

EXHIBIT D

GENERAL TERMS AND CONDITIONS

1. Effective Date, Commencement of Work and Completion Dates

This Agreement is effective upon the date of the Department representative's signature on page one of the fully executed Standard Agreement, STD 213. The Sponsor agrees that development of the Affordable Housing Development has not commenced as of the submission deadline for applications set forth in the NOFA. Additionally, if Section 1 of Exhibit E of this Agreement identifies FWHG as a Funding Program featuring a construction loan component, then Sponsor agrees that Work must not commence prior to construction close. The Sponsor agrees that the Work must be completed as and when specified in this Agreement and is subject to the specified expiration date for this Agreement unless a written request for an extension is submitted and approved by the Department in writing at least ninety (90) calendar days prior to the expiration date of this Agreement. Any extension to the termination date shall require an amendment to this Agreement be executed by all parties prior to the operative expiration date hereof.

2. Termination

The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) calendar days' notice in writing to the Sponsor or Borrower. Such termination rights shall be in addition to, and not in limitation of, any other rights and remedies available to the Department under this Agreement or any other agreements contemplated herein, including without limitation the documents evidencing the Loan(s), at law or in equity, all of which shall be cumulative and nonexclusive to the maximum extent permitted by law. Cause shall consist of violations by the Sponsor or Borrower of any terms and/or special conditions of this Agreement, including but not limited to:

- A. Failure of all permanent financing Loan(s) to close simultaneously with one another in a single escrow on or before the Loan closing deadline as stated under Section 3 ("Timing") of these General Terms and Conditions. If Section 1 of Exhibit E of identifies any construction-to-permanent financing, this provision does not apply to instruments recorded at construction close, but is applicable to any instruments relating to such construction-to-permanent financing which the Department requires to be recorded as part of the Development's conversion to permanent financing, including without limitation any subordination agreements, amendments to previously recorded regulatory agreements, and amendments to previously recorded deeds of trust.
- B. Failure of the Sponsor or Borrower to satisfy in a timely manner each of the conditions set forth in these General Terms and Conditions, the Special

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- Conditions in Exhibit E of this Agreement, the Project Report, and the Award Letter.
- C. Determination by the Department that:
- (i) any material fact, representation, or warranty made or furnished to the Department by the Sponsor in connection with the Application or the Award Letter shall have been untrue, incomplete, or misleading at the time that such fact, representation, or warranty was made (or made known) to the Department, or subsequently becomes untrue or misleading; or,
 - (ii) the Sponsor or Borrower has at any time concealed any material fact from the Department related to the Application or the Development.
- D. Filing of a petition by Sponsor or Borrower, or any affiliate, control person or general partner of either of them, for relief under the Bankruptcy Code; the filing of any pleading or answer by Sponsor or Borrower, or any affiliate, control person or general partner of either of them, in any involuntary proceeding under the Bankruptcy Code; a general assignment by Sponsor or Borrower, or any affiliate, control person or general partner of either of them, for the benefit of creditors; or the filing of an application for the appointment of a receiver, trustee, custodian or liquidator for Sponsor or Borrower for any of its property, or for any affiliate, control person or general partner of Sponsor or Borrower of any of its property.
- E. Failure of Sponsor or Borrower, or of any affiliate, control person or general partner of either of them, to effect a full dismissal of any involuntary petition under the Bankruptcy Code that is filed against Sponsor or Borrower, or any affiliate, control person or general partner of either of them, or that in any way restrains or limits Sponsor or Borrower, any affiliate, control person or general partner of either of them, or the Department regarding the Loan(s) or the Development, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or thirty (30) calendar days after the date of filing of such involuntary petition.
- F. Attachment, levy, execution, or other judicial seizure of any portion of the Development, or any substantial portion of the other assets of Sponsor or Borrower, or any affiliate, control person or general partner of either of them, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) calendar days after the attachment, levy, execution, or seizure.
- G. Pendency of any proceeding challenging the legal existence or authority of Sponsor or Borrower, or any affiliate, control person or general partner of either of them, or any proceeding challenging the legality of the Development.

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- H. Failure of Sponsor or Borrower to close the Department-approved third-party construction financing on or before the date indicated under Section 3 ("Timing") of these General Terms and Conditions.

3. Timing

- A. The Sponsor must close the construction financing approved by the Department and commence construction of the Development in accordance with the development schedule or Performance Milestones referenced in Section 7 of Exhibit A of this Agreement, or as extended by the Department pursuant to the terms and requirements thereof. Upon the Department's request, the Sponsor must promptly provide evidence of recorded deeds of trust for all construction financing, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) and notice to proceed delivered to the contractor. If no construction lender is involved, and the Development is receiving low-income housing tax credits, evidence must be submitted that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred.
- B. To the extent Funding Programs have different liquidation dates, Sponsor must satisfy all conditions for disbursement no later than the earliest liquidation date as identified in Section 1 of Exhibit E of this Agreement and in sufficient time to permit permanent conversion to occur at least 90 calendar days prior to said liquidation date.

4. Disputes

In the event of a conflict between this Agreement or the Program Requirements and any Sponsor- or Borrower-controlled documents, this Agreement and the Program Requirements shall prevail, be applicable and be enforced by the Department, notwithstanding any prior conduct of the Department, including without limitation, the Department's prior or preliminary review of any such documents at the time of construction loan closing or otherwise.

5. Consent

The parties agree that wherever the consent of, approval of, or acceptance by the Department, the Borrower or the Sponsor is required under this Agreement, such consent, approval, or acceptance means prior express written consent, approval, or acceptance. The consent, approval, or acceptance of any party, where required, will not be unreasonably withheld, conditioned, or delayed, unless the same is specified as being in that party's sole and absolute discretion or other words of similar import.

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6. Mandatory Contractual Obligations

When used in this Agreement, the term “must” and “shall” denote a mandatory contractual obligation and is not permissive.

