orchard at Hilltop Family Housing

COUNCIL DISTRICT: 4

REQUESTED ACTION

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STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) recommend that the Housing Authority of the City of San Diego (Housing Authority):

1. Authorize the issuance of up to \$27,885,943 in tax-exempt Multifamily Housing Revenue Bonds to facilitate Hilltop Family Housing L.P.’s new construction of The Orchard at Hilltop, formerly known as Hilltop & Euclid Family Housing, to be located at 922-944 Euclid Avenue, San Diego, California 92115, which will consist of 111 units that will remain affordable for 55 years and two managers’ units.
2. Authorize the issuance of up to \$3,500,000 in taxable Multifamily Housing Revenue Bonds for the Hilltop Family Housing L.P.’s construction financing for The Orchard at Hilltop Family Housing.

SUMMARY

A Development Summary is at Attachment 1.

Table 1 –Development Details

Address	922-944 Euclid Avenue, San Diego
Council District	4
Community Plan Area	Encanto Neighborhoods Community Planning Group (ENCPG)
Developers	Affirmed Housing Group, Inc.
Development Type	New construction
Construction Type	Mid-rise: two four-story and one three-story building
Parking Type	98 Standard non-accessible parking spaces: 3 accessible parking spaces; 21 spaces for commercial use: 57 secured bicycle parking spaces

	5 non-accessible EVCS for the multifamily units 1 accessible EVCS for the multifamily space
Housing Type (Affordable)	Low-income families and individuals
Lot Size	4.801 acre, 209,132 square feet.
Units (407-units total)	113 (111-units affordable, plus two managers' units).
Density	27.7 dwelling units per acre (113 units ÷ 4.08 acres).
Unit Mix	113 units: 14 Studio, 23 One-bedrooms, 36 two-bedrooms, 20 three-bedrooms, 18 four-bedrooms, and 2 managers' units.
Gross Building Area	145,047 square feet
Net Rentable Area	124,772 square feet
Commercial/Retail Space	8,485 square feet
Project Based Housing Vouchers	25 Project-Based Housing Vouchers

The Orchard at Hilltop is a new construction mixed-use development containing 113 apartment homes for single-member through large-family low-income households, as well as 8,485 square feet of commercial space. Pursuant to the terms of a Disposition and Development Agreement (DDA) with Civic San Diego, Affirmed Housing will redevelop the eastern half of the vacant nine-acre site, and a market-rate developer (Infill Development Company) will construct 20 market-rate single-family dwelling units and 27 market rate two- and three-story townhomes on the western half of the site. The terms, conditions and financing of the affordable and market-rate components are entirely separate from one another. This report only discusses the affordable mixed-use component under development by Affirmed Housing. On January 2, 2020, the Housing Commission Board of Commissioners approved a residual receipts loan of up to \$8,550,000 for the affordable housing development.

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

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

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

All of the 113 apartments (except for two manager's units) are income- and rent-restricted. Rents will be the lesser of California Tax Credit Allocation Committee (CTCAC) or California Redevelopment Law

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maximums, ranging from 30 percent to 60 percent of San Diego Area Median Income (AMI). The apartment unit types include studios to four-bedroom units.

The Development

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

The development proposes to provide 111 affordable rental housing units and two managers' units. The development will include studios, one-, two-, three-, and four-bedroom units. The apartments will range from 456 square feet for studios to 1,441 square feet for four-bedroom units. Site amenities will include: an approximately 8,485-square-foot community building, basketball court, gardening space, community room, and outdoor gathering areas. However, neither the Housing Commission's loan funds nor the Multifamily Housing Revenue Bond proceeds can be used for commercial space financing nor for furnishings.

The Property

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

Appraisal

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

Prevailing Wages

The development proposes to use U.S. Department of Housing and Urban Development (HUD) federal Project-Based Housing Vouchers (PBVs), administered by the Housing Commission, which will require the project to pay federal Davis-Bacon prevailing wages.

Relocation

The developer reports that there will be no relocation as the site is vacant.

Accessibility

CTCAC requires wheelchair accessibility in 10 percent of the units, with an additional 4 percent of the units accessible to residents with visual and/or hearing impairment. The same units can satisfy both of these accessibility requirements. In addition, these accessible units will satisfy the federal HOME Investment Partnerships Program (HOME) and Project-Based Housing Voucher accessibility requirement of wheelchair accessibility in 5 percent of the units, plus an additional 2 percent of the units accessible to residents with visual and/or hearing impairment. The project will be 100 percent accessible for visitors. The development will include Universal Design features.

Project Sustainability

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

Development Team

The proposed borrower will be Hilltop Family Housing L.P., a single-asset California limited partnership.

The limited partnership will include Affirmed Housing Group, Inc., (Affirmed Housing) as the Administrative General Partner, NEXUS for Affordable Housing as Managing General Partner, and Boston Capital as tax credit Investor Limited Partner (Attachment 3 – Organization Chart).

Since its inception in 1992, Affirmed Housing has successfully developed 42 communities with more than 3,000 affordable rental and for-sale apartments and homes. The Affirmed Housing pipeline of projects currently includes more than 500 apartments, each at various stages of development. Affirmed Housing has secured more than \$200 million of tax credit, conventional, and other financing for affordable housing developments. Recent developments include new construction in San Diego as well as acquisition and substantial rehabilitation in San Diego, Los Angeles, Riverside and Ventura counties. Projects in San Diego include the 229-unit 1050 B Apartments, the 106-unit Tesoro Grove Apartments, the 94-unit Hollywood Palms Apartments, and their most recent completions, the 80-unit Stella and 80-unit Bluewater properties.

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

Supportive Services

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

Table 2 Development Team Summary

ROLE	FIRM/CONTACT
Developers	Affirmed Housing
Owner/Borrower	Hilltop Family Housing L.P.,
Managing General Partner	NEXUS for Affordable Housing, Inc

Administrative General Partner	Affirmed Housing Group, Inc.
Tax Credit Investor Limited Partner	Boston Capital
Architect	Studio E
General Contractor	HA Builders
Property Management	Solari Enterprises
Supportive Services Provider	Compass for Affordable Housing
Construction and Permanent Lender	Boston Capital Finance LLC

Property Management

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

FINANCING STRUCTURE

The project has an estimated total development cost of \$54,305,415 (\$480,579/unit). Financing will include a combination of sources as described in Table 3. The developer’s current pro forma is included as Attachment 4 and is summarized below.

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

Financing Sources	Amounts	Financing Uses	Amounts	Per Unit
Permanent Loan	\$13,046,340	Property acquisition	\$1	\$0
CivicSD Predevelopment Loan	2,826,626	Construction costs	37,395,648	330,935
CivicSD Loan	3,023,374	Hard Cost Contingency	3,066,443	27,137
Housing Commission Loan	8,300,000	Architectural, Survey, & Engineering	2,559,135	22,647
Deferred developer’s fee	1,009,420	Development Impact Fees & Permits	3,000,531	26,553
Federal Tax Credit Equity	20,137,617	Construction Interest & Fees	1,695,300	15,003
State Tax Credit Equity	5,962,038	Financing costs	1,199,141	10,612
		Legal	365,000	3,230
		Other soft costs	865,066	7,655
		Soft Cost Contingency	\$559,150	4,948
		Developer’s fee	3,600,000	31,858
Total Development Cost	\$54,305,415	Total Development Cost (TDC)	\$54,305,415	\$480,579

The developer proposes financing with a combination of tax-exempt and taxable bonds, 4 percent tax credits, loan funds from Civic San Diego, deferred developer fee funds, and a Housing Commission residual receipts loan. The Housing Commission requires affordable housing developers to pursue all viable sources of funding to reduce the financing gap and amount of Housing Commission subsidy required. If other funding is secured, proceeds will first be used to make an adjustment to reduce the Housing Commission’s loan.

Developers’ Fee

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

On April 25, 2017, the Housing Authority approved the “Request for Approval of Updated Developer

Fees” (HAR17-011). That report approved certain developer fee guidelines for multifamily loans and bonds issuances. That report at its Attachment 1 states: “Developer fee for 4% tax credits: in project costs 15% of eligible basis....” For this development the developers are proposing a \$3,600,000 total developer fee which complies with HAR17-011. The net cash developer fee shall be \$2,590,580 provided, however, that in the event financing terms or construction costs change and result in a financing gap, the developer may defer additional developer fee. The fee proposed is consistent with the Request for Approval of Updated Developer Fees (HAR17-011) approved by the Housing Authority on April 25, 2017.

Development Cost Key Performance Indicators

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

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

Total Development Cost Per Unit	\$54,305,415 ÷ 113 units =	\$480,579
Housing Commission Subsidy Per Unit	\$8,300,000 ÷ 113 units =	\$73,451
Gross Building Square Foot Hard Cost	\$40,462,091 ÷ 145,047 sq. ft. =	\$279
Net Rentable Square Foot Hard Cost	\$40,462,091 ÷ 124,772 sq. ft. =	\$324

Project Comparison Chart

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

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

Project Name	Year	Units	Prevailing Wages	Total Development Cost	Cost Per Unit	HC Subsidy Per Unit	Gross Hard Cost Sq. Ft.
Subject- Hilltop Family Housing L.P.	2020	113	Yes	\$54,305,415	\$480,579	\$73,451	\$279
Civita	2017	203	No	\$99,859,721	\$491,919	0	\$332
Town & Country	2018	145	Yes	\$48,166,994	\$332,186	\$91,358	\$90
Ten Fifty B	2010	229	Yes	\$88,682,000	\$387,258	0	\$447
Stella	2017	80	Yes	\$28,734,448	\$359,181	\$93,750	\$303
Bluewater	2017	80	Yes	\$32,174,500	\$402,182	\$118,356	\$218

Proposed Housing Bonds Financing

The Housing Commission utilizes the Housing Authority’s tax-exempt borrowing status to pass on lower interest rate financing (and make 4 percent low-income housing tax credits available) to developers of affordable rental housing. The Housing Authority’s ability to issue bonds is limited under the U.S. Internal Revenue Code. To issue bonds for a development, the Housing Authority must first submit an application to the California Debt Limit Allocation Committee (CDLAC) for a bond allocation. Prior to submitting applications to CDLAC, developments are brought before the Housing

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Commission, Housing Authority, and City Council. Housing Authority bond inducement resolutions must be obtained prior to application submittal, and City Council Tax Equity and Fiscal Responsibility Act (TEFRA) resolutions must be secured no later than 30 days after application submittal. On January 7, 2020, these actions were completed for The Orchard at Hilltop.

On January 7, 2020, an application was submitted to CDLAC for a bond allocation of up to \$27,885,943. On April 14, 2020, CDLAC approved the \$27,885,943 bond allocation and CTCAC approved an allocation of 4 percent tax credits. The developer proposes that the bonds be issued through a tax-exempt private placement bond issuance. The bonds will meet all requirements of the Housing Commission's Multifamily Housing Revenue Bond Program policy and will fully comply with the City of San Diego's (City) ordinance on bonds disclosure. The bonds will meet all requirements of the Housing Commission's Multifamily Housing Revenue Bond Program policy and will fully comply with the City of San Diego's ordinance on bonds disclosure.

The bonds amount that will ultimately be set will be based upon development costs, revenues and interest rates prevailing at the time of the bonds issuance. The bonds proceeds will be used for both construction financing and permanent financing. A general description of the Multifamily Housing Revenue Bond Program and the actions that must be taken by the Housing Authority and by the City Council to initiate and finalize proposed financings are described in Attachment 5.

