

APPENDIX D

LOAN TERMS, REGULATORY AGREEMENT, UNDERWRITING POLICIES, AND COMPLIANCE MONITORING

I. INTRODUCTION

1. Purpose. The following guidelines are intended to assist applicants for County of San Mateo Department of Housing (“DOH”) loans for affordable housing development to prepare financing applications and to understand the terms and conditions that will be imposed by County of San Mateo affordable housing loan documents. These guidelines will govern DOH staff review of financing applications and will guide funding recommendations to the Housing and Community Development Committee and the Board of Supervisors. DOH may review and approve or disapprove any requests for waivers in its absolute and sole discretion.

2. Revisions. These guidelines will be updated from time to time, and revisions will be incorporated in the Loan Agreement for any Project that has not yet closed on construction financing escrow, allowing the project to immediately start construction, unless a waiver of such updated guidelines is approved by DOH in its sole and absolute discretion.

3. Not a Contract. Notwithstanding anything to the contrary herein, this document provides a non-binding summary of specified terms of County loan documents and underwriting policies for informational purposes only and is not a contract or agreement; the governing terms and conditions of any County loan will be set forth in an integrated written agreement that will not be binding until approved and executed by the County.

II. LOAN TERMS

1. Loan Documents. In addition to the Regulatory Agreement described in Section III below, an award of funds under an Affordable Housing Fund (AHF) NOFA shall be evidenced by a Loan Agreement and a Promissory Note secured by a nonrecourse Deed of Trust, which may, in DOH’s sole discretion, be subordinated to other financing necessary for the development of the Project. In no event will DOH agree to subordinate its deed of trust to the lien of a lender affiliated with, controlled by, or controlling the Borrower, a general partner of the Borrower, or any entity or person controlled by or controlling the Borrower. The Loan Agreement, Promissory Note, Deed of Trust, Regulatory Agreement, and other documents that may be required by the County in connection with the AHF Award (Loan Documents) as summarized here are subject to and shall be in a form and in substance agreeable to the County in its sole discretion.

a. Amount and Source of Loan Principal. All funding awards are subject to further due diligence review by DOH prior to loan closing. The source of the award may be changed after the award date in the reasonable exercise of DOH’s discretion, including consideration of the impact on the Project’s development or operating costs. The amount of the award may be reduced or increased if DOH determines, in its sole discretion, that the full amount of the award is not necessary to achieve financial feasibility, or if the amount is insufficient to achieve DOH’s housing goals and objectives. DOH may request additional documentation from successful applicants during underwriting, including applications for funding from other public and private entities.

b. Term. The typical loan term is 55 years from the date of Certificate of Occupancy, but not more than 57 years from the date of recording of the Deed of Trust.

c. Interest and Residual Receipts.

- i. The Loan Agreement is expected to provide for the Promissory Note to accrue simple interest at a rate of 3% annually from the date specified in the Loan Agreement, which in most cases is the date of the Project's Certificate of Occupancy. Any accrued interest is subject to repayment from Residual Receipts prior to the application of Residual Receipts to payment of the principal amount of the loan. Loans from the Housing Authority of the County of San Mateo are typically not interest-bearing, but repayments of principal are also subject to repayment from Residual Receipts.
- ii. When DOH is the only public sector lender with a loan repayable from Residual Receipts, the Loan Agreement requires annual loan payments to DOH in an amount not less than 50% of the Project's Residual Receipts for a term of 55 years from the Project date of Certificate of Occupancy. As further defined in the loan documents, Residual Receipts refers to the net cash flow after payment of annual operating expenses, required reserve deposits, debt service payments, and current year Partnership Management fees and Asset Management Fees in amounts approved by DOH.
- iii. When the Project includes other public sector or nonprofit subsidy lenders whose loans are also repayable from Residual Receipts, DOH may, in its sole discretion, require that two-thirds (66.67%) of any Residual Receipts (rather than 50%) will be allocated to such subsidy lenders who will share in that portion of the Residual Receipts in proportion to each subsidy lender's respective loan amounts. DOH must be included in any negotiations of the distribution of Residual Receipts with other subsidy lenders, the results of which may be documented in an Intercreditor Agreement among all the affected subsidy lenders.
- iv. Any remaining Residual Receipts may be distributed to the Borrower. Except for any deferred developer fee specifically allowed to be paid before the allocation of Residual Receipts pursuant to Section C(9) below, the Borrower's share of Residual Receipts is the sole source of payment of deferred Developer Fees, deferred Partnership Management fees, deferred Asset Management fees, and any other incentive fees and any General Partner loan repayment other than a sponsor loan funded solely by a state HCD grant.