PRE-CONSTRUCTION LOAN REQUIREMENTS

Unless otherwise approved in writing by the Department, Sponsor must comply with the following conditions prior to the close of the construction loan(s) for the Development (construction loan includes a rehabilitation loan):

7. Site Control

The Sponsor or Borrower, as applicable, must have one hundred percent (100%) control of the Property at time of Application and through permanent loan closing, and such control must not be contingent on the approval of any other person. The status and nature of the Sponsor's or Borrower's title and interest in the Property shall be subject to the Department's approval. Site control may be evidenced by one of the following:

- A. Fee title;
- B. A leasehold interest on the Property with provisions that enable the lessee to make improvements on and encumber the Property provided that the terms and conditions of any proposed lease shall permit compliance, prior to loan closing, with all Program Requirements, including without limitation, UMR section 8316;
- C. An enforceable option to purchase or lease which shall extend through the anticipated date of the Program award as specified in the Notice of Funding Availability (NOFA);
- D. An executed disposition and development agreement, or irrevocable offer of dedication to a public agency;
- E. A right of way or easement, which is either perpetual, or of sufficient duration to meet Program Requirements, and which allows the applicant and/or developer to access, improve, occupy, use, maintain, repair, and alter the property underlying the right of way or easement;

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- F. An executed encroachment permit for construction of improvements or facilities within the public right of way or on public land;
- G. An executed agreement with a public agency that gives the Sponsor or Borrower exclusive rights to negotiate with that agency for acquisition of the site, provided that the major terms of the acquisition have been agreed to by both parties;
- H. A land sales contract or other enforceable agreement for the acquisition of the property; or
- I. Other forms of site control that give the Department assurance (equivalent to A-H above) that the applicant or developer will be able to complete the Development and all housing designated in the Application in a timely manner and in accordance with all of the Program Requirements.

If the Sponsor's or Borrower's interest in the Property is a leasehold, the lease must provide adequate security for the Loan(s) and must comply with UMR section 8316. The Sponsor or Borrower must provide a copy of the ground lease for the Department's legal review and approval. The lessor and lessee will be required to sign the Department's standard lease rider, unless the lessor agrees to sign the Funding Program Loan documents as required by the Department and encumber all its interest in the Property. Where the lessee and the lessor are affiliated or related parties, both the lessee and the lessor must execute all Funding Program Loan documents in order to encumber both the leasehold and fee interests in the Property.

8. **Preliminary Report**

The Sponsor must provide a current preliminary report from a title company acceptable to the Department for the Property on which the Development is located. If the Sponsor's or Borrower's interest in the Property is leasehold, then the Sponsor must provide a current preliminary report from a title company acceptable to the Department for the leasehold interest and the fee interest.

9. **Site Inspection**

The Department reserves the right, upon reasonable notice and without obligation, to inspect the Development site and any structures or other improvements thereon to determine, investigate or assess whether the Development site complies with this Agreement and the Program Requirements. If the Department reasonably determines that the site does not comply with this Agreement or the Program Requirements, the Department reserves the right to rescind the award and the Loan(s).

10. **Adaptability and Accessibility**

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The Sponsor and the Development must comply with all applicable federal, state, and local laws regarding adaptability and accessibility in the design, construction, and rehabilitation of residential projects for persons with disabilities, including, without limitation, those set forth in Section 7314 of the Program Guidelines, if Section 1 of Exhibit E of this Agreement identifies MHP as a Funding Program, and Section 303 of the Program Guidelines, if Section 1 of Exhibit E of this Agreement identifies VHHP or FWHG as a Funding Program.

11. **Physical Needs Assessment**

If the Development involves rehabilitation of existing units, the Sponsor must provide a post-rehabilitation physical needs assessment acceptable to the Department, in accordance with instructions provided by the Department.

12. **Reserve Study**

Upon request by the Department, Sponsor must provide an independent, third-party replacement reserve study acceptable to the Department.

13. **Development Budget**

Unless otherwise approved by the Department, prior to the close of any construction financing, the Sponsor must provide to the Department for its review and approval, a copy of the construction lender(s)' approved development budget.

14. **Reasonable Development Costs**

Sponsor must provide to the Department evidence that total development costs are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third-party verification of costs, evidence of the competitive bidding of major trades and real estate appraisals. Where the Development is a component of a larger development, the Sponsor must submit to the Department for its approval, a development cost sharing breakdown for the entire development which covers all development costs for each of the individual components of the entire development and includes a discrete development budget for the Development consistent with the budget in the Application and Project Report. Eligible costs for Developments are limited to the following:

- A. With respect to MHP funding, costs as specified in Section 7304 of the MHP Guidelines;

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- B. With respect to VHHP funding, costs as specified in Section 204 of the VHHP Guidelines; and
- C. With respect to FWHG funding, costs as specified in Section 205 of the FWHG Guidelines.

15. Cost Savings

If, upon completion of the Development, the total development funding sources exceed the total development costs, the Department will address the resulting funding surplus in accordance with UMR section 8313.1.

16. Sponsor Control of Development

Sponsor must provide evidence satisfactory to the Department that the appropriate legal entity (i.e., the legal entity which submitted the Application as an applicant or a joint applicant, which demonstrated compliance with all eligible Sponsor requirements set forth in the applicable Guidelines as part of that Application, and which received an Award Letter) has and will retain full and continuing control of the development, construction, ownership and management of the Development. The Sponsor must demonstrate this control either by acting as the Borrower, or by showing, to the Department's satisfaction in its sole and absolute discretion, that the Sponsor controls the Borrower in accordance with UMR section 8313.2. The Sponsor's failure to demonstrate compliance with UMR section 8313.2 may result in significant delay or cancellation of the Loan.

Additionally, for Developments receiving FWHG funds, the Sponsor shall demonstrate to HCD's satisfaction that the Sponsor is independent from any direction of, or control by, a for-profit entity, and shall meet the requirements of HSC Section 50517.5. Non-profit corporations include a Tribally Designated Housing Entity pursuant to HSC Section 50091.

The Department's Sponsor Operating Guaranty must be executed by the legal entity or entities which demonstrated compliance with the foregoing requirements as part of the Application. In the event that more than one entity is considered the Sponsor for the Development, all such entities must execute and be jointly and severally bound by the Department's Sponsor Operating Guaranty.