Public Disclosure and Bond Authorization

The tax-exempt and taxable debt, in the form of the bonds, will be sold through a private placement, purchased directly by Boston Capital Finance LLC. Boston Capital is a "qualified institutional buyer" within the meaning of the U.S. securities laws. At closing, Boston Capital will sign an "Investor's Letter" certifying, among other things, that it is buying the bonds for its own account and not for public distribution. Because the bonds is being sold through a private placement, an Official Statement will not be used. In addition, the bonds will be neither subject to continuing disclosure requirements, nor credit enhanced, nor rated. Under the private placement structure for this transaction, Boston Capital will make a loan to the Housing Authority pursuant to the terms of a Funding Loan Agreement among Boston Capital, the Housing Authority, and a to-be selected Fiscal Agent. The loan made by Boston Capital to the Housing Authority (Funding Loan) will be evidenced by the bonds, which will obligate the Housing Authority to pay Boston Capital the amounts it receives from the Borrower, as described below. The Housing Authority and the Borrower will enter into a Borrower Loan Agreement pursuant to which the proceeds of the Funding Loan will be advanced to the Borrower. In return, the Borrower agrees to pay the Fiscal Agent amounts sufficient for the Fiscal Agent to make payments on the bonds. The Housing Authority's obligation to make payments on the bonds is limited to amounts the Fiscal Agent receives from the Borrower under the Borrower Loan Agreement, and no other funds of the Housing Authority are pledged to make payments on the bonds. The transfer of the bonds to any subsequent purchaser will comply with Housing Commission's "Bond Issuance and Post-Issuance Compliance Policy" (policy number PO300.301). Moreover, any subsequent bonds holder will be required to represent to the Housing Authority that it is a qualified institutional buyer or accredited investor who is buying the bonds for investment purposes and not for resale, and it has made due investigation of any material information necessary in connection with the purchase of the bonds. The following documents will be executed on behalf of the Housing Authority with respect to the bonds: the Funding Loan Agreement, the Borrower Loan Agreement, the Assignment of Deed of Trust, the Regulatory Agreement, and other ancillary loan documents. At the time of docketing, documents in substantially final form will be presented to members of the Housing Authority. Any changes to the documents following Housing Authority approval require the consent of the City Attorney's Office and Bond Counsel. The bonds will be issued

pursuant to the Funding Loan Agreement. Based upon instructions contained in the Funding Loan Agreement and the Borrower Loan Agreement, Boston Capital will disburse the bonds proceeds for eligible costs and will, pursuant to an assignment from the Housing Authority, receive payments from the Borrower. The Borrower Loan Agreement sets out the terms of repayment and the security for the loan made by the Housing Authority to the Borrower, and the Housing Authority assigns its rights to receive repayments under the loan to Boston Capital. The Regulatory Agreement will be recorded against the property to ensure the long-term use of the project as affordable housing. The Regulatory Agreement will also ensure that the project complies with all applicable federal and state laws. An Assignment of Deed of Trust, and other loan documents, will assign the Housing Authority’s rights and responsibilities as the issuer to Boston Capital. It will be signed by the Housing Authority for the benefit of Boston Capital. Rights and responsibilities that are assigned to Boston Capital include the right to collect and enforce the collection of loan payments, the right to monitor project construction and related budgets, plus the right to enforce insurance and other requirements. These rights will be used by Boston Capital to protect its financial interests as the bonds holder.

Financial Advisor’s Recommendation

Jones Hall will be the Bond Counsel and CSG Advisors Incorporated will be the Financial Advisor to work on the tax-exempt and taxable bond issuance. After evaluating the terms of the proposed financing and the public benefits to be achieved, it is the Financial Advisor’s recommendation that the Housing Authority should proceed with the bond issuance. The Financial Advisor’s analysis and recommendation is included as Attachment 7.

AFFORDABLE HOUSING IMPACT

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

The development will be subject to a Housing Commission Declaration of Covenants and Restrictions, in addition to applicable tax credit and bond regulatory agreements that will restrict affordability of 111 units for 55 years. The HOME program’s funds will have affordability and rent restrictions for 20 years. Under the proposed loan and bond financing, the development will have 111 units restricted to households with incomes from 30 percent (\$24,300/year for a studio, one-person household) to 60 percent (\$74,880 year for a four-bedroom, five- person household) of the 2020 San Diego Area Median Income (AMI). The remaining two units will be unrestricted managers’ units. Table 6 summarizes the affordability:

Table 6 – The Orchard at Hilltop Affordability & Monthly Estimated Rent Table

Unit Type	AMI	Number of Units	Maximum TCAC Gross Rents
Studio	30%	14	\$606
One-Bedroom	30%	12	\$649
One- Bedroom	60%	11	\$1,299
Two-Bedroom	40%	5	\$1,040
Two-Bedroom	60%	31	\$1,560
Three-Bedroom	40%	4	\$1,201
Three-Bedroom	60%	16	\$1,802

Four-Bedroom	40%	3	\$1,340
Four-Bedroom	60%	15	\$2,010
Subtotal residential units		111	
Managers' units (one & two bedrooms)	--	2	--
Total Units		113	

There will be 20 total HOME restricted units. The tax credit restricted units and/or the HOME restricted units may be counted against the same specific units. The more stringent of the funding sources' affordability/rent restrictions will take precedence during the term of their applicability.

FISCAL CONSIDERATIONS

The funding sources and uses proposed for this approval are not included in the Housing Authority-approved Fiscal Year (FY) 2021 Housing Commission Budget. Approving this action will increase the FY 2021 total budget.

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

Bond Issuance Fees - \$78,465 (\$31,385,943 X .0025)

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

Program Administration Costs - \$78,465

There are no fiscal impacts to the Housing Commission, or to the City of San Diego, or to the Housing Authority associated with the requested bond actions. The bonds will not constitute a debt of the City of San Diego. If the bonds is ultimately issued for the project, the bonds will not financially obligate the City, the Housing Authority, or the Housing Commission because security for the repayment of the bonds will be limited to specific private revenue sources. Neither the faith and credit nor the taxing power of the City, nor the faith and credit of the Housing Authority will be pledged to the payment of the bonds. The developer is responsible for the payment of all costs under the financing, including the Housing Commission Bond Counsel and Financial Advisor fees. Additionally the developer is responsible for payment of the Housing Commission's .0025 bond amount issuer fee (estimated at \$78,465 with a \$31,385,943 tax-exempt and taxable bond issuance).

Development Schedule

The estimated development timeline is as follows:

Milestones	Estimated Dates
<ul style="list-style-type: none"> • Housing Commission final bond authorization • Housing Authority final bond authorization • Estimated bond issuance and escrow/loan closing • Estimated start of construction work • Estimated completion of construction work 	<ul style="list-style-type: none"> • September 18, 2020 • September 29, 2020 • October 2020 • October 2020 • July 2022

PREVIOUS COUNCIL and/or COMMITTEE ACTION

Site Development Permit No. 1976637 and Neighborhood Development Permit No. 2179090 were granted by the City Council of the City of San Diego to the City of San Diego and Affirmed Housing for the Hilltop & Euclid Mixed-Use Development Project No. 560527, currently known as The Orchard at Hilltop, on December 3, 2018. On January 2, 2020, the Housing Commission approved preliminary bond authorization and loan recommendation. On January 7, 2020, the Housing Authority approved preliminary bond authorization.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS

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

KEY STAKEHOLDERS and PROJECTED IMPACTS

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

ENVIRONMENTAL REVIEW

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

National Environmental Policy Act

Federal funds constitute a portion of this project making the project subject to U.S. Department of Housing and Urban Development under 24 CFR Part 58 of the National Environmental Policy Act

(NEPA). The Housing Commission received final NEPA clearance and authorizations to grant funds on May 2, 2020.

Respectfully submitted,

Approved by,



Colin Miller
Vice President, Multifamily Housing Finance
Real Estate Division

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

- Attachments:
- 1) Development Summary
 - 2) Site Map
 - 3) Organization Chart
 - 4) Developer's Project Proforma
 - 5) Multifamily Housing Revenue Bond Program Summary
 - 6) Civic Disposition and Development Agreement
 - 7) Financial Advisor's Analysis
 - 8) Developer's Disclosure Statement – Affirmed

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at www.sdhc.org

Attachment 1

Table 1 – Development Details

Address	922-944 Euclid Avenue, San Diego
Council District	4
Community Plan Area	Encanto Neighborhoods Community Planning Group (ENCPG)
Developers	Affirmed Housing Group, Inc.
Development Type	New construction
Construction Type	Mid-rise: two four-story and one three-story building
Parking Type	98 Standard non-accessible parking spaces; 3 accessible parking spaces; 21 spaces for commercial use; 57 secured bicycle parking spaces 5 non-accessible EVCS for the multifamily units 1 accessible EVCS for the multifamily space
Housing Type (Affordable)	Low-income families and individuals
Lot Size	4.801 acre, 209,132 square feet.
Units (407-units total)	113 (111-units affordable, plus two managers' units).
Density	27.7 dwelling units per acre (113 units ÷ 4.08 acres).
Unit Mix	113 units: 14 Studio, 23 One-bedrooms, 36 two-bedrooms, 20 three-bedrooms, 18 four-bedrooms, and 2 managers' units.
Gross Building Area	145,047 square feet
Net Rentable Area	124,772 square feet
Commercial/Retail Space	8,485 square feet
Project Based Housing Vouchers	25 Project-Based Housing Vouchers

Table 2 Development Team Summary

ROLE	FIRM/CONTACT
Developers	Affirmed Housing
Owner/Borrower	Hilltop Family Housing L.P.,
Managing General Partner	NEXUS for Affordable Housing, Inc
Administrative General Partner	Affirmed Housing Group, Inc.
Tax Credit Investor Limited Partner	Boston Capital
Architect	Studio E
General Contractor	HA Builders
Property Management	Solari Enterprises
Supportive Services Provider	Compass for Affordable Housing
Construction and Permanent Lender	Boston Capital Finance LLC

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

Financing Sources	Amounts	Financing Uses	Amounts	Per Unit
Permanent Loan	\$13,046,340	Property acquisition	\$1	\$0

CivicSD Predevelopment Loan	2,826,626	Construction costs	37,395,648	330,935
CivicSD Loan	3,023,374	Hard Cost Contingency	3,066,443	27,137
Housing Commission Loan	8,300,000	Architectural, Survey, & Engineering	2,559,135	22,647
Deferred developer's fee	1,009,420	Development Impact Fees & Permits	3,000,531	26,553
Federal Tax Credit Equity	20,137,617	Construction Interest & Fees	1,695,300	15,003
State Tax Credit Equity	5,962,038	Financing costs	1,199,141	10,612
		Legal	365,000	3,230
		Other soft costs	865,066	7,655
		Soft Cost Contingency	\$559,150	4,948
		Developer's fee	3,600,000	31,858
Total Development Cost	\$54,305,415	Total Development Cost (TDC)	\$54,305,415	\$480,579

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

Total Development Cost Per Unit	\$54,305,415 ÷ 113 units =	\$480,579
Housing Commission Subsidy Per Unit	\$8,300,000 ÷ 113 units =	\$73,451
Gross Building Square Foot Hard Cost	\$40,462,091 ÷ 145,047 sq. ft. =	\$279
Net Rentable Square Foot Hard Cost	\$40,462,091 ÷ 124,772 sq. ft. =	\$324