2. Request to Lower Interest Rate. A decision whether to grant a request for a reduced interest rate is subject to the County's sole exercise of its discretion. The County will not consider a request to lower its interest rate unless a lower interest rate has been approved in writing by an incorporated city and any other public sector subsidy lenders including the California Department of Housing and Community Development with respect to any financing such public sector subsidy lender is providing. The request must describe the reason a lower interest rate is necessary; explain why the need for a lower interest rate was not able to be anticipated at the time of the AHF application; show that the reduction in interest rate is the lowest possible reduction to ensure the financial feasibility and long term affordability of the Project; show that the burden of the reduced interest rate has been proportionately borne by all other subsidy lenders; and attach financial projections prepared by a consultant acceptable to the County modeling the Project financing with and without the reduced interest rate including the difference in investor capital accounts with and without the requested interest rate reduction.

3. Insurance Requirements. Borrower and its Administrative and Managing General Partner as applicable shall be required to maintain comprehensive general liability in a minimum amount of \$1 million and professional liability insurance in the minimum amount of \$1 million, and if the Borrower or Administrative or Managing General Partner has employees, Worker's Compensation coverage not less than the statutory minimum, employment liability insurance in a minimum amount of \$1 million and motor vehicle liability insurance in a minimum amount of \$1 million. DOH will also require builder's risk insurance with coverage equal to 100% of the replacement costs of the improvements, and a lender's loss payable endorsement in favor of DOH. Construction contractors will also be required to maintain general liability coverage of at least \$1 million and Workers Compensation coverage not less than the statutory minimum. The Architect and Engineer contracted for the Project shall be required to maintain professional liability coverage in the minimum amount of \$2 million, Workers Compensation coverage not less than the statutory minimum, motor vehicle liability insurance in the minimum amount of \$1 million, and general liability coverage of \$1 million per occurrence. Upon expiration or termination of the builder's risk insurance, Borrower shall maintain a standard fire and extended coverage policy in the amount of at least the full replacement value of the improvements which are part of the project. DOH reserves the right in its sole discretion to require additional coverage, including coverage of additional members of the Applicant Team, to ensure adequate coverage for risks of the Project. Proof of insurance in the form, type, and coverage required by the County must be provided prior to execution of loan documents.

4. Limits on Disbursement. Funds may be drawn for pre-development, acquisition, construction, and permanent financing, including eligible expenses incurred prior to the award of AHF fund, but no funds will be disbursed until all required loan documents have been fully executed by the parties. In addition:

- a. Disbursements are for reimbursement of paid expenses, except for expenses, such as land acquisition, that will be paid through a third-party escrow. Upon the start of construction, construction costs may be reimbursed based on submission of invoices, AIA certifications and conditional or unconditional lien releases. However, soft costs incurred during construction will only be paid on a reimbursement basis.
- b. Disbursement of funds for acquisition or predevelopment expenses before the close of escrow for the Project's construction financing is in the DOH's sole discretion. In exercising its discretion, the DOH may request the Applicant (or Borrower) to provide evidence of the progress made and how predevelopment funds would contribute to the progress of the project, the lack of other resources to pay predevelopment expenses, the amount and maturity date of other indebtedness to which the County's predevelopment loan would be subordinate, and the likelihood that the project will secure tax credits and other financing commitments as a result of the County's assistance with predevelopment expenses.
- c. In no event will the disbursement of predevelopment funds committed to a Project before the close of escrow for the Project's construction financing exceed the lesser of a total maximum amount of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) or 3% of Total Development Costs ("TDC") until such time as the Applicant (or Borrower) has acquired fee title to the real property, or a long term leasehold, and is able to convey a Deed of Trust to secure the AHF Promissory Note and record a Regulatory Agreement as described in Section III below.

d. In no event will the disbursement of predevelopment funds committed to a Project before the close of escrow for the Project's construction financing exceed the lesser of Two Million Dollars and Zero Cents (\$2,000,000.00) or 3% of Total Development Costs ("TDC").

5. Loan Draws and Change Orders. Requests for reimbursement of expenses authorized under the executed Loan Agreement shall be made quarterly before the start of construction using the forms supplied by DOH, which are expected to be completed in CDS unless authorized by the DOH project manager to be submitted as an attachment to email, and may be submitted monthly during the construction period. DOH's prior written approval is required for any proposed change order that will exceed \$250,000. In addition, the Borrower must request DOH's prior approval of any construction change order greater than \$25,000 in the case of any Project in which DOH is the sole construction lender or its loan amount is 50% or more of the TDC. Copies of all change orders shall be provided to the County on a monthly basis, whether positive or negative. A no-cost change order shall also be submitted for prior approval by DOH in the event of any construction schedule change that would extend the Project Completion date set forth in the schedule of performance in the Loan Agreement.