17. Organizational Documents

The Department neither approves nor disapproves the Borrower's organizational documents or those of the Sponsor or any other entity affiliated with the Sponsor with experience approved by the Department. However, the Department may require

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changes thereto if necessary to ensure that the Sponsor has sufficient control of the Borrower, and that the term of the Borrower, Sponsor, and any other entity in the ownership or management structure of the Borrower, is equal to or greater than the term of the Department's Loan documents. In the event that the organizational documents of the Borrower, Sponsor or Sponsor-affiliated entities referenced in this paragraph conflict with the Department's Loan documents, this Agreement, the Department's Loan documents or the Program Requirements, then this Agreement, the Department's Loan documents, and the Program Requirements, as applicable, shall prevail.

18. Relocation

If there is or will be any residential or commercial displacement directly or indirectly caused by the Development, all persons who are displaced shall be entitled to relocation benefits, and the Sponsor must provide a relocation plan to the Department for review and approval. The relocation benefits and plan must comply with the requirements of state law (Gov. Code, § 7260 et seq.), the regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.), and Program Requirements. To the extent applicable, local relocation law as well as the Federal Uniform Relocation Assistance and Real Property Acquisition Act, 49 CFR Part 24, including Appendix A to Part 24, shall apply. To the extent of any variation in the applicable relocation laws, the stricter standard shall apply. The Development budget must include sufficient funds to pay all costs of relocation benefits and assistance as set forth in the relocation plan accepted by the Department. If the Development will not cause any displacement, the Sponsor must submit to the Department an original fully executed Indemnification and Certification (prepared by the Department) prior to execution of the Standard Agreement along with corroborating documentation to the Department for review and approval providing that there are no relocation requirements. If there is federal funding of the Development, the Sponsor must comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) requirements to the extent applicable.

19. Architect Contract

The Sponsor must enter into a contract with a licensed architect to provide professional services for the Development. The contract must require the architect to supervise the construction work, conduct periodic site visits, prepare periodic inspection reports, verify the validity of the construction contractor's payment requests, prepare or review change orders, and, upon completion of construction, provide the certification described in this Exhibit D in the requirements for Completion of Construction.

20. Appraisals

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If the property for the Development is being purchased, the Sponsor must provide an appraisal acceptable to the Department of the as-is value of the property, prepared by a qualified, licensed appraiser.

21. Non-Department Financing

The Sponsor must qualify for and obtain all of the financial assistance, loans and grants described in the Application for both the construction and permanent periods. Final terms and conditions of the non-Department financing must substantially conform to the terms and conditions that were presented in the Application. The terms and conditions of all financing shall be subject to the Department's review and approval.

22. Senior Loan Terms and Disclosures

- A. The terms of loans in a lien position senior to the Program Loan must comply with all the underwriting standards of UMR sections 8310 and 8315. No subordination may limit the Department's remedies and all subordinations must comply with UMR section 8315.
- B. Balloon payments are not allowed on senior debt, except as provided pursuant to UMR section 8310. Senior loans are prohibited from including call option language in the terms of the loan or bond documents other than is reasonable in case of default, nor may Sponsor or Borrower be required to remarket bonds prior to expiration of the senior loan. Financial instruments on senior loans (including but not limited to swaps, collars, and interest rate hedges) must extend for the full term of the senior loan and cannot be required to be renewed or extended prior to the end of the full term.
- C. Sponsors must obtain an interest rate cap on any interest rate that is not fixed for the full term of the senior loan. The interest rate at the cap must not jeopardize project feasibility. Interest rate resets, renewals, extensions of letters of credit, or other senior loan provisions, must not require the Sponsor or Borrower to re-qualify.
- D. All payments, lender fees, bond fees, issuer fees, trustee fees, letter of credit fees, swaps fees, hedge fees, enhancement fees, credit facility and liquidity fees, and other fees, charges and costs, in addition to principal and interest payments, must be fully disclosed to the Department in the loan closing transaction summary and in the operating budget.
- E. The Department's lien must not be subordinated to the liens of a lender affiliated with an entity that has an ownership interest in the Development unless the

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Department's regulatory agreement or similar instrument, which includes the provisions of UMR section 8310(f), is recorded senior to the lender's documents.

23. **Estoppel Letter (or Estoppel Certificate) for a Construction Loan**

If Section 1 of Exhibit E of this Agreement identifies FWHG as a Funding Program, the Department shall require a current estoppel letter (or estoppel certificate) in form and content reasonably acceptable to the Department from all other lenders on (and other persons providing funding to) the Development as part of its due diligence in making a construction loan or construction-to-permanent loan. All such construction and permanent lenders and other persons must provide the Department any and all requested estoppel letters in a timely manner upon which the Department will rely in providing a construction loan to the Borrower.

24. **Environmental Conditions**

The Sponsor must provide a Phase I Environmental Site Assessment ("ESA") for the Development, in conformance with ASTM Standard Practice E 1527, evaluating whether the Development is affected by any recognized environmental conditions. In the event the Phase I ESA indicates evidence of recognized environmental conditions and the Sponsor desires to proceed with the Development, the Sponsor must provide the Department with a Phase II report and such further reports as required by the Department in form and content acceptable to the Department. At a minimum, the Sponsor must perform or cause to be performed all work necessary to fully address and remediate the environmental conditions referenced in the ESA and/or the Phase II report in compliance with all applicable federal, state, local and other laws, statutes, regulations, orders, and findings, all at Sponsor's sole cost and expense. Any remediation work to be performed shall be subject to the Department's approval. The Sponsor must also provide an asbestos assessment and a lead-based paint report for the Department's review and approval if the Development involves rehabilitation or demolition of existing improvements.

25. **Article XXXIV**

All Developments must comply with Article XXXIV, section 1 of the California Constitution ("Article XXXIV"), as clarified by the Public Housing Election Implementation Law (Health & Saf. Code, §§ 37000 – 37002). Prior to construction loan closing, the Sponsor must submit documentation which shows, to the Department's satisfaction, that the Development complies with or is exempt from Article XXXIV. The Article XXXIV documentation must take all "state public body" sources of funding and other assistance into account, including each and all Funding Programs, each of which must independently comply with or be exempt from Article XXXIV.