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

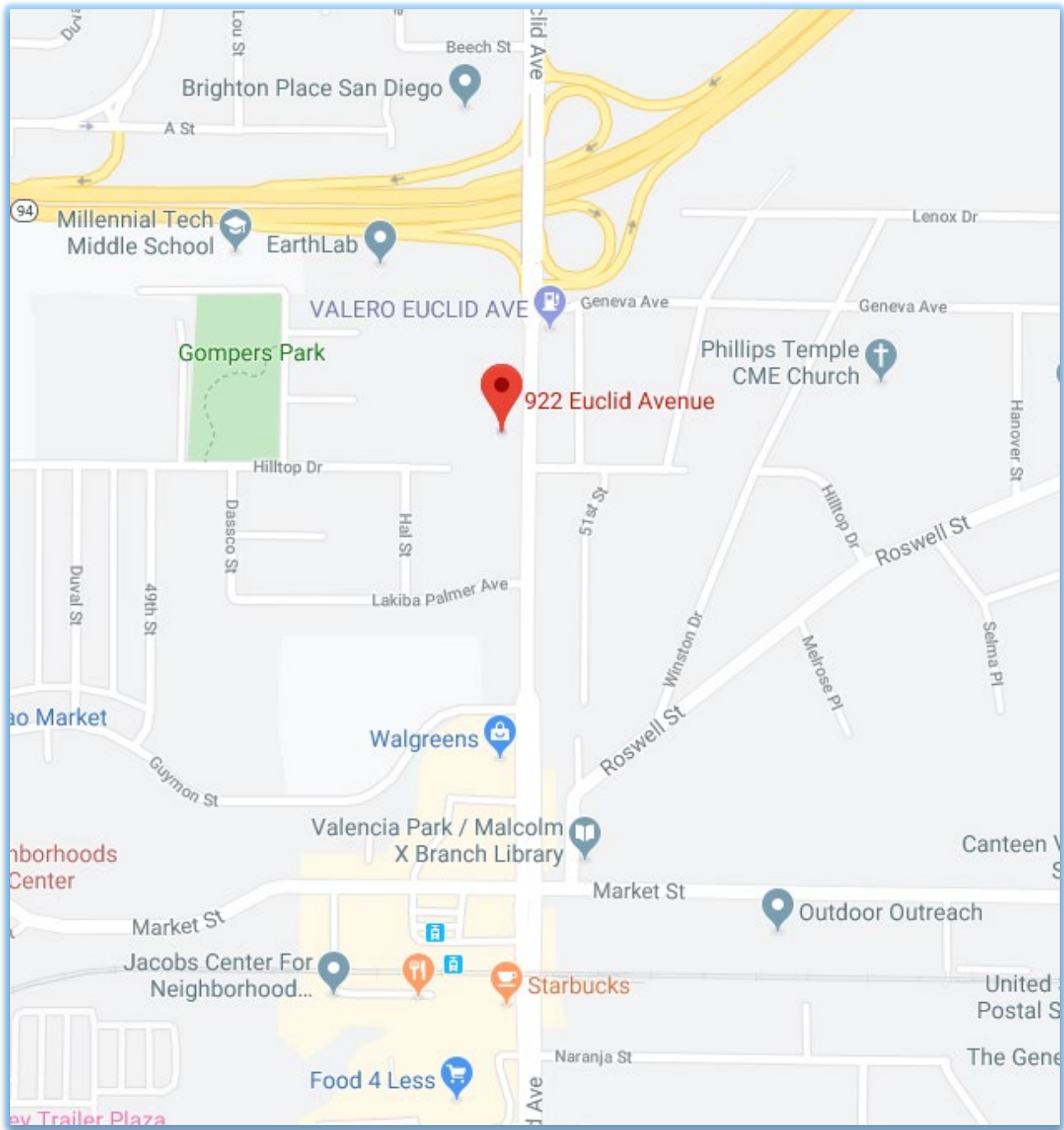
Project Name	Year	Units	Prevailing Wages	Total Development Cost	Cost Per Unit	HC Subsidy Per Unit	Gross Hard Cost Sq. Ft.
Subject- Hilltop Family Housing L.P.	2020	113	Yes	\$54,305,415	480,579	\$73,451	\$279
Civita	2017	203	No	\$99,859,721	\$491,919	0	\$332
Town & Country	2018	145	Yes	\$48,166,994	\$332,186	\$91,358	\$90
Ten Fifty B	2010	229	Yes	\$88,682,000	\$387,258	0	\$447
Stella	2017	80	Yes	\$28,734,448	\$359,181	\$93,750	\$303
Bluewater	2017	80	Yes	\$32,174,500	\$402,182	\$118,356	\$218

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

Unit Type	AMI	Number of Units	Maximum TCAC Gross Rents
Studio	30%	14	\$606
One-Bedroom	30%	12	\$649
One- Bedroom	60%	11	\$1,299
Two-Bedroom	40%	5	\$1,040
Two-Bedroom	60%	31	\$1,560
Three-Bedroom	40%	4	\$1,201
Three-Bedroom	60%	16	\$1,802
Four-Bedroom	40%	3	\$1,340
Four-Bedroom	60%	15	\$2,010
Subtotal residential units		111	

Managers' units (one & two bedrooms)	--	2	--
Total Units		113	

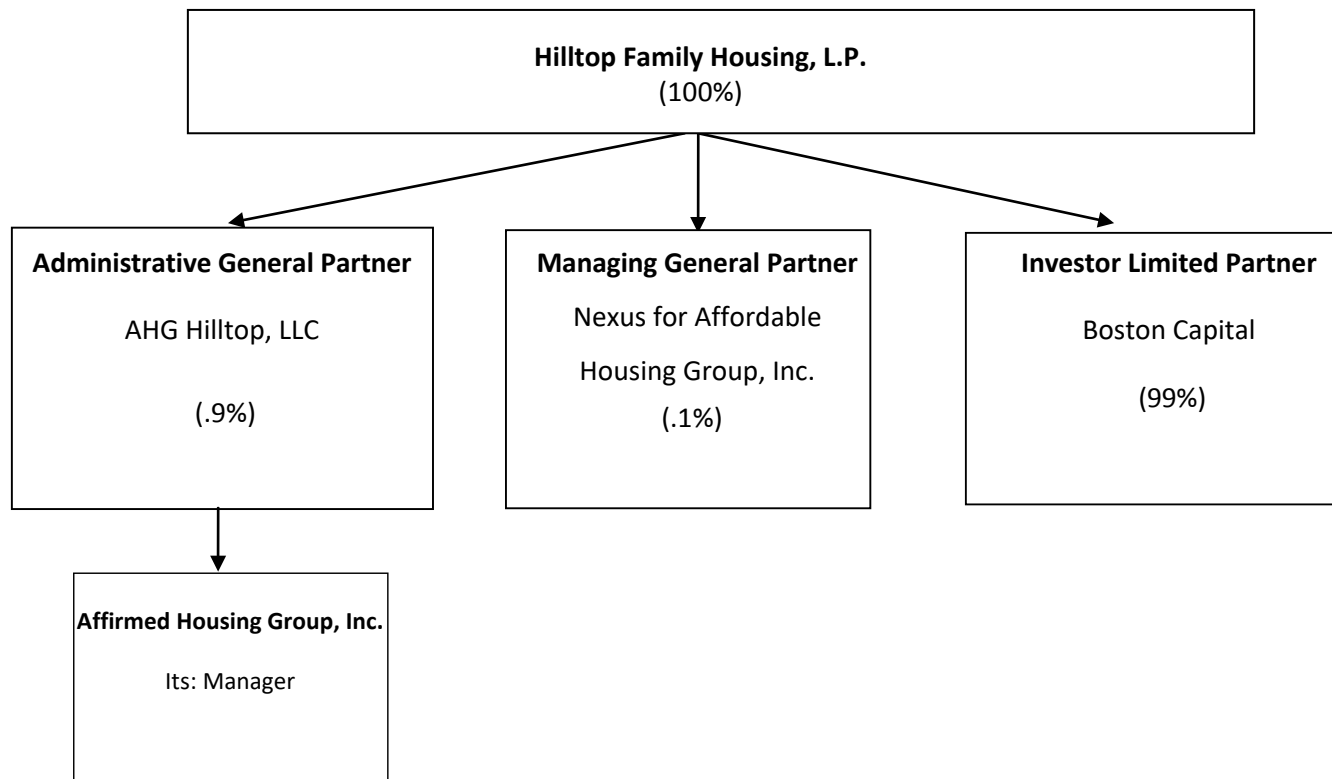
Attachment 2



Hilltop Family Housing, LP OWNERSHIP STRUCTURE:

Limited Partnership

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



OFFICERS AND/OR MANAGERS RESPONSIBLE FOR THE PROJECT:

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. James Silverwood
President
Affirmed Housing Group, Inc.
13520 Evening Creek Dr. N, #160
San Diego, CA 92128</p> | <p>3. Jonathan Taylor
Senior Project Manager
Affirmed Housing Group, Inc.
13520 Evening Creek Dr. N, #160
San Diego, CA 92128</p> |
| <p>2. Jimmy Silverwood
Executive Vice President
Affirmed Housing Group, Inc.
13520 Evening Creek Dr. N, #160
San Diego, CA 92128</p> | |

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

Attachment 4

Hilltop & Euclid

5012, 5032, 5052 Hilltop Drive, San Diego, CA 92102

113 Family Affordable Units (3 residential bldgs; 1 community bldg) + 8,300 SF Commercial
+ 47 for sale homes by other developer

4% + State Tax Credits + CivicSD Loan & Land Donation + SDHC Loan + 25 non-PSH PBVs

SOURCES

Name of Lender/Source	Amount of Funds	Per Unit	%
Permanent Loan	\$ 13,046,340	115,454	24.0%
CivicSD Predevelopment Loan	\$ 2,826,626	25,014	5.2%
CivicSD Loan-Affordable	\$ 3,023,374	26,756	5.6%
SDHC Loan	\$ 8,300,000	73,451	15.3%
Deferred Developer Fee	\$ 1,009,420	8,933	1.9%
Federal Tax Credit Equity	\$ 20,137,617	178,209	37.1%
State Tax Credit Equity	\$ 5,962,037	52,761	11.0%
TOTAL USES	\$ 54,305,414	480,579	100.0%

USES

Property Acquisition Cost	\$	1	0	0.0%
Total New Construction Cost	\$	37,395,648	330,935	68.9%
Hard Cost subtotal	\$	37,395,648	330,935	68.9%
Construction Contingency	\$	3,066,443	27,137	5.6%
Architecture & Engineering	\$	2,559,135	22,647	4.7%
Construction Interest & Fee	\$	1,695,300	15,003	3.1%
Capitalized Reserves	\$	365,000	3,230	0.7%
Taxes & Insurance	\$	180,000	1,593	0.3%
Cost of Issuance	\$	120,000	1,062	0.2%
Other: Const Mgmt & Deput	\$	150,000	1,327	0.3%
Escrow & Title	\$	75,000	664	0.1%
Legal Fees	\$	365,000	3,230	0.7%
Devel Impact Fees & Permi	\$	3,000,531	26,553	5.5%
Tax Credit Fees	\$	309,141	2,736	0.6%
Misc. Soft Costs	\$	865,066	7,655	1.6%
Soft Cost subtotal	\$	9,684,173	85,701	17.8%
Soft Cost Contingency	\$	559,150	4,948	1.0%
Developer Fee	\$	3,600,000	31,858	6.6%
TOTAL USES	\$	54,305,415	480,579	100.0%

(\$0)

FINANCING ASSUMPTIONS

Permanent Loan Amou	\$13,046,340
Permanent Loan Intere	3.80%
Permanent Loan Term	180
Net Operating Income	\$742,480
Debt Service	\$495,761
Debt Coverage Ratio	1.50
Construction Loan Amc	\$27,885,943
Construction Loan Intei	3.50%
Construction Loan Terr	28
Loan to Value	51.35%

INCOME

Type	Qty.	%AMI	Net Income	Total Income
Studio	7	30%	\$ 470	\$ 3,290
Studio-PBV	7	30%	\$ 1,080	\$ 7,560
1BR	6	30%	\$ 533	\$ 3,198
1BR-PBV	6	30%	\$ 1,232	\$ 7,392
1BR	11	60%	\$ 1,089	\$ 11,979
2BR-PBV	5	40%	\$ 1,495	\$ 7,475
2BR	31	60%	\$ 1,227	\$ 38,037
3BR-PBV	4	40%	\$ 2,180	\$ 8,720
3BR	16	60%	\$ 1,364	\$ 21,824
4BR-PBV	3	40%	\$ 2,629	\$ 7,887
4BR	15	60%	\$ 1,470	\$ 22,050
2BR MGR	1		\$ -	\$ -
3BR MGR	1		\$ -	\$ -
TOTAL	113			\$ 139,412
Annual Residential Income				\$ 1,487,028
Excess PBV Income:				\$ 185,916
Other Income				\$ 9,492
Total Gross Annual Income				\$ 1,682,436
Vacancy @ 5.0%				\$ (83,647)
TOTAL NET ANNUAL INCOME				\$ 1,598,789