6. Termination of Award Letter or Loan Agreement. An AHF Award Letter or Loan Agreement is conditional and subject to termination in DOH's sole discretion for the Borrower's failure to meet any required conditions or achieve the specified milestones on the approved schedule and in any event if construction of the Project has not commenced within three years of the Award Letter Date unless a longer period is specifically provided and approved in an amendment of the Award Letter or Loan Agreement as applicable. After closing of the construction loan, the loan is subject to termination if construction has not been completed and the construction loan converted to a permanent loan within two years of the construction loan closing unless a longer period is specifically provided for in the Loan Agreement. Failure to meet the deadline imposed by California Tax Credit Allocation Committee for placing the project in service shall also result in termination of the Loan Agreement. In the event of any termination, DOH may utilize the rights and remedies granted to it by the Loan Agreement, Promissory Note, Deed of Trust, Security Agreement, or other loan documents.

7. Withdrawals from Reserves. Prior to the use of funds from any reserve account, Borrower must submit written request to DOH for approval to withdraw funds from any reserve account if such withdrawal would exceed Five Thousand Dollars and Zero Cents (\$5,000.00).

8. Federally Funded Activities. All federally funded activities must adhere to the federal government's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) as well as the HOME Program Requirements (24 CFR part 92) and/or CDBG Program Requirements (24 CFR part 570). In the case of a Federal Award, if the AHF 14 Underwriting Guidelines conflict with the federal guidelines, the federal guidelines will prevail.

9. Misrepresentations or Material Changes. Any changes in the borrowing entity or the Project design, unit count, unit configuration, population served, income targeting, development timeline, or financing plan for the Project are subject to DOH's prior approval and without such prior approval will result in

termination of DOH's loan commitment. Any material misrepresentation made with respect to the borrowing entity, or the Project is grounds for immediate termination by DOH without providing an opportunity to cure.

III. REGULATORY AGREEMENT

1. Purpose. As a condition of the loan of AHF funds, the Borrower shall execute and record a Regulatory Agreement in favor of DOH in a senior lien position, which imposes long-term income, rent, unit size, and target population restrictions (including tenant preferences) on the Project's AHF-Restricted Units and authorizes DOH specifically to enforce performance of those restrictions, as set forth in the AHF Award Letter and subsequently included in the AHF Loan Agreement. As described in Section G below, Units designated as HOME Units may be restricted by a program-specific Affordability Covenant, but at the end of the term of such program-specific Affordability Covenant, those Units shall then be subject to the primary DOH Regulatory Agreement.

2. Total Number of Restricted Units. Subject to any limitations imposed by federal or state requirements, the Regulatory Agreement shall restrict 100% of a Project's Units as AHF-Restricted Units, excluding any approved manager's unit(s). As set forth in the Award Letter, Units shall be restricted at the income and rent levels for different Unit sizes and for different tenant populations.

3. Float-Up Upon Termination of Rental Subsidies. Among other terms, the Regulatory Agreement may, in DOH's sole and absolute discretion, allow for the "float-up" of income and rent limits for Units that have received certain time-limited rental subsidy or operating subsidy commitments (for example, Project-Based Vouchers or a state or local award to fund a Capitalized Operating Subsidy Reserve) AND the subsidy expires or is subsequently reduced or terminated through no fault of the Borrower. In such event, the Borrower must first seek alternative sources of rental assistance, rental subsidies, or other funding sources to fund the financial gap, if any, resulting from the reduction or loss of the subsidy. The terms of any approved "float-up" provisions included in the Regulatory Agreement and DOH's subsequent approval of any actual "float-up" request shall be in DOH's sole and absolute discretion and shall be limited to the amount necessary for the Project's continued financial feasibility, as determined by DOH in its sole and absolute discretion. In no event shall such approved "float-up" exceed rent and income levels higher than 60% of Area Median Income as identified by the California Tax Credit Allocation Committee or a lower percentage of Area Median Income imposed by a specific state or federal funding source administered by DOH (for example, 30% of Area Median Income for Housing for Healthy California Units). An approved "float-up" shall be administered with the goal of minimizing disruption to and reducing displacement of existing tenants, by, for example, applying the approved "float-up" first to vacant Units and to Units occupied by tenants with actual income closer to the new "float-up" limit. The Regulatory Agreement shall require the Borrower to provide any tenants in Units approved for a "float-up" with timely and proper written notice of any rent increase as required by applicable federal, state, and/or local laws and regulations, including without limitation Government Code Section 65863.10, 65863.11 and 65863.13.