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26. **Supportive Services Plan**

For Developments serving Special Needs populations, including Supportive Housing and/or providing Supportive Services to the general tenant population, the Sponsor must provide the Department with a supportive services plan for review and approval by the Department. If Section 1 of Exhibit E of this Agreement identifies VHHP as a Funding Program, the Sponsor must provide the supportive services plan to the California Department of Veterans Affairs ("Cal Vet") for its review and approval as well. Such plan must meet all Program Requirements as set forth under the applicable sections of the Guidelines.

27. **Resident Services Plan**

If Section 1 of Exhibit E of this Agreement identifies VHHP as a Funding Program, and if the Development contains VHHP-assisted units other than VHHP-assisted Supportive Housing or Transitional Housing units, the Borrower must provide the Department with a resident services plan for the Department's review and approval. Such plan must meet the requirements of the Super NOFA and Application.

28. **Disabled Veterans Business Enterprises (DVBES) Utilization Plan**

If Section 1 of Exhibit E of this Agreement identifies VHHP as a Funding Program, Borrower must, and shall continue to, furnish the Department with a compliant utilization plan detailing how the Development shall comply with Section 217 of the VHHP Guidelines, which requires that entities certified by the California Department of General Services as DVBES shall receive an amount at least equal to five percent (5%) of total construction costs for work performed or supplies provided to the Development. The utilization plan must comply with Section 217 of the VHHP Guidelines and, among other things, include the matters set forth in Subsection 217(a)(1) thereof.

29. **Market Study**

As a condition of funding, the Department may require a market study to assess the Development's fiscal feasibility. If required, such market study must comply with the applicable sections of the Guidelines.

CONSTRUCTION PHASE REQUIREMENTS

30. **Construction Phase Information**

If requested by the Department, the Sponsor must provide the Department with information during the construction period, including, but not limited to, all change orders and modifications to the construction documents; all inspection reports prepared

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by the Development architect and other consultants; and all information relative to Development income, expenses, occupancy, relocation benefits and expenses, contracts, operations and conditions. Upon written notice to Sponsor or Borrower, Department may require its advance written approval of all future change orders and modifications. Notwithstanding the foregoing, deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not rejected in writing within ten (10) business days of receipt by the Department. Sponsor must not authorize or approve any change orders rejected by the Department.

31. Inspection

The Department and any authorized representative of the Department shall have the right, during construction and thereafter, to enter upon and inspect the construction of the Development. Such right to inspect shall include, but shall not be limited to, the right to inspect all work done, all materials and equipment used or to be used, and all books and records, including payroll records, maintained in connection with the construction work. Such right of inspection shall be exercised in a reasonable manner. The Department shall have no affirmative duty to inspect the Development and shall incur no liability for failing to do so. Once having undertaken any inspection, neither the Department, nor any representative of the Department, shall incur any liability for failing to make any such inspection properly, or for failing to complete any such inspection. The fact that such inspection may or may not have occurred shall not relieve the Sponsor, the Borrower, the contractor, the construction lender, the architect, the structural engineer, the locality or anyone else of any obligation they may have with respect to the Development, including without limitation, any obligation to inspect the Development.

32. Updated Information

Sponsor must provide the Department with updated documentation to reflect any change in the information previously provided relating to the Program Loan(s), including updated sources and uses and income information. All changes shall be subject to Department approval. However, if the Development is changed in any way as to make it ineligible under any of the applicable Guidelines, then all of the Loan commitments will be cancelled, and all Funding Program Loan funds awarded to the Sponsor described in this Agreement shall be disencumbered.

33. Evidence of Existence of Application Selection Criteria

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Upon request, Sponsor must provide the Department with documentary evidence of the Development amenities, services, sustainable building methods, improvements, features and characteristics which were proposed in the Application, awarded points during the Department's application rating process, and identified in the Project Report.

34. **Signage**

Sponsor must place signs on the construction site for the Work stating that the Department is providing financing through the Funding Programs. The signs must be placed at the appropriate location(s) and must exhibit the message set forth in Section 6 of Exhibit E of this Agreement in an appropriate typeface and size.

Each sign must be maintained in a prominent location visible and legible to the public through construction completion. If the job sign includes the acknowledgment and/or logo of one or more other public lenders, the Department acknowledgment and logo, as well as the equal housing opportunity logo and the Americans with Disabilities Act logo must also be displayed in a similar size and layout. Copies of the Department logo can be obtained by contacting the Department Contract Manager.

Upon installation of each sign, the Sponsor must submit a digital photograph thereof to the Department to verify compliance with these signage requirements.

35. **Photographs**

The Sponsor must provide the Department, upon request, with copies of any photographs that may be taken of the Development by or on behalf of the Sponsor or the Development's architect. The Sponsor must provide an acceptable written consent and release agreement authorizing use of said photographs, all at no expense to the Department.

36. **DVBEs Plan Implementation**

If Section 1 of Exhibit E of this Agreement identifies VHHP as a Funding Program, prior to the commencement of construction, Borrower must submit a report to the Department and to CalVet on DVBE utilization plan implementation as contemplated by and in compliance with Section 217(a)(2) of the VHHP Guidelines.

COMPLETION OF CONSTRUCTION

37. **Relocation Plan Implementation Report**

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The Sponsor must provide a report, in form and content acceptable to the Department, detailing its actions in implementing its relocation plan. Such report must include, but not be limited to, a summary of the actions taken, identifying all sources of the relocation assistance provided, and the amounts paid, and benefits provided to, by or on behalf of the Sponsor.

38. **Architect Certification**

Where required by the Department, the Sponsor must cause the Development architect(s) or other appropriate professional to certify to the Department, in form acceptable to the Department, that all construction is completed in accordance with the "as-built" plans and specifications and in compliance with all applicable federal, state and local laws, and applicable Program e Requirements including those relating to disabled accessibility and MHP senior housing type. Additionally, prior to loan closing but after construction completion, the Sponsor shall provide a certification of compliance with the accessibility requirements as required by the applicable Guidelines, signed by the Borrower and the project architect as well as third party documentation confirming compliance by a Certified Access Specialist (CAsp) with demonstrated experience meeting federal accessibility standards, or by an architect with demonstrated experience meeting federal accessibility standards. (See e.g., MHP Guidelines section 7314(b)(8).)