EXPENSES

Administrative	\$ 1,425	\$ 161,000
Management	\$ 849	\$ 95,927
Utilities	\$ 1,177	\$ 133,000
Payroll	\$ 1,258	\$ 142,118
Total Insurance:	\$ 292	\$ 33,000
Maintenance	\$ 1,239	\$ 140,000
Other: Agency Monitoring Fee	\$ -	\$ -
Subtotal	\$ 6,239	\$ 705,045
Resident Services	\$ 637	\$ 72,000
Replacement Reserves	\$ 300	\$ 33,900
Real Estate Taxes	\$ 121	\$ 13,714
Other: SDHC Monitoring Fee	\$ 147	\$ 16,650
ANNUAL EXPENSES	\$	841,309

TAX CREDIT ASSUMPTIONS

9% Tie Breaker Score	35.21%
Federal Tax Credits Request	\$2,075,615
Federal Tax Credit Pricing	\$0.9800
State Tax Credits Requested	\$8,110,788
State Tax Credit Pricing	\$0.7425
LP Interest	99.00%
Applicable Rate - 9%	NA
Applicable Rate - 4%	3.07%
50% Test	53.53%

CONFIDENTIAL

CONSTRUCTION & PERMANENT FINANCING
Hilltop & Euclid

Construction Financing				
Name of Lender/Source	Term (months)	Interest Rate	Amount of Funds	Int. Reserve
Tax-Exempt Construction Loan	28	3.50%	27,885,943	1,045,000
Taxable Construction Loan	28	4.45%	3,329,527	105,000
Federal Tax Credit Equity			16,110,094	
Civic SD Land Donation			-	
CivicSD Predevelopment Loan			2,826,626	
CivicSD Loan-Affordable			2,721,037	
SDHC Loan			7,885,000	
Construction Loan Paydown			(6,452,812)	
Total Funds for Construction			54,305,415	

Permanent Financing				
Name of Lender/Source	Term (months)	Interest Rate	Amount of Funds	Debt Service
Permanent Loan	180	3.80%	13,046,340	634,970
Civic SD Land Donation			-	
CivicSD Predevelopment Loan	660	3.00%	2,826,626	
CivicSD Loan-Affordable	660	3.00%	3,023,374	
SDHC Loan	660	4.00%	8,300,000	
Deferred Developer Fee			1,009,420	
Total Permanent Financing			28,205,760	
Federal Tax Credit Equity			20,137,617	
State Tax Credit Equity			5,962,037	
Total Sources of Project Funds			54,305,414	

CONFIDENTIAL

DEVELOPMENT BUDGET

Hilltop & Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan-Affordable	0	Deferred Developer Fee	SDHC Loan	0		70% PVC for New Construction/ Rehabilitation	30% PVC for Acquisition
LAND COST/ACQUISITION												
Purchase Price		-	-	-	-	-	-	-	-	-	-	-
Donated Land (Eastern 1/2 of Site)	1.00	1	-	-	-	-	-	-	-	1	-	-
Land Carry Cost	-	-	-	-	-	-	-	-	-	-	-	-
Total Land Cost or Value	1.00	1	-	-	-	-	-	-	-	1	-	-
Existing Improvements Value	-	-	-	-	-	-	-	-	-	-	-	-
Off-Site Improvements	-	-	-	-	-	-	-	-	-	-	-	-
Total Acquisition Cost	-	-	-	-	-	-	-	-	-	-	-	-
Total Land Cost / Acquisition Cost	1.00	1	-	-	-	-	-	-	-	1	-	-
REHABILITATION												
Abatement/Demolition Structures	-	-	-	-	-	-	-	-	-	-	-	-
General Requirements	-	-	-	-	-	-	-	-	-	-	-	-
Contractor Overhead	-	-	-	-	-	-	-	-	-	-	-	-
Contractor Profit	-	-	-	-	-	-	-	-	-	-	-	-
Prevailing Wages	-	-	-	-	-	-	-	-	-	-	-	-
General Liability Insurance	-	-	-	-	-	-	-	-	-	-	-	-
Contractor Contingency	-	-	-	-	-	-	-	-	-	-	-	-
Total Rehabilitation Costs	-	-	-	-	-	-	-	-	-	-	-	-
Total Relocation Expenses	-	-	-	-	-	-	-	-	-	-	-	-
NEW CONSTRUCTION												
Site Work	6,202,560	6,202,560	-	-	-	-	-	-	-	6,202,560	6,202,560	-
Structures	25,445,071	25,445,071	-	-	-	-	-	-	-	25,445,071	25,445,071	-
General Requirements	1,450,000	1,450,000	-	-	-	-	-	-	-	1,450,000	1,450,000	-
Contractor Overhead	1,908,794	1,908,794	-	-	-	-	-	-	-	1,908,794	1,908,794	-
Contractor Profit	1,104,397	1,104,397	-	-	-	-	-	-	-	1,104,397	1,104,397	-
Prevailing Wages	-	-	-	-	-	-	-	-	-	-	-	-
GL Insurance + Bond Premium	965,276	965,276	-	-	-	-	-	-	-	965,276	965,276	-
Other:	-	-	-	-	-	-	-	-	-	-	-	-
Other: Commercial Space TI's	319,550	-	319,550	-	-	-	-	-	-	-	-	-
Total New Construction Costs	37,395,648.00	37,076,098	319,550	37,395,648.00	-	-	-	-	-	37,076,098	37,076,098	-

DEVELOPMENT BUDGET

Hilltop & Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan-Affordable	-	Deferred Developer Fee	SDHC Loan	-	-	70% PVC for NC/Rehab or 30% PVC for Fed Subsidized NC/Rehab	30% PVC for Acquisition
ARCHITECTURAL FEES												
Design (incl landscape)	1,422,162	1,422,162	-	-	-	-	-	-	-	1,422,162	1,422,162	-
Other:	-	-	-	-	-	-	-	-	-	-	-	-
Total Architectural Costs	1,422,162	1,422,162	-	-	-	-	-	-	-	1,422,162	1,422,162	-
Total Survey and Engineering	1,136,973	1,136,973	-	-	-	-	-	-	-	1,136,973	1,136,973	-
CONST. INTEREST & FEES												
Tax-Exempt Construction Loan Interest	645,000	645,000	-	-	-	-	-	-	-	645,000	645,000	-
Taxable Construction Loan Interest	105,000	105,000	-	-	-	-	-	-	-	105,000	105,000	-
Origination Fee	310,000	310,000	-	-	-	-	-	-	-	310,000	310,000	-
Cost of Issuance	120,000	120,000	-	-	-	-	-	-	-	120,000	120,000	-
Bond Premium	-	-	-	-	-	-	-	-	-	-	-	-
Taxes	30,000	30,000	-	-	-	-	-	-	-	30,000	30,000	-
GL Insurance	150,000	150,000	-	-	-	-	-	-	-	150,000	150,000	-
Title and Recording	75,000	75,000	-	-	-	-	-	-	-	75,000	75,000	-
Construction Service Fees (Bank)	75,000	75,000	-	-	-	-	-	-	-	75,000	75,000	-
Other: Const Mgmt & Deputy Services	150,000	150,000	-	-	-	-	-	-	-	150,000	150,000	-

Total Const. Interest & Fees	1,660,000	1,660,000	-	-	-	-	-	-	1,660,000	1,435,000	-
<i>PERMANENT FINANCING</i>											
Loan Origination Fee (Bank + Agencies)	160,300	160,300	-	-	-	-	-	-	160,300		
Credit Enhancement/Application Fee			-	-	-	-	-	-			
Title and Recording			-	-	-	-	-	-			
Taxes			-	-	-	-	-	-			
Insurance			-	-	-	-	-	-			
Other:			-	-	-	-	-	-			
Other: Post Construction Interest	400,000	400,000	-	-	-	-	-	-	400,000		
Total Perm. Financing Costs	560,300	560,300	-	-	-	-	-	-	560,300		
<i>LEGAL FEES</i>											
Lender Legal Pd. by Applicant	165,000	165,000	-	-	-	-	-	-	165,000	115,000	-
Other : Partnership & Transaction	200,000	200,000	-	-	-	-	-	-	200,000	-	-
Total Attorney Costs	365,000	365,000	-	-	-	-	-	-	365,000	115,000	-
<i>RESERVES</i>											
Rent Reserves	-	-	-	-	-	-	-	-	-		
Operating Reserve			-	-	-	-	-	-			
*3- Month Operating Reserve	365,000	365,000	-	-	-	-	-	-	365,000		
Other: (Specify)			-	-	-	-	-	-			
Total Reserve Costs	365,000	365,000	-	-	-	-	-	-	365,000		

DEVELOPMENT BUDGET

Hilltop & Euclid

	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Civic SD Land Donation	CivicSD Loan-Affordable	Deferred Developer Fee	SDHC Loan	-	-	-	70% PVC for NC/Rehab or 30% PVC for Fed Subsidized NC/Rehab	30% PVC for Acquisition
Total Appraisal Costs	6,250	6,250	-	-	-	-	-	-	-	6,250	6,250	-
Total Hard Cost Contingency	3,066,443	3,066,443	-	-	-	-	-	-	-	3,066,443	3,066,443	-
<i>OTHER PROJECT COSTS</i>												
TCAC App/Allocation/Monitoring	309,141	309,141	-	-	-	-	-	-	-	309,141		
Environmental Audit	212,286	212,286	-	-	-	-	-	-	-	212,286	212,286	-
Local Dev. Impact Fees	2,464,921	2,464,921	-	-	-	-	-	-	-	2,464,921	2,464,921	-
Permit Processing Fees	535,610	535,610	-	-	-	-	-	-	-	535,610	335,610	-
Marketing	54,030	54,030	-	-	-	-	-	-	-	54,030		
Furnishings	430,750	430,750	-	-	-	-	-	-	-	430,750	430,750	-
Market Study	21,750	21,750	-	-	-	-	-	-	-	21,750	21,750	-
Accounting/Reimbursables	25,000	25,000	-	-	-	-	-	-	-	25,000	25,000	-
Soft Cost Contingency	559,150	559,150	-	-	-	-	-	-	-	559,150	559,150	-
Other: CivicSD Fees			-	-	-	-	-	-	-			
Other: Estimating Services	15,000	15,000	-	-	-	-	-	-	-	15,000		
Other: Community Outreach	100,000	100,000	-	-	-	-	-	-	-	100,000	100,000	-
Other:			-	-	-	-	-	-	-			
Total Other Costs	4,727,638	4,727,638	-	-	-	-	-	-	-	4,727,638	4,149,467	-
SUBTOTAL PROJECT COST	50,705,415	50,385,865	319,550							50,385,865	48,407,393	-
	Total Project Cost	Total Residential	Total Commercial	Subtotal Eligible Basis							48,407,393	-
<i>DEVELOPER COSTS</i>												
Developer Overhead/Profit	3,600,000	3,600,000	-	-	-	-	-	-	-	3,600,000	3,600,000	-
Consultant/Processing Agent			-	-	-	-	-	-	-			
Project Administration			-	-	-	-	-	-	-			
Broker Fees Paid to a Related Party			-	-	-	-	-	-	-			
Construction Oversight by Developer			-	-	-	-	-	-	-			
Other: (Specify)			-	-	-	-	-	-	-			
Total Developer Costs	3,600,000.00	3,600,000	-	-	-	-	-	-	-	3,600,000	3,600,000	-
TOTAL PROJECT COSTS	54,305,415	53,985,865	319,550							53,985,865	52,007,393	-
Bridge Loan Expense During Construction												
Total Eligible Basis											52,007,393	-