39. **Cost Certification**

At the request of the Department, the Sponsor must submit a Development cost certification audited by an independent certified public accountant in accordance with the requirements of the Department and TCAC, if applicable. The Sponsor (and the developer or builder if there is an identity of interest with the Sponsor) must keep and maintain records of all construction costs incurred under the construction contract and make such records available for review by the Department.

40. **Recorded Notice of Completion**

The Sponsor must provide the Department with a certified copy of any Notice of Completion for the Development recorded in the county in which the Development is located.

PROGRAM LOAN CLOSING REQUIREMENTS

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The Department shall not be obligated to close or fund any Loan(s) unless the Sponsor has complied with and satisfied all Program Requirements applicable to each Funding Program and all the terms and conditions of this Agreement, all in a manner satisfactory to the Department in its sole and absolute discretion, on or before the earlier of the Program Loan closing, the Program Loan closing deadline, or such earlier time, all as indicated herein.

41. Development Construction

The Development must be constructed in compliance with the plans and specifications, subject to any change order(s) accepted by the Department where such acceptance is required, and in compliance with Sections 7314 and 7316 of the Program Guidelines if Section 1 of Exhibit E of this Agreement identifies MHP as a Funding Program, and Sections 303 and 305 of the Program Guidelines if Section 1 of Exhibit E of this Agreement identifies VHHP or FWHG as a Funding Program.

42. Title Insurance

In any construction loan closing where the Department is providing a construction Loan, the Department will require the following three title insurance policies with respect to such Loan to protect against title defects: (1) an ALTA Policy of Title Insurance and endorsements as required by the Department, the issuance of which will be a condition precedent to the construction loan closing; (2) upon completion of construction, the Department will require the escrow company to issue a new updated ALTA policy with such endorsements as the Department may request; and (3) when the construction loan converts to a permanent loan, the Department will require a new updated ALTA policy consistent with the immediately following paragraph.

At permanent closing, the Sponsor must provide an updated preliminary report from a title company acceptable to the Department and an ALTA As-Built Survey acceptable to the Department. The Sponsor must provide a pro forma ALTA lender's policy of title insurance if requested by the Department and the Sponsor must ensure the issuance to the Department of an ALTA lender's policy of title insurance as contemplated herein. The condition of title, insurer, liability amount, form of policy and endorsements shall be subject to the request and approval of the Department. Such endorsements must include, but not be limited to, a CLTA endorsement 100.2-06, and may include, but shall not be limited to, CLTA endorsements 105, 110.9 and 116 (modified for apartments) or their ALTA equivalents. The policy must ensure that the Borrower holds good and marketable fee simple title (or leasehold, if approved by Department) and that the Department is the beneficiary of an attached and perfected fee (or leasehold) deed of trust lien on the Development, free and clear of all encumbrances, encroachments, other interests and exceptions to title other than as shall have been previously approved in writing by the Department. The Department's deeds of trust and regulatory agreements and the other loans indicated under the "Permanent Funding" section of the

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Application shall have the lien priority as indicated in the Application and approved by the Department.

43. **Sponsor's Status**

Prior to all construction and permanent Loan closings, the Sponsor and Borrower must provide the Department with copies of all of their respective organizational documents, including, but not limited to, partnership agreements, operating agreements, corporate documents, and related documents, filings and agreements, as required by the Department, as well as those of all other entities in the organizational or management structure of Borrower. As of the date of all construction and permanent Loan closings, the Sponsor, the Borrower, and all other entities in the ownership and management structure of the Borrower must be duly organized, validly existing, and in good standing under California law and with the Department and must have, and continue to have, the authority to enter into the Loan(s) and related Loan documents.

44. **Compliance with California's Prevailing Wage Law**

This Development may be subject to California's prevailing wage law (Lab. Code, § 1720 et seq.). The Sponsor is urged to seek professional legal advice about the law's requirements. Prior to closing the Loan(s), the Department will require a certification of compliance with California's prevailing wage law. The certification must verify that prevailing wages have been or will be paid (if such payment is required by law), and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by the general contractor(s) and the Sponsor.

45. **Insurance**

The Sponsor must obtain and maintain for the term of the Loan(s) hazard and liability insurance for the Development in accordance with the Department's requirements, including flood insurance, if applicable. The Department must be named as a loss payee or an additional insured on all such policies. Such policies also must provide for notice to the Department in the event of any lapse of or change in coverage and in the event of any claim thereunder. The Sponsor must provide evidence satisfactory to the Department of compliance with these insurance requirements, including without limitation all necessary certificates of insurance.

46. **Program Loan Documents**

- A. The Sponsor and Borrower must enter into this Standard Agreement with the Department, which shall govern the encumbrance of the Funding Program(s) Loan funds. In addition, the Borrower must enter into regulatory agreements with

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the Department, which will govern the use, operation and occupancy of the Development consistent with applicable Program Requirements. The regulatory agreements will provide for, among other things, the imposition of certain low-income occupancy requirements, the regulation of rents on the low-income units, audits and other financial controls, reserve requirements, management oversight by the Department, and compliance with federal and state laws and other Department requirements.

- B. In addition to the regulatory agreement, the Loan shall be evidenced by promissory notes and secured by deeds of trust encumbering the Development. The regulatory agreements shall be recorded prior to the Department's deeds of trust.
- C. Where there are two or more Funding Programs, in structuring and evidencing the Loan(s) contemplated thereby, the Department may, at its election and in its sole and absolute discretion, do any of the following:
 - (i) Require the Sponsor and/or Borrower, as applicable, to execute and deliver a separate, Program-specific set of Loan documentation (e.g. a separate regulatory agreement, promissory note, deed of trust, sponsor operating guaranty, lease rider, and other Department loan documents) for each Funding Program evidencing separate, multiple Loans;
 - (ii) Consolidate the Funding Program awards into a single Loan, by requiring Sponsor and/or Borrower, as applicable, to execute and deliver a single consolidated regulatory agreement, promissory note, deed of trust, operating guaranty, lease rider, and other Department loan documents), which shall contain and satisfy the Program Requirements for each and all Funding Programs being consolidated therein, and/or
 - (iii) Combine the structures contemplated by clauses (i) and (ii) immediately preceding.
- D. Where the Department proceeds under either clause (i) or (iii) preceding, the separate Loans and their corresponding sets of Loan documentation shall be cross-defaulted to each other so that an event of default under one such Loan shall be an event of default under each and all of the other Loans, and the loan documentation for the Loans shall provide for the same.
- E. The Sponsor and Borrower must execute and enter into such additional agreements and documents, as the Department may deem reasonable and necessary to satisfy all applicable Program Requirements and the terms and conditions of this Agreement. Without limiting the generality of the foregoing, the Sponsor and any affiliate of the Sponsor which met the Application threshold

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requirements of experience and capacity must execute and deliver the Department's Sponsor Operating Guaranty in accordance with Section 16 of this Exhibit D to provide the Department with assurance that the Sponsor has the resources and experience to develop, own and manage the Development.