PROJECT INCOME INFORMATION
Hilltop & Euclid

(a) # of Bedrooms	(b) # of Units	(c) Proposed Monthly Rent Less Utilities	(d) Total Monthly Rents (bxc)	(e) Monthly Utility Allow.	(f) Monthly Rent Plus Utilities (c + e)	(g) % of Area Median Income	PBVs Rents	PBV Add Mo. Rent Above TCAC	Total Add. Mo. Rents
Studio	7	\$ 470	\$ 3,290	\$ 17.00	\$ 487	30%	\$ -	\$ -	\$ -
Studio-PBV	7	\$ 680	\$ 4,760		\$ 680	30%	\$ 1,080.00	\$ 400	\$ 2,800
1BR	6	\$ 533	\$ 3,198	\$ 23.00	\$ 556	30%	\$ -	\$ -	\$ -
1BR-PBV	6	\$ 729	\$ 4,374		\$ 729	30%	\$ 1,232.00	\$ 503	\$ 3,018
1BR	11	\$ 1,089	\$ 11,979	\$ 23.00	\$ 1,112	60%	\$ -	\$ -	\$ -
2BR-PBV	5	\$ 1,068	\$ 5,340		\$ 1,068	40%	\$ 1,495.00	\$ 427	\$ 2,135
2BR	31	\$ 1,227	\$ 38,037	\$ 25.00	\$ 1,252	60%	\$ -	\$ -	\$ -
3BR-PBV	4	\$ 1,234	\$ 4,936		\$ 1,234	40%	\$ 2,180.00	\$ 946	\$ 3,784
3BR	16	\$ 1,364	\$ 21,824	\$ 27.00	\$ 1,391	60%	\$ -	\$ -	\$ -
4BR-PBV	3	\$ 1,377	\$ 4,131		\$ 1,377	40%	\$ 2,629.00	\$ 1,252	\$ 3,756
4BR	15	\$ 1,470	\$ 22,050	\$ 32.00	\$ 1,502	60%	\$ -	\$ -	\$ -
2BR MGR	1	\$ -	\$ -	\$ -	\$ -	MKT	\$ -	\$ -	\$ -
3BR MGR	1	\$ -	\$ -	\$ -	\$ -	MKT	\$ -	\$ -	\$ -
Affordable Units	111	Total Rent	\$ 123,919				Total Tranche B:		\$ 15,493

Aggregate Monthly Rents for All Units:	\$ 123,919
Aggregate Annual Rents for All Units:	\$ 1,487,028

Avg Affordability	51%
--------------------------	-----

Total Affordable Plus Manager Units: **113**

Annual Income from Laundry Facilities **\$ 9,492** **7.00** per unit per month
 Annual Income from Vending Machines **-**
 Annual Interest Income **-**
 Other Annual Income (Specify) **-**
Total Miscellaneous Income: 9,492
Total Annual Potential Gross Income: **\$ 1,496,520**

Excess PBV Income: **\$ 185,916**

Total Gross Annual Income **\$ 1,682,436**

Utility Allowances	Studio	1 BR	2 BR	3 BR	4 BR
Space Heating:			-	-	-
Water Heating:			-	-	-
Cooking:			-	-	-
Lighting:			-	-	-
Electricity:			-	-	-
Water:*			-	-	-
AC					
City's Fee					
Total:	17	23	25	27	32

**Owner paid utilities*

**ANNUAL RESIDENTIAL OPERATING EXPENSES
Hilltop & Euclid**

			Per Unit
Administrative	Advertising:	1,000	9
	Legal:	6,000	53
	Accounting/Audit:	12,000	106
	Security:	110,000	973
	General Office Costs:	32,000	283
	Total Administrative:	161,000	1,425
Management	Total Management Fee:	95,927	849
Utilities	Fuel:	-	-
	Gas:	10,000	88
	Electricity:	43,000	381
	Water/Sewer:	80,000	708
	Total Utilities:	133,000	1,177
Payroll / Payroll Taxes	On-site Manager(s):	49,920	442
	Maintenance Personnel:	62,400	552
	Other: Payroll Burden/Taxes	29,798	264
	Total Payroll/Payroll Taxes:	142,118	1,258
	Total Insurance:	33,000	292
Maintenance	Painting:	5,000	44
	Repairs:	16,000	142
	Trash Removal:	17,000	150
	Exterminating:	7,000	62
	Grounds:	75,000	664
	Other: Elevator + Fire Monitoring	15,000	133
	Other: Cleaning/Interiors	5,000	44
	Total Maintenance:	140,000	1,239
Other Expenses	Other:		-
	Other:		-
	Other:		-
	Other:		-
	Other:	-	-
	Total Other:	0	-

Total Expenses

Total Annual Residential Operating Expenses:	705,045
Total Number of Units in the Project:	113
Total Annual Operating Expenses Per Unit:	6,239
Total 3-Month Operating Reserve:	365,000
Total Annual Internet Expense (site amenity election):	-
Total Annual Service Amenities Budget (from project expenses):	72,000
Total Annual Reserve for Replacement:	33,900
Total Annual Real Estate Taxes:	13,714
Other: SDHC Monitoring Fee	16,650
Other: Bond Issuance Fee	15,000
TOTAL:	856,309

5,200 min per unit

637 per unit

300 per unit

yes non-profit

150

7,578 per unit
631 per month

Commercial Income

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

15-YEAR CASH FLOW PROJECTION

Hilltop & Euclid

	Inflation Factor	Year 1 2023	Year 2 2024	Year 3 2025	Year 4 2026	Year 5 2027	Year 6 2028	Year 7 2029	Year 8 2030	Year 9 2031	Year 10 2032	Year 11 2033	Year 12 2034	Year 13 2035
Rental Income	2.5%	1,487,028	1,524,204	1,562,309	1,601,367	1,641,401	1,682,436	1,724,497	1,767,609	1,811,799	1,857,094	1,903,522	1,951,110	1,999,887
PBV INCOME IF APPLICABLE	2.5%	185,916	190,564	195,328	200,211	205,216	210,347	215,606	220,996	226,521	232,184	237,988	243,938	250,036
TOTAL GROSS POTENTIAL REVENUE		1,672,944	1,714,768	1,757,637	1,801,578	1,846,617	1,892,783	1,940,102	1,988,605	2,038,320	2,089,278	2,141,510	2,195,048	2,249,924
Vacancy @	5.0%	83,647	85,738	87,882	90,079	92,331	94,639	97,005	99,430	101,916	104,464	107,075	109,752	112,496
Other Income	2.5%	9,492	9,729	9,973	10,222	10,477	10,739	11,008	11,283	11,565	11,854	12,151	12,454	12,766
TOTAL NET RENTAL INCOME		1,598,789	1,638,759	1,679,727	1,721,721	1,764,764	1,808,883	1,854,105	1,900,457	1,947,969	1,996,668	2,046,585	2,097,749	2,150,193
Advertising	3.5%	1,000	1,035	1,071	1,109	1,148	1,188	1,229	1,272	1,317	1,363	1,411	1,460	1,511
Legal	3.5%	6,000	6,210	6,427	6,652	6,885	7,126	7,376	7,634	7,901	8,177	8,464	8,760	9,066
Accounting	3.5%	12,000	12,420	12,855	13,305	13,770	14,252	14,751	15,267	15,802	16,355	16,927	17,520	18,133
Security	3.5%	110,000	113,850	117,835	121,959	126,228	130,645	135,218	139,951	144,849	149,919	155,166	160,597	166,218
Other Admin	3.5%	32,000	33,120	34,279	35,479	36,721	38,006	39,336	40,713	42,138	43,613	45,139	46,719	48,354
Management Fee	3.5%	95,927	99,285	102,760	106,356	110,079	113,932	117,919	122,046	126,318	130,739	135,315	140,051	144,953
Gas	3.5%	10,000	10,350	10,712	11,087	11,475	11,877	12,293	12,723	13,168	13,629	14,106	14,600	15,111
Electricity	3.5%	43,000	44,505	46,063	47,675	49,343	51,071	52,858	54,708	56,623	58,605	60,656	62,779	64,976
Water & Sewer	3.5%	80,000	82,800	85,698	88,697	91,802	95,015	98,340	101,782	105,345	109,032	112,848	116,798	120,885
On-Site Manager	3.5%	49,920	51,667	53,476	55,347	57,284	59,289	61,364	63,512	65,735	68,036	70,417	72,882	75,433
Maintenance Personnel	3.5%	62,400	64,584	66,844	69,184	71,605	74,112	76,706	79,390	82,169	85,045	88,021	91,102	94,291
Other Payroll	3.5%	29,798	30,841	31,920	33,037	34,194	35,391	36,629	37,911	39,238	40,611	42,033	43,504	45,027
Insurance	3.5%	33,000	34,155	35,350	36,588	37,868	39,194	40,565	41,985	43,455	44,976	46,500	48,079	49,865
Painting	3.5%	5,000	5,175	5,356	5,544	5,738	5,938	6,146	6,361	6,584	6,814	7,053	7,300	7,555
Repairs	3.5%	16,000	16,560	17,140	17,739	18,360	19,003	19,668	20,356	21,069	21,806	22,570	23,360	24,177
Trash Removal	3.5%	17,000	17,595	18,211	18,848	19,508	20,191	20,897	21,629	22,386	23,169	23,980	24,819	25,688
Exterminating	3.5%	7,000	7,245	7,499	7,761	8,033	8,314	8,605	8,906	9,218	9,540	9,874	10,220	10,577
Grounds	3.5%	75,000	77,625	80,342	83,154	86,064	89,076	92,194	95,421	98,761	102,217	105,795	109,498	113,330
Fire Monitoring/Elevator	3.5%	20,000	20,700	21,425	22,174	22,950	23,754	24,585	25,446	26,336	27,258	28,212	29,199	30,221
Other: Bond Issuance Fee	3.5%	15,000	15,525	16,068	16,631	17,213	17,815	18,439	19,084	19,752	20,443	21,159	21,900	22,666
Service Amenities Budget	3.0%	72,000	74,160	76,385	78,676	81,037	83,468	85,972	88,551	91,207	93,944	96,762	99,665	102,655
Other: SDHC Monitoring Fee	2.5%	16,650	17,066	17,493	17,930	18,378	18,838	19,309	19,792	20,286	20,794	21,313	21,846	22,392
Real Estate Taxes	2.0%	13,714	13,988	14,268	14,553	14,844	15,141	15,444	15,753	16,068	16,389	16,717	17,052	17,393
Replacement Reserve	0.0%	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900
TOTAL EXPENSES		856,309	884,361	913,376	943,387	974,428	1,006,535	1,039,744	1,074,094	1,109,624	1,146,374	1,184,388	1,223,707	1,264,378
Cash Flow Prior to Debt Service (NOI)		742,480	754,397	766,351	778,334	790,336	802,348	814,361	826,363	838,345	850,294	862,197	874,043	885,816
DEBT SERVICE - Permanent Loan		495,761	495,761	495,761	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970
		0	0	0	0	0	0	0	0	0	0	0	0	0
FORECASTED CASH AVAILABLE		246,719	258,636	270,590	143,363	155,365	167,377	179,390	191,393	203,374	215,323	227,227	239,072	250,845
Percent of Gross Revenue	8% Max	14.75%	15.08%	15.40%	7.96%	8.41%	8.84%	9.25%	9.62%	9.98%	10.31%	10.61%	10.89%	11.15%
25% Debt Service Test	Yr 1-3 Max	49.77%	52.17%	54.58%	22.58%	24.47%	26.36%	28.25%	30.14%	32.03%	33.91%	35.79%	37.65%	39.51%
Debt Coverage Ratio	1.15 Min	1.50	1.52	1.55	1.23	1.24	1.26	1.28	1.30	1.32	1.34	1.36	1.38	1.40
Partnership Management Fee	3.0%	20,000	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878	27,685	28,515
Asset Management Fee	3.0%	5,000	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524	6,720	6,921	7,129
Cash Available for Distribution		221,719	232,886	244,068	116,045	127,227	138,396	149,539	160,646	171,705	182,704	193,629	204,466	215,201
Deferred Fee	1,009,420	221,719	232,886	244,068	116,045	127,227	108,090	-	-	-	-	-	-	-
	2.0%	15,754	11,411	6,758	4,573	2,119	-	-	-	-	-	-	-	-
balance		803,455	581,980	344,671	233,198	108,090	-	-	-	-	-	-	-	-
CASH FLOW FOR DISTRIBUTION		-	-	-	-	-	30,305	149,539	160,646	171,705	182,704	193,629	204,466	215,201
Soft loan split	50.00%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,153	\$ 74,769	\$ 80,323	\$ 85,853	\$ 91,352	\$ 96,814	\$ 102,233	\$ 107,601
Annual Payment to CivicSD	41.34%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,265	\$ 30,912	\$ 33,208	\$ 35,494	\$ 37,767	\$ 40,026	\$ 42,266	\$ 44,485
Annual Payment to SDHC	58.66%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,888	\$ 43,858	\$ 47,115	\$ 50,359	\$ 53,585	\$ 56,789	\$ 59,967	\$ 63,116
Annual Payment to Affirmed	50.000%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,153	\$ 74,769	\$ 80,323	\$ 85,853	\$ 91,352	\$ 96,814	\$ 102,233	\$ 107,601

15-YEAR CASH FLOW PROJECTION

Hilltop & Euclid

	Inflation Factor	Year 14 2036	Year 15 2037	Year 16 2038	Year 17 2039	Year 18 2040	Year 19 2041	Year 20 2042	Year 21 2043	Year 22 2044	Year 23 2045	Year 24 2046	Year 25 2047	Year 26 2048
Rental Income	2.5%	2,049,885	2,101,132	2,153,660	2,207,501	2,262,689	2,319,256	2,377,238	2,436,669	2,497,585	2,560,025	2,624,025	2,689,626	2,756,867
PBV INCOME IF APPLICABLE	2.5%	256,287	262,694	269,262	275,993	282,893	289,966	297,215	304,645	312,261	320,068	328,069	336,271	344,678
TOTAL GROSS POTENTIAL REVENUE		2,306,172	2,363,826	2,422,922	2,483,495	2,545,582	2,609,222	2,674,452	2,741,314	2,809,846	2,880,093	2,952,095	3,025,897	3,101,545
Vacancy @	5.0%	115,309	118,191	121,146	124,175	127,279	130,461	133,723	137,066	140,492	144,005	147,605	151,295	155,077
Other Income	2.5%	13,085	13,412	13,747	14,091	14,443	14,804	15,174	15,554	15,943	16,341	16,750	17,168	17,598
TOTAL NET RENTAL INCOME		2,203,948	2,259,047	2,315,523	2,373,411	2,432,746	2,493,565	2,555,904	2,619,802	2,685,297	2,752,429	2,821,240	2,891,771	2,964,065
Advertising	3.5%	1,564	1,619	1,675	1,734	1,795	1,857	1,923	1,990	2,059	2,132	2,206	2,283	2,363
Legal	3.5%	9,384	9,712	10,052	10,404	10,768	11,145	11,535	11,939	12,357	12,789	13,237	13,700	14,179
Accounting	3.5%	18,767	19,424	20,104	20,808	21,536	22,290	23,070	23,877	24,713	25,578	26,473	27,400	28,359
Security	3.5%	172,035	178,056	184,288	190,738	197,414	204,324	211,475	218,877	226,537	234,466	242,673	251,166	259,957
Other Admin	3.5%	50,047	51,798	53,611	55,488	57,430	59,440	61,520	63,673	65,902	68,208	70,596	73,067	75,624
Management Fee	3.5%	150,026	155,277	160,712	166,337	172,158	178,184	184,420	190,875	197,556	204,470	211,627	219,034	226,700
Gas	3.5%	15,640	16,187	16,753	17,340	17,947	18,575	19,225	19,898	20,594	21,315	22,061	22,833	23,632
Electricity	3.5%	67,250	69,604	72,040	74,561	77,171	79,872	82,668	85,561	88,556	91,655	94,863	98,183	101,620
Water & Sewer	3.5%	125,116	129,496	134,028	138,719	143,574	148,599	153,800	159,183	164,755	170,521	176,489	182,666	189,060
On-Site Manager	3.5%	78,073	80,805	83,633	86,561	89,590	92,726	95,971	99,330	102,807	106,405	110,129	113,984	117,973
Maintenance Personnel	3.5%	97,591	101,007	104,542	108,201	111,988	115,907	119,964	124,163	128,509	133,006	137,662	142,480	147,466
Other Payroll	3.5%	46,603	48,234	49,922	51,669	53,478	55,349	57,287	59,292	61,367	63,515	65,738	68,038	70,420
Insurance	3.5%	51,611	53,417	55,287	57,222	59,224	61,297	63,443	65,663	67,961	70,340	72,802	75,350	77,987
Painting	3.5%	7,820	8,093	8,377	8,670	8,973	9,287	9,613	9,949	10,297	10,658	11,031	11,417	11,816
Repairs	3.5%	25,023	25,899	26,806	27,744	28,715	29,720	30,760	31,837	32,951	34,104	35,298	36,533	37,812
Trash Removal	3.5%	26,587	27,518	28,481	29,478	30,509	31,577	32,683	33,826	35,010	36,236	37,504	38,817	40,175
Exterminating	3.5%	10,948	11,331	11,727	12,138	12,563	13,002	13,458	13,929	14,416	14,921	15,443	15,983	16,543
Grounds	3.5%	117,297	121,402	125,651	130,049	134,601	139,312	144,188	149,234	154,457	159,863	165,459	171,250	177,243
Fire Monitoring/Elevator	3.5%	31,279	32,374	33,507	34,680	35,894	37,150	38,450	39,796	41,189	42,630	44,122	45,667	47,265
Other: Bond Issuance Fee	3.5%	23,459	24,280	25,130	26,010	26,920	27,862	28,838	29,847	30,891	31,973	33,092	34,250	35,449
Service Amenities Budget	3.0%	105,734	108,906	112,174	115,539	119,005	122,575	126,252	130,040	133,941	137,959	142,098	146,361	150,752
Other: SDHC Monitoring Fee	2.5%	22,952	23,526	24,114	24,717	25,335	25,968	26,618	27,283	27,965	28,664	29,381	30,115	30,868
Real Estate Taxes	2.0%	17,741	18,095	18,457	18,826	19,203	19,587	19,979	20,378	20,786	21,202	21,626	22,058	22,499
Replacement Reserve	0.0%	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900
TOTAL EXPENSES		1,306,446	1,349,961	1,394,972	1,441,531	1,489,690	1,539,507	1,591,037	1,644,339	1,699,476	1,756,510	1,815,507	1,876,534	1,939,663
Cash Flow Prior to Debt Service (NOI)		897,502	909,086	920,551	931,880	943,056	954,058	964,867	975,462	985,821	995,919	1,005,733	1,015,236	1,024,402
DEBT SERVICE - Permanent Loan		634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970
		0	0	0	0	0	0	0	0	0	0	0	0	0
FORECASTED CASH AVAILABLE		262,531	274,115	285,580	296,910	308,085	319,088	329,897	340,492	350,850	360,949	370,763	380,266	389,432
Percent of Gross Revenue	8% Max	11.38%	11.60%	11.79%	11.96%	12.10%	12.23%	12.34%	12.42%	12.49%	12.53%	12.56%	12.57%	12.56%
25% Debt Service Test	Yr 1-3 Max	41.35%	43.17%	44.98%	46.76%	48.52%	50.25%	51.95%	53.62%	55.25%	56.84%	58.39%	59.89%	61.33%
Debt Coverage Ratio	1.15 Min	1.41	1.43	1.45	1.47	1.49	1.50	1.52	1.54	1.55	1.57	1.58	1.60	1.61
Partnership Management Fee	3.0%	29,371	30,252	31,159	32,094	33,057	34,049	35,070	36,122	37,206	38,322	39,472	40,656	41,876
Asset Management Fee	3.0%	7,343	7,563	7,790	8,024	8,264	8,512	8,768	9,031	9,301	9,581	9,868	10,164	10,469
Cash Available for Distribution		225,818	236,300	246,631	256,792	266,764	276,527	286,059	295,339	304,343	313,046	321,423	329,446	337,087
Deferred Fee	1,009,420	-	-	-	-	-	-	-	-	-	-	-	-	-
2.0% balance		-	-	-	-	-	-	-	-	-	-	-	-	-
CASH FLOW FOR DISTRIBUTION		225,818	236,300	246,631	256,792	266,764	276,527	286,059	295,339	304,343	313,046	321,423	329,446	337,087
Soft loan split	50.00%	\$ 112,909	\$ 118,150	\$ 123,316	\$ 128,396	\$ 133,382	\$ 138,263	\$ 143,030	\$ 147,670	\$ 152,171	\$ 156,523	\$ 160,711	\$ 164,723	\$ 168,544
Annual Payment to CivicSD	41.34%	\$ 46,680	\$ 48,847	\$ 50,982	\$ 53,082	\$ 55,144	\$ 57,162	\$ 59,132	\$ 61,051	\$ 62,912	\$ 64,711	\$ 66,443	\$ 68,101	\$ 69,681
Annual Payment to SDHC	58.66%	\$ 66,229	\$ 69,304	\$ 72,334	\$ 75,314	\$ 78,238	\$ 81,102	\$ 83,897	\$ 86,619	\$ 89,260	\$ 91,812	\$ 94,269	\$ 96,622	\$ 98,863
Annual Payment to Affirmed	50.00%	\$ 112,909	\$ 118,150	\$ 123,316	\$ 128,396	\$ 133,382	\$ 138,263	\$ 143,030	\$ 147,670	\$ 152,171	\$ 156,523	\$ 160,711	\$ 164,723	\$ 168,544