47. **Restrictions on Transfer and Change of Ownership**

Subject to the Department's approval in its sole and absolute discretion, neither the Sponsor nor the Borrower shall:

- A. directly or indirectly sell, transfer, convey, encumber, hypothecate, pledge or otherwise alienate the Development or the Property, or any portion thereof or interest therein;
- B. discharge or replace any general or managing partner, manager or managing member or other control person of Borrower or Sponsor, or amend, modify or add to any partnership agreement, operating agreement or other organizational documents related to any such entities or persons, including any provisions related to the management or control thereof (except that the Borrower may sell or transfer limited partnership interests in a limited partnership without the Department's approval);
- C. wind up, liquidate or dissolve the affairs of the Borrower, any control person of Borrower or Sponsor, or enter into any transaction of merger or consolidation with respect to Borrower, any control person of Borrower or Sponsor.; or
- D. change the organizational or management structure of the Sponsor or of any entity or entities through which it exerts control over the Borrower.

The Sponsor and Borrower shall also comply with all other requirements in the applicable Guidelines and Program Requirements governing sales, transfers, and encumbrances.

48. **Rental and Operating Subsidy Contracts**

The Sponsor must provide the Department with full and complete copies of all contracts, and all amendments thereto, regarding rental subsidies and other operating subsidies to be provided to tenants residing in the Development.

49. **Substitution of Rent, Operating, or Social Service Subsidy**

Sponsor may substitute a source of funding for a rent, operating or social service subsidy so long as it is acceptable to the Department. The amount, terms and

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conditions of the new source of funding must provide an equivalent or greater level of rent, operating or social service subsidy to the Development, acceptable to the Department.

50. Final Certificate of Occupancy

The Sponsor must provide to the Department a final certificate of occupancy (or an equivalent form of occupancy certification or approval) issued by the local agency having jurisdiction over such certificates.

51. Environmental Conditions & Remedial Work

All remedial work on recognized environmental conditions must be completed prior to Loan closing. The Sponsor must provide the Department with an environmental update/operations and maintenance plan if remedial work was required with evidence of lead-based paint and/or asbestos-containing materials remediation if applicable.

52. Reserve Accounts

The Sponsor must establish and maintain reserve accounts as required by the Department and as further described in the regulatory agreement. All withdrawals shall require approval from the Department, as provided in the regulatory agreement. Reserve accounts do not need to be funded at any construction closing; but must be fully funded at the permanent loan closing.

53. Operating Reserve Account

The Sponsor must fund an operating reserve account in accordance with UMR section 8308. The specific amount of the Operating Reserve Account shall be set forth in the regulatory agreement. This operating reserve account requirements will not be required to be funded at the time of construction closing; but must be fully funded a permanent loan closing.

54. Replacement Reserve Account

The Sponsor must establish a replacement reserve account in accordance with UMR section 8309. The replacement reserve account shall be funded by monthly deposits from operating income, or a combination of operating income and development sources, as indicated in the regulatory agreement. The amount of the monthly deposits may be adjusted, as determined by the Department, in its sole and absolute discretion,

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based on reserve studies performed by an independent third party at the Sponsor's expense as requested by the Department or as based on other reliable indicators of future reserve needs. This replacement reserve account requirement does not need to be established for construction-to-permanent financing until the permanent loan conversion occurs.

55. **Capitalized Reserve Accounts**

If Program funds are used to fund a reserve account, the Department shall disburse such funds in a manner to ensure the proper funding of the reserve. The proceeds of the Loan(s) may be used to capitalize only operating and replacement reserve accounts and amounts required by UMR sections 8308 and 8309. Proceeds of the Loan(s) may not be used to capitalize rental subsidy reserves, except as authorized by the Guidelines, or any reserves established to pay recurring operating costs, including, but not limited to, the required Monitoring Fee(s).

56. **CalHFA and HUD Funded Projects**

Projects subject to the federal Department of Housing and Urban Development ("HUD") Section 811 and Section 202 programs or receiving a permanent loan from the California Housing Finance Agency ("CalHFA") shall not be subject to any Program reserve requirements during the time such projects are regulated by HUD or CalHFA and the Sponsor complies with the applicable CalHFA or HUD reserve requirements.

57. **Asset Management and Compliance Requirements**

The Sponsor must obtain all documents and information contemplated by the Department's Loan Closing Checklist in the course of closing the Loan(s), and must submit such documents and information required, for the Department's review and approval, including, but not limited to, the following (in a format provided or approved by the Department):

- A. a proposal for management agent with management agent's qualifications and all other supporting documentation attached;
- B. a management contract;
- C. a management plan, including the Development's marketing and tenant selection plan;

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- D. a template residential tenant lease;
- E. an initial-year operating budget and Schedule of Rental Income (SRI);
- F. any applicable Special Needs population residential service plan; and
- G. evidence of current property hazard and liability insurance in accordance with the applicable Program Requirements.

Prior to close of the Loan(s), the Sponsor must obtain the Department's review and approval of the above-mentioned items A. through G. and any additional documents required by the Department.

Furthermore, the Sponsor shall be provided links to the Department's Asset Management and Compliance Web page, which, in conjunction with the regulatory agreement, sets forth the obligations and requirements to which the Sponsor and Borrower must adhere for the use, operation and occupancy of the Development, including but not limited to: annual reporting requirements which include but are not limited to budgets, SRIs, tenant demographics, and supportive housing and/or special needs populations services plans, audit requirements, and other obligations as determined by the Department and noted on the webpage. The Department may amend such requirements from time to time and will note such amendments on the Web page.