15-YEAR CASH FLOW PROJECTION

Hilltop & Euclid

	Inflation Factor	Year 27 2049	Year 28 2050	Year 29 2051	Year 30 2052	Year 31 2053	Year 32 2054	Year 33 2055	Year 34 2056	Year 35 2057
Rental Income	2.5%	2,825,788	2,896,433	2,968,844	3,043,065	3,119,142	3,197,120	3,277,048	3,358,974	3,442,949
PBV INCOME IF APPLICABLE	2.5%	353,295	362,127	371,180	380,460	389,971	399,721	409,714	419,957	430,455
TOTAL GROSS POTENTIAL REVENUE		3,179,083	3,258,560	3,340,024	3,423,525	3,509,113	3,596,841	3,686,762	3,778,931	3,873,404
Vacancy @	5.0%	158,954	162,928	167,001	171,176	175,456	179,842	184,338	188,947	193,670
Other Income	2.5%	18,038	18,489	18,951	19,424	19,910	20,408	20,918	21,441	21,977
TOTAL NET RENTAL INCOME		3,038,167	3,114,121	3,191,974	3,271,773	3,353,568	3,437,407	3,523,342	3,611,425	3,701,711
Advertising	3.5%	2,446	2,532	2,620	2,712	2,807	2,905	3,007	3,112	3,221
Legal	3.5%	14,676	15,189	15,721	16,271	16,841	17,430	18,040	18,672	19,325
Accounting	3.5%	29,352	30,379	31,442	32,543	33,682	34,860	36,080	37,343	38,650
Security	3.5%	269,055	278,472	288,219	298,307	308,747	319,553	330,738	342,314	354,295
Other Admin	3.5%	78,271	81,010	83,846	86,780	89,817	92,961	96,215	99,582	103,068
Management Fee	3.5%	234,634	242,846	251,346	260,143	269,248	278,672	288,425	298,520	308,969
Gas	3.5%	24,460	25,316	26,202	27,119	28,068	29,050	30,067	31,119	32,209
Electricity	3.5%	105,176	108,857	112,667	116,611	120,692	124,916	129,288	133,814	138,497
Water & Sewer	3.5%	195,677	202,525	209,614	216,950	224,543	232,403	240,537	248,955	257,669
On-Site Manager	3.5%	122,102	126,376	130,799	135,377	140,115	145,019	150,095	155,348	160,785
Maintenance Personnel	3.5%	152,628	157,970	163,499	169,221	175,144	181,274	187,619	194,185	200,982
Other Payroll	3.5%	72,884	75,435	78,076	80,808	83,637	86,564	89,594	92,729	95,975
Insurance	3.5%	80,717	83,542	86,466	89,492	92,624	95,866	99,221	102,694	106,288
Painting	3.5%	12,230	12,658	13,101	13,559	14,034	14,525	15,034	15,560	16,104
Repairs	3.5%	39,135	40,505	41,923	43,390	44,909	46,481	48,107	49,791	51,534
Trash Removal	3.5%	41,581	43,037	44,543	46,102	47,715	49,386	51,114	52,903	54,755
Exterminating	3.5%	17,122	17,721	18,341	18,983	19,648	20,335	21,047	21,784	22,546
Grounds	3.5%	183,447	189,868	196,513	203,391	210,510	217,877	225,503	233,396	241,565
Fire Monitoring/Elevator	3.5%	48,919	50,631	52,403	54,238	56,136	58,101	60,134	62,239	64,417
Other: Bond Issuance Fee	3.5%	36,689	37,974	39,303	40,678	42,102	43,575	45,101	46,679	48,313
Service Amenities Budget	3.0%	155,275	159,933	164,731	169,673	174,763	180,006	185,406	190,968	196,697
Other: SDHC Monitoring Fee	2.5%	31,640	32,431	33,242	34,073	34,925	35,798	36,693	37,610	38,550
Real Estate Taxes	2.0%	22,949	23,408	23,876	24,354	24,841	25,338	25,845	26,361	26,889
Replacement Reserve	0.0%	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900	33,900
TOTAL EXPENSES		2,004,964	2,072,515	2,142,391	2,214,674	2,289,447	2,366,795	2,446,809	2,529,579	2,615,201
Cash Flow Prior to Debt Service (NOI)		1,033,202	1,041,606	1,049,583	1,057,099	1,064,121	1,070,611	1,076,533	1,081,847	1,086,510
DEBT SERVICE - Permanent Loan		634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970	634,970
		0	0	0	0	0	0	0	0	0
FORECASTED CASH AVAILABLE		398,232	406,636	414,612	422,129	429,150	435,641	441,563	446,876	451,540
Percent of Gross Revenue	8% Max	12.53%	12.48%	12.41%	12.33%	12.23%	12.11%	11.98%	11.83%	11.66%
25% Debt Service Test	Yr 1-3 Max	62.72%	64.04%	65.30%	66.48%	67.59%	68.61%	69.54%	70.38%	71.11%
Debt Coverage Ratio	1.15 Min	1.63	1.64	1.65	1.66	1.68	1.69	1.70	1.70	1.71
Partnership Management Fee	3.0%	43,132	44,426	45,759	47,131	48,545	50,002	51,502	53,047	54,638
Asset Management Fee	3.0%	10,783	11,106	11,440	11,783	12,136	12,500	12,875	13,262	13,660
Cash Available for Distribution		344,317	351,103	357,414	363,215	368,469	373,139	377,186	380,568	383,242
Deferred Fee	1,009,420	-	-	-	-	-	-	-	-	-
	2.0%	-	-	-	-	-	-	-	-	-
	balance	-	-	-	-	-	-	-	-	-
CASH FLOW FOR DISTRIBUTION		344,317	351,103	357,414	363,215	368,469	373,139	377,186	380,568	383,242
Soft loan split	50.00%	\$ 172,158	\$ 175,552	\$ 178,707	\$ 181,607	\$ 184,234	\$ 186,570	\$ 188,593	\$ 190,284	\$ 191,621
Annual Payment to CivicSD	41.34%	\$ 71,175	\$ 72,578	\$ 73,882	\$ 75,081	\$ 76,168	\$ 77,133	\$ 77,970	\$ 78,669	\$ 79,221
Annual Payment to SDHC	58.66%	\$ 100,983	\$ 102,974	\$ 104,825	\$ 106,526	\$ 108,067	\$ 109,437	\$ 110,623	\$ 111,615	\$ 112,400
Annual Payment to Affirmed	50.000%	\$ 172,158	\$ 175,552	\$ 178,707	\$ 181,607	\$ 184,234	\$ 186,570	\$ 188,593	\$ 190,284	\$ 191,621

ATTACHMENT 5
HOUSING COMMISSION MULTIFAMILY
HOUSING REVENUE BOND PROGRAM
SUMMARY

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

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

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

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

Approval Process:

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

- TEFRA Hearing and Resolution (Tax Equity and Fiscal Responsibility Act of 1982): To assure that projects making use of tax-exempt financing meet appropriate governmental purposes and provide reasonable public benefits, the IRS Code requires that a public hearing be held and that the issuance of bonds be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located (City Council). This process does not make the City financially or legally liable for the bonds or for the project.

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

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

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

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

DUPLICATE

Attachment 6

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

by and between the

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

and

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

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

CITY OF SAN DIEGO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **DEVELOPER DEPOSIT**

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

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

as City sees fit.

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

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

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

5.2 **Due Diligence**

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

5.2.2 **Review of Title.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initials of Authorized
City Representative

Initials of Authorized
Developer Representative

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) A copy of the Construction Contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. PROJECT DEVELOPMENT AND USE.

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

9.2 Construction Start and Completion of Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **INDEMNIFICATION.**

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

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

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

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

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

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

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

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

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

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

12. FINANCING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. REMEDIES AND INDEMNITY

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

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

Initials of Authorized
City Representative

Initials of Authorized
Developer Representative

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

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

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

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

14. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.11 Unavoidable Delay; Extension of Time for Performance.

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

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

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

Initials of Authorized
City Representative(s)

Initials of Authorized
Developer Representative(s)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

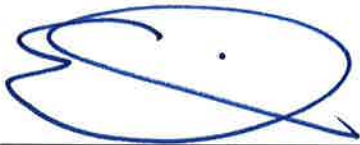
**SIGNATURE PAGE
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Hilltop & Euclid)**

CITY:

DEVELOPER:

CITY OF SAN DIEGO,
a municipal corporation


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

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

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

Approved as to form:

MARA W. ELLIOTT
City Attorney

By: 
Adam Wander
Deputy City Attorney

Dated: 12/18/19

September 02, 2020

Mr. Colin Miller
San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, California 92101

RE: Orchard at Hilltop Apartments

Dear Mr. Miller:

The San Diego Housing Commission (the "Commission") has retained CSG Advisors, Inc. to analyze the feasibility of the proposed tax-exempt financing for the Orchard at Hilltop Apartments (the "Project"). Our findings are organized as follows:

- Current Project Status and the Proposed Project
- The Proposed Financing
- Project's Projected Financial Status
- Benefits and Risks to the Commission
- Public Purpose
- Negotiation of Additional Public Benefit
- Recommendations

We have based our analysis of the proposed financing on documents provided by Affirmed Housing (the "Developer"), and on additional conversations and documents provided by representatives of the Developer and Commission staff. The documents examined included the Developer's proposed financial schedules and financing commitments from the proposed lender and investor. CSG has not visited the site of the proposed Project.

CURRENT PROJECT STATUS AND THE PROPOSED DEVELOPMENT

The Project will consist of a 113-unit development (the "Development") to be newly-constructed at 922 -1040 Euclid Avenue, San Diego, 92114 (the "Site"). The acquisition of the Site and construction of the Development would be financed from, among other sources, equity raised from the sale of 4% low-income housing tax credits and tax-exempt debt issued by the Housing Authority of the City of San Diego (the "Housing Authority"). 111 units (i.e., excluding two manager's units) will be subject to affordability restrictions as further described herein.

The Site is a parcel of approximately 4.801 acres. The Site is currently vacant. The Site is currently owned by City of San Diego. The Borrower will purchase the Site from the City pursuant to a Disposition and Development Agreement between the City of San Diego and Hilltop Family Housing, LP (the "Borrower") dated November 5, 2019.

On January 14, 2020, the Housing Authority approved a resolution evidencing its official intent to conduct a tax-exempt issuance in the not-to-exceed amount of \$29,000,000 for the Project. The resolution also approved submittal of the application to the California Debt Limit Allocation Committee (“CDLAC”) for an allocation of private activity tax-exempt authority for the Project.

On January 14, 2020, the City Council held a public hearing (“TEFRA”) required pursuant to Section 147(f) of the Internal Revenue Code for tax-exempt issuances. The City Council approved the resulting approving resolution on January 15, 2020. The TEFRA hearing remains valid for a period of one year.

On January 17, 2020, the Housing Authority submitted an application to CDLAC for \$27,885,943 in private activity tax-exempt issuance authority for the Project.

On April 14, 2020, CDLAC awarded \$27,885,943 in private activity tax-exempt allocation to the Housing Authority for the Project.

THE PROPOSED FINANCING

The Developer proposes that the Housing Authority issue up to \$27,885,943 in “Tax-Exempt Bonds” and up to \$3,500,000 in “Taxable Bonds” (together, the “Bonds”) for the Project. The Bonds would be issued pursuant to an Indenture and Loan Agreement.

The Developer proposes, pursuant to a Term Sheet, dated June 5, 2020, from Boston Capital Finance LLC, that the Bonds would be purchased on a private-placement basis by Boston Capital Finance LLC. Construction draws of tax-exempt and taxable bond proceeds would be funded on and as-needed “draw-down” basis.

Boston Capital Finance LLC would remain the permanent lender for the Project upon stabilization and conversion to permanent financing.

According to projections provided by the Developer, the total development cost (“TDC”) totals approximately \$54,305,391.

Orchard at Hilltop Apartments: Construction and Permanent Source Summary¹

	<u>Construction</u>	<u>Permanent</u>
Tax Exempt Bond	27,885,943	13,046,340
Pre-Conversion Bond Redemption	(6,452,809)	0
Taxable Bond	3,329,530	0
Tax Credit Equity (Federal)	16,110,100	20,137,620
Tax Credit Equity (State)	0	5,962,040
San Diego Housing Commission	7,885,000	8,300,000
Civic San Diego Predevelopment Loan	2,826,626	2,826,626
Civic San Diego Affordable	2,721,030	3,023,374
Deferred Developer Fee	0	1,009,420
Accrued Soft Loan Interest	0	<u>0</u>
Total Sources	54,305,420	54,305,420

Orchard at Hilltop Apartments: Permanent Use Summary²

	<u>Permanent</u>
Land and Acquisition Costs	1
Construction Costs	37,395,650
Construction Contingency	3,066,440
Developer Fee	3,600,000
Operating Reserve	365,000
Capitalized Construction Loan Interest	750,000
Other Hard and Soft Costs	9,128,300
Total Uses	54,305,391

Ownership

The Project will be owned by the Borrower. The Borrower will consist of AHG Hilltop LLC as the Administrative General Partner, and NEXUS For Affordable Housing its Managing General Partner. An entity of Boston Capital Corporation will be the tax credit investor limited partner.

Tax-Exempt Bond Structure and Credit Enhancement

Construction Loan

The Developer proposes that the Housing Authority issue Tax-Exempt Bonds in the maximum amount of \$27,885,943, and Taxable Bonds in the maximum amount of \$3,500,000 in order to finance the acquisition and construction of the Project. Solely revenues pledged under the Indenture and Loan Agreement will secure the payment of principal and interest to the bondholder.