58. Affirmative Fair Housing Marketing Plan and Fair Housing Compliance

Sponsor must develop and implement an affirmative fair housing marketing plan satisfactory to the Department and shall adopt a written non-discrimination policy as described in Guidelines. Appropriate aspects of the initial Affirmative Fair Housing Marketing Plan must be incorporated into the ongoing management plan to ensure positive outreach and informational efforts to those who are least likely to know about and apply for assisted units in the Development. Sponsor is encouraged to refer to HUD's guidelines for Affirmative Fair Housing Marketing Plans. Sponsor must comply with all state and federal fair housing laws. At the Department's election, Sponsor must submit an attorney's opinion acceptable to the Department describing the intended occupancy restrictions and how they comply with the California Unruh Civil Rights Act (Civ. Code, §§ 51 - 53) and the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Occupancy restrictions must be carried out in a manner which does not violate state or federal fair housing laws, and Section 7314 of the Program Guidelines if Section 1 of Exhibit E of this Agreement identifies MHP as a

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Funding Program, and Section 303 of the Program Guidelines if Section 1 of Exhibit E of this Agreement identifies VHHP or FWHG as a Funding Program.

59. Identification of Special Populations

If applicable, Sponsor must submit a report that specifically identifies the number of units rented to the elderly, to military veterans, Agricultural Households, and other special populations as identified by the Department.

60. TCAC and Other Regulatory Agreements

The Sponsor must provide the Department with a copy of the TCAC regulatory agreement if the Development budget includes tax credits, and any other regulatory agreements pertaining to the Development.

61. Property Tax Exemption

Unless expressly waived in writing by the Department, Sponsor must provide evidence of eligibility for property tax exemption for the Development and a copy of the tax exemption application to the local tax assessor(s).

62. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

The Sponsor agrees to comply with all state and federal laws, rules, guidelines (including applicable Guidelines) and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Development, the Sponsor, its contractors or subcontractors, and any Loan activity.

Without limiting the generality of the foregoing, if Section 1 of Exhibit E of this Agreement identifies FWHG as a Funding Program, Sponsor shall not use state funds to “plan, develop, or operate” housing used to comply with federal law requiring the furnishing of housing to workers utilizing the H-2A visa program. (AB 1783 (2019-2020 Reg Sess.) as modified by AB 107 (2019-2020 Reg. Sess.).)

Additionally, Sponsor and Borrower shall at all times comply with all applicable Program Requirements.

63. Change of Conditions

The Department reserves the right to re-underwrite the Development based on new information or funding sources. Particular attention will be paid to the continued feasibility of the Development and the maintenance of the security position of the

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Loan(s). If the new information demonstrates a reduction or elimination of financing gap being addressed by the Loan(s), the Department will, in its discretion, reduce the amount or amounts of the Loan awards accordingly. If the Department has underwritten the Loan(s) pursuant to CalHFA or HUD requirements and the Development subsequently does not utilize the CalHFA or HUD financing, the Loan(s) will be re-underwritten by the Department pursuant to all applicable Program Requirements. In the event the Department determines the Development is no longer financially feasible, the award and any Loan commitments issued by the Department may be revoked and disencumbered.

64. **Investor Commitments**

If the Development will be receiving an allocation of tax credits from TCAC, the Sponsor must provide the Department with a copy of all tax credit investor commitments, including referenced financial projections and any amendments.

65. **Restricted Units**

All units designated in the Application and approved by the Department as restricted units, but that are not also assisted units, must be restricted on a long-term basis by a public agency at the income and rent levels shown in the Application. Similarly, all units designated in the Application as restricted units, but that are not also assisted units, must be restricted on a long-term basis by a public agency to the designated target population.

66. **Asset Management Fees**

Asset management, partnership management, and similar fees must be in compliance with UMR section 8314(a)(1)(B) and as noted in the regulatory agreement.

67. **Representations & Warranties**

- A. Sponsor and Borrower represent and warrant that as of the date of this Agreement, each of them, as well as any and all other entities in the organizational or management structure of Borrower, are all duly organized and validly existing entity, in good standing under California law and that the persons signing this Agreement on their behalf have the authority to act on their behalf of and to bind them in accordance with the terms of this Agreement.
- B. Sponsor and Borrower represent and warrant that as of the date of any and all Loan closings, each of them, as well as any and all other entities in the organizational or management structure of Borrower shall be duly organized, validly existing, and in good standing under California law, and that each and all

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of them shall have the authority to enter into the Loan(s) and all related Loan documents.

- C. Sponsor and Borrower further represent and warrant that as of the date of any and all Loan closings, the person(s) executing the Loan documents on behalf of Borrower, Sponsor and any and all other entities in the organizational or management structure of Borrower will have full authority to act on their behalf and to bind them in accordance with the terms of those documents and applicable Program Requirements.
- D. Sponsor and Borrower further represent and warrant that there are no pending or threatened suits, actions, or proceedings to which the Sponsor or Borrower is a party or is subject, or to which the Development or the Property is subject, which would affect the Sponsor's ability to enter into and perform its obligations under this Agreement.
- E. Sponsor further represents and warrants that neither the Sponsor nor any of its affiliated or related entities, including without limitation the Borrower, is the subject of any pending or threatened bankruptcy or creditors' rights proceedings, whether voluntary or involuntary.

68. Survival of Obligations

The obligations of the Sponsor as set forth in this Agreement shall survive all Loan closings, construction and permanent, and the Sponsor shall continue to cooperate with the Department and perform acts and provide documents as provided herein.

69. Litigation

If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole and absolute discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable. The Sponsor must notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement, the Department or the Development, and must take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

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70. **Obligations of Sponsor with Respect to Certain Third-Party Relationships**

The Sponsor and Borrower agree they shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Development with respect to which assistance is being provided under this Agreement. The Sponsor must comply with all lawful requirements of the Department necessary to ensure the completion, occupancy and use of the Development in accordance with this Agreement.

71. **Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Sponsor or the Borrower of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions. Any waiver, to be effective, shall be express, in writing, duly executed by the Department, and delivered to the Sponsor and Borrower.

72. **Audit/Retention and Inspection**

- A. The Department, its representatives or employees, or its delegates shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement. Sponsor must provide the Department or its delegates with any relevant information requested and must permit the Department or its delegates access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material. Sponsor further agrees to maintain such records for a minimum period of four (4) years after final payment under the Agreement, unless a longer period of records retention is stipulated.
- B. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Development. At the Department's request, the Sponsor must provide, at its own expense, a financial audit prepared by a certified public accountant.
- C. The audit shall be performed by a qualified State, Department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
- D. If there are audit findings, the Sponsor must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, will conclude the audit process and notify the

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Sponsor in writing. If the Department is not in agreement, the Sponsor will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.

- E. If so, directed by the Department upon termination of this Agreement, the Sponsor must cause all records, accounts, documentation and all other materials relevant to this Agreement to be delivered to the Department as depository.

73. **Reporting Requirements**

Sponsor must comply with all reporting requirements set forth in the applicable Program Requirements and applicable law, including, without limitation, each and all of those reporting requirements set forth in Section 7326 of the MHP Guidelines, (if Section 1 of Exhibit E of this Agreement identifies MHP as a Funding Program), Section 504 of the VHHP Guidelines (if Section 1 of Exhibit E of this Agreement identifies VHHP as a Funding Program) and Section 505 of the FWHG Guidelines (if Section 1 of Exhibit E of this Agreement identifies FWHG as a Funding Program), all if, as, and to the fullest extent applicable to the Development.

74. **Sponsor Acknowledgment of the Pet Friendly Housing Act of 2017**

Sponsor must authorize residents of the housing development to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (Health & Saf. Code, § 50466).

75. **Violence Against Women Act (VAWA)**

Where applicable, Sponsors shall ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as survivors of domestic violence, dating violence, sexual assault, or stalking, or for being affiliated with a victim, pursuant to 34 USC Section 12491. Sponsors must also comply with all notice requirements under VAWA and additional protections afforded to survivors under state law pursuant to CIV Section 1946.7 (early lease termination without penalty) and CIV Sections 1941.5 and 1941.6.

76. **Assignment Prohibited**

This Agreement must not be assigned, in whole or in part, except to the Borrower upon the approval of the Department. This Agreement must not be assigned, in whole or in

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part, to any other person without the consent of the Department, in its sole and absolute discretion. The Sponsor and the Borrower are the only beneficiaries of this Agreement. Where the Application indicates that the Development will be owned by a Sponsor-controlled limited partnership, Sponsor may assign this Agreement in whole to such partnership, subject to the Department's approval of the limited partnership agreement and other organizational documents. Upon such approved assignment, Loan funds that would otherwise be advanced or paid to Sponsor pursuant to the terms of the Agreement shall be advanced or paid to such partnership.

77. Cash Out

No cash-out is permitted, in escrow or otherwise, to the Sponsor, or to any related party thereof (other than for reimbursement of the lower of actual cost or appraised value of land used by the Development) or to the Borrower or to any partners or members of Borrower, including cash-out of equity, deferred developer fee, seller-carry back loan, fees owed by seller to Sponsor, or for any other purpose for the entire term of the Loan(s) and/or regulatory agreement, whichever is longer. Excess funds on close of escrow must be applied to reserve accounts or must be applied against the Department Loan(s), in the Department's sole and absolute discretion.

78. Residual Receipts

Only public agencies can receive Residual Receipts.

79. Invalidity of Statute, Regulation or Use

In the event that a state or federal governmental entity, which has the authority to do so, determines that any use of Loan funds contemplated by this Agreement is unlawful or contrary to any applicable provision of federal or state law, this Agreement shall be deemed modified to eliminate such unlawful use or application and/or to add necessary restrictions or requirements. In the event of such determination, the Department shall notify Sponsor, in writing, of the specific modifications to this Agreement, which are required by such determination. Sponsor shall have fifteen (15) calendar days after receipt of such notice to terminate this Agreement and return any and all funds advanced including interest earned on such funds. If Sponsor fails to so act within the fifteen (15) day period, the modification shall become part of this Agreement effective on the date of receipt of notice and binding on the parties hereto.

80. Attorney's Fees, Costs

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In any action to enforce or relating to this Agreement, the prevailing party shall be entitled to recover from the other party, its costs and expenses, including attorneys' fees. The term "costs and expenses" as used herein shall include all costs and expenses actually and reasonably incurred, including, but not limited to, attorneys' fees; filing, motion, and jury fees; juror food and lodging; taping, videotaping, and transcribing depositions and travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; expenses of attachment including keeper's fees; premiums on surety bonds; ordinary witness fees pursuant to section 68093 of the Government Code; fees of expert witnesses whether or not ordered by the court; transcripts of court proceedings whether or not ordered by the court; court reporters fees as established by statute; investigation expenses in preparing the case for trial; postage, telephone and photocopying charges; costs in investigation of jurors or in preparation for voir dire; models, blowups and photocopies of exhibits; and any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor.

81. **Governing Law**

This Agreement must be construed with and be governed by the laws of the State of California. All references to codes refer to the California Codes.

82. **Integration**

This Agreement, together with Exhibit A through Exhibit E attached hereto, incorporating references herein, and enclosures herewith, sets forth all of the promises, agreements and understandings to date among the parties hereto with respect to the Loan, and there are no promises, agreements, or understandings, oral or written, express or implied, other than as set forth or incorporated herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

83. **Amendment of this Agreement.**

No amendment or modification of this Agreement shall be valid unless set forth in an express writing and executed by authorized representatives of all of the parties. Any amendment or modification shall become effective as of the date of the authorized Department representative's signature thereto or as of the date specified in the amendment.

84. **Construction**

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Each party hereto acknowledges and agrees that each has had opportunity to have independent counsel review this Agreement and each hereby fully waives the application of any law, statute or rule of construction or interpretation, including without limitation California Civil Code Section 1654, to the effect that any ambiguities are to be construed against the drafting party.

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