The Bonds would be unrated, without credit enhancement, and would be purchased by Boston Capital Finance LLC on a on a private placement basis. The Bonds would be funded on a draw-down basis through the construction period. Upon stabilization and conversion, all

¹ Source: Developer projections. Rounding by CSG. Total of Uses and Sources may not equal due to rounding.

² Source: Developer projections. Rounding by CSG. Total of Uses and Sources may not equal due to rounding.

outstanding Taxable bonds and a portion the Tax-Exempt Bonds would be redeemed with tax credit equity and other sources available at conversion. *Please note, however, that the Boston Capital Finance Term Sheet currently reflects only \$2,200,000 of Taxable Bonds.*

As unrated, non-credit enhanced Bonds sold on a private placement basis, the Bonds must meet the minimum requirements of the Commission's policies for such issues (e.g., maximum \$100,000 minimum denominations, no more than 15 Bondholders, etc).

The construction period would be 28 months. The Boston Capital Finance LLC Term sheet indicates an initial construction period interest rate for the Tax-Exempt Bonds of 3.50% -- subject to a 3.80% ceiling. The Taxable Bonds will be subject to a 4.45% floor and a 4.80% ceiling. Interest rate during the construction period will be variable, set monthly at an annual rate equal to the sum 1-month LIBOR (with a floor of 1.50%) and 2.00%. As noted, the construction period interest rate will be subject to a 3.80% ceiling. Payments during the construction period would be interest-only.

Permanent Loan

Prior to the conversion to the permanent loan, the Borrower proposes to redeem a portion of the outstanding Bonds with available sources (e.g., tax credit equity). Upon satisfaction of certain conditions precedent to conversion to the permanent financing period, a remaining portion of the Tax-Exempt Bonds and all of the Taxable Bonds will have been redeemed. The remaining outstanding Tax-Exempt Bond will convert to a permanent loan.

According to the Boston Capital Finance LLC Term Sheet, the permanent loan would have a term of 15 years and an amortization period of 40 years. The permanent loan will bear a fixed rate of interest. Boston Capital Finance LLC has provided an indicative rate of 3.25% – subject to a floor rate of 3.80% – as of June 05, 2020.

Projected Issuance Date

The Developer proposes that the Housing Authority issue the Bonds on or about October 02, 2020. The Authority received an allocation of \$27,885,943 from CDLAC at its April 14, 2020 allocation meeting date. The allocation expiration date provided by CDLAC is October 27, 2020.

Commission Financial Involvement

The Commission will provide a subordinate construction loan in the amount of \$8,300,000. The Commission's loan will be funded by \$4,300,000 of HOME funds and \$4,000,000 from the Affordable Housing Fund (Inclusionary Affordable Housing Funds and Housing Impact Fees). The Commission's loan will mature on July 31, 2077 – approximately 55 years from the completion of the project – and will accrue simple interest at the rate of 4% per annum.

Affordability Restrictions

Upon implementing the proposed financing, the Project will be subject to the following regulatory restrictions and regulatory terms:

Source of Restriction	Restriction	Expiration Date
California Tax Credit Allocation Committee	26 units at 30% AMI 85 units at 60% AMI	55 years
Tax-Exempt Bond (CDLAC)	26 units at 50% AMI; 85 units at 60% AMI	55 years
San Diego Housing Commission	26 units at 30% AMI 12 units at 40% AMI 73 units at 60% AMI	July 31, 2077 (approx. 55 years)
Civic San Diego	26 units at 30% AMI 85 units at 60% AMI	55 years from Occupancy Date

Because certain of the above restrictions are over-lapping, the most restrictive restrictions will apply.

PROJECT'S PROJECTED FINANCIAL STATUS

Under the proposed financing – according to information provided by the Developer and analysis by CSG – annual debt service on the proposed senior permanent loan of \$13,046,340 would total approximately \$634,790. According to preliminary information provided by the Developer and analysis by CSG, stabilized annual cash flow (before reserves) after construction and lease-up (including Issuer fees) would total approximately \$138,077 at a debt coverage ratio (DCR) of 1.22. Cash flow after reserves would total approximately \$104,177 at a DCR of 1.16. The Boston Capital Finance LLC debt coverage minimum is 1.15.

Please note that the Boston Capital Finance LLC Term Sheet indicates a maximum loan amount of \$12,510,000, while the Developer's projections provide for \$13,046,340. The Developer and Boston Capital Finance LLC must reconcile the maximum loan amount.

THE BENEFITS AND RISKS TO THE COMMISSION

The proposed financing provides for financing for the acquisition and construction of the Project. By approving a recommendation to the Housing Authority to move forward with the approval process for the proposed tax-exempt Bond financing, the Commission will not obligate the Commission or the Housing Authority to issue the Bonds.

As proposed, the financing will create 111 affordable units in the City of San Diego. These units will remain long-term affordable for approximately 55 years under the Commission's restrictions.

If the Authority issues the Bonds, the Commission would receive a fee at closing of 0.25% of the issue amount (approximately \$78,465 (assuming maximum issuance amount) and an annual fee equal to the greater of \$10,000 and 0.125% of the outstanding Bonds.

PUBLIC PURPOSE

The proposed financing will result in the creation of 111 affordable family housing units in the City of San Diego. The proposed financing will result in new CDLAC, CTCAC and Commission regulatory restrictions as follows (most restrictive) for 55 years:

- 26 units at 30% AMI
- 12 units at 40% AMI
- 73 units at 60% AMI

NEGOTIATION OF ADDITIONAL PUBLIC BENEFIT

As noted above, the financing will result in long-term affordability restrictions on 111 units within the Project.

RECOMMENDATIONS

Based upon analysis of the available information, we recommend that the Commission approve moving forward with the proposed issuance. Our recommendation is based upon the following:

- The financing will create 111 affordable family units in the City of San Diego with long-term affordability covenants.
- The Commission has received tax-exempt authority of \$27,885,943 from CDLAC for the Project.
- Boston Capital Finance LLC and Redstone are currently underwriting the Project.
- The Commission will not be responsible for costs of issuance. The Commission will receive an issuance fee at closing of approximately \$78,465 (assuming maximum issuance amount), and a long-term annual fee equal to the greater of \$10,000 and 0.125% the outstanding Notes.

- The net Tax-Exempt Bond financing and tax credit equity will provide approximately \$13,048,670 for development costs.

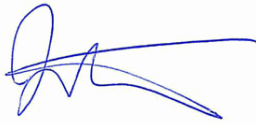
Contingent Items

The Commission may choose to move forward with the financing subject to the following contingencies:

- The Project's financial underwriting must be consistent among the Borrower and Boston Capital Finance LLC.
- As of this writing, Boston Capital Finance LLC nor Boston Capital Corporation have provided final credit approval for the financing. The Bonds cannot be issued without these final approvals.
- Final Bonds documents and approving resolution must be approved by the Housing Authority.

Should you require any further information or would like to discuss the Project or the proposed financing in additional detail, please do not hesitate to contact me.

Sincerely,
CSG Advisors



John Hamilton



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

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

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

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

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

No

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

No

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

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

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

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

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

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

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

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

Name: US Bank

Address: 4747 Executive Dr., 3rd Fl., San Diego, CA 92121

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

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

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

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

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

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

Yes No

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

N/A

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

Yes No

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

N/A

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

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

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

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

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

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

Yes No

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

N/A

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

General description of such work:

N/A

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

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

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

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

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

Awarding Agency	Amount	Date Opened
N/A		

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

N/A

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

Yes No

If yes, explain:

N/A

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

N/A

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

Yes No

If yes, explain:

N/A

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

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

Check coverage(s) carried:

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

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

Check coverage(s) carried:

- Comprehensive Form
- Owned
- Hired
- Non-Owned

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

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

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

Government Complaint	Entity	Making	Date	Resolution
N/A				

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

Yes No

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

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

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

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

N/A

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

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

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

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

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

Yes No

If yes, explain:

N/A

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

Yes No

If yes, explain:

N/A

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

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

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

Phone: (760) 744-1050 ext 3238

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

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

N/A

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

Name	Experience
TBD	

CONSENT TO PUBLIC DISCLOSURE BY CONTRACTOR

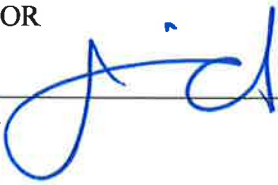
By providing the "Personal Information", (if any) as defined in Section 1798.3(a) of the Civil Code of the State of California (to the extent that it is applicable, if at all), requested herein and by seeking a loan from, a grant from, a contract with, the sale of real estate to, the right to develop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

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

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

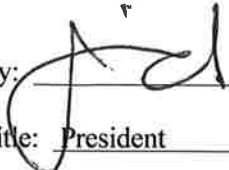
Executed this 22 day of November, 20 19, at San Diego, California.

CONTRACTOR

By: 
Signature
President
Title

CERTIFICATION

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

By: 
Title: President
Dated: 9/22/2019

By: _____
Title: _____
Dated: _____

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

JURAT

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

State of California

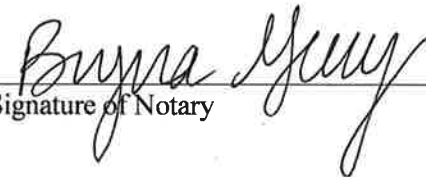
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 22 day of November, 2019

by James Silverwood personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



SEAL

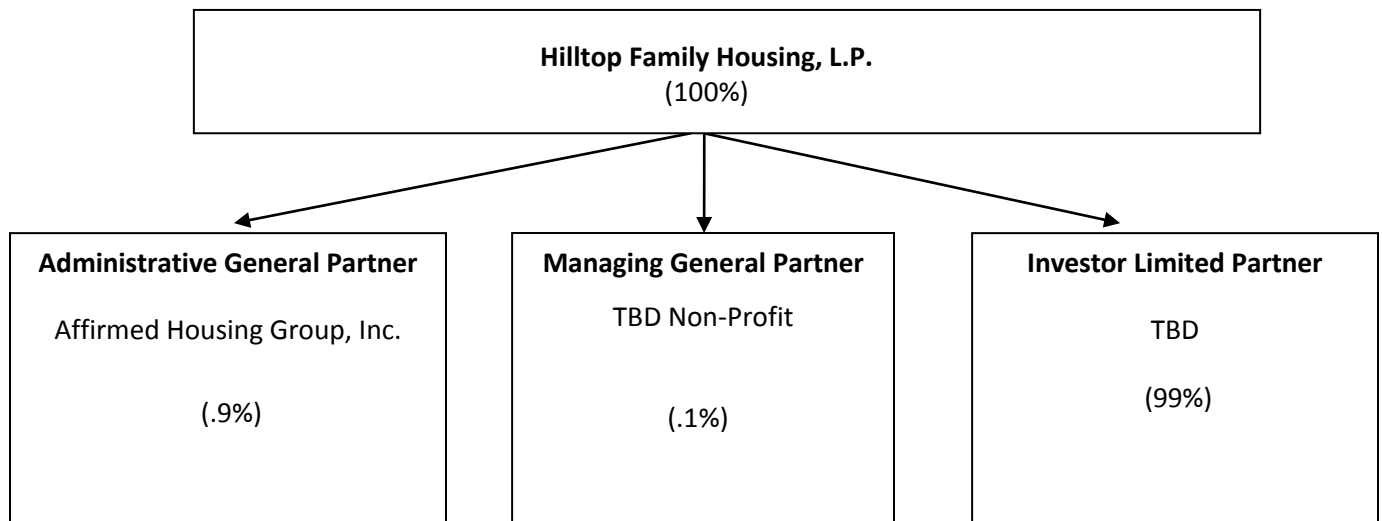

Signature of Notary

Hilltop Family Housing, LP

OWNERSHIP STRUCTURE:

Limited Partnership

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



OFFICERS AND/OR MANAGERS RESPONSIBLE FOR THE PROJECT:

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

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