4. Floating Units. Among other terms, the Regulatory Agreement may, in DOH's sole discretion, describe how the number and type of AHF-Restricted Units will be maintained over time by designating Units as "floating units". Floating units allow a tenant whose income has increased above the original qualifying income level to remain in their Unit and the property manager to designate another Unit to fulfill the applicable income category. For example, when an Extremely Low-Income Unit is occupied by an Extremely Low-Income household whose income later increases, the household shall be allowed to continue to occupy the Unit. When the household's income reaches Very Low-Income, the next available vacant Unit at the Project of the same size shall then be restricted to be affordable to Extremely Low-Income households, and the household whose income increased shall be allowed to continue to occupy their original Unit, which shall then be designated a Very Low-Income Unit.

5. Preference or Set-Aside Units. Among other terms, the Regulatory Agreement shall define the terms under which any AHF-Restricted Units may be subject to a specific tenant preference or set-aside, including, but not limited to, any homeless or special need preferences or set-asides; farmworker preferences or set-asides; public employee preferences or set-asides; or local live-work preferences.

6. Seniority of the Regulatory Agreement. Unless DOH grants an exception in its sole and absolute discretion to facilitate the Borrower securing another long-term, low-interest, deferred public sector or nonprofit subsidy loan, DOH's Regulatory Agreement shall be recorded in a first lien position senior to any other liens, including any conventional first mortgage, and shall authorize DOH specifically to enforce the restrictions of the Regulatory Agreement for the term of the Regulatory Agreement. DOH, in its sole discretion, may consider a request by a conventional first mortgage lender to amend its Regulatory Agreement to allow a specific increase in a Project's income and rent restrictions up to 60% of Area Median Income in the event of foreclosure if DOH determines that this modification would facilitate the Project benefiting from a conventional first mortgage loan.

7. Term of Regulatory Agreement. The Regulatory Agreement must be recorded when the Borrower acquires title to the real property and not later than the Project's construction loan closing. If the Regulatory Agreement is recorded after an existing lien, the lienholder must agree to subordinate the existing lien to the Regulatory Agreement so that the seniority of the Regulatory Agreement is maintained. The Regulatory Agreement shall expire 55 years from the date of Project completion, which in the case of new construction projects is the date of Certificate of Occupancy. However, restrictions required by certain federal funding sources (HOME) for Units assisted by such funding may be limited by a Regulatory Agreement with a term less than 55 years. Upon expiration of the shorter term of any HOME Regulatory Agreement, those Units shall then become AHF-Restricted Units for the balance of the 55-year period of AHF restrictions.

8. Specific Performance of the Regulatory Agreement. The Regulatory Agreement will authorize specific performance by DOH until the Regulatory Agreement expires 55 years from the date of the Certificate of Occupancy, even if the DOH Promissory Note is canceled, and the Deed of Trust is re-conveyed and even if the Borrower is in default of any other note and deed of trust such that the lien of the DOH Deed of Trust is foreclosed.

9. Tenant Protections. DOH's Regulatory Agreement will require that tenants be offered an initial one-year lease term. Leases shall be subject to compliance with "just cause" eviction protections and tenants shall be protected from waiver of their rights. Tenants shall be afforded the protection of the Violence Against Women Act (VAWA) and the Right to Report from Home law even if the Project does not benefit from a federal housing finance program.

10. Local Live-Work Preferences. All AHF-regulated units shall be subject to a County of San Mateo live-work preference, which shall be (a) a primary preference on Units not subject to an approved city live-work preference and (b) a secondary preference on Units subject to an approved city live-work preference. DOH's Regulatory Agreement will allow for the implementation of city-imposed live-work preferences in filling vacant Units only under the conditions set forth below. DOH's prior approval is required for any city-imposed live-work preference, and unless a waiver is approved in DOH's sole and absolute discretion, any city-imposed live-work preference will be limited in application to the greater of 51% of the Project's total Units OR the percentage of Units that equals the percentage of city financial contribution to the Project compared to the sum of City and County financial contributions. After reviewing the demographic analysis of the live-work preference area compared to the demographic analysis of the Project's housing market area prepared by a qualified third-party consultant, DOH may approve a city-imposed live-work preference only if it has been determined in its sole and absolute discretion to comply with Fair Housing requirements. Furthermore, DOH will not approve a city-imposed live-work preference for:

- a. any HOME-assisted Units or
- b. any Units benefiting from Project-Based Vouchers, other county rental subsidy program or Capitalized Operating Subsidy Reserve, or
- c. any Units required to be filled from a specific county referral program.

In calculating the City's or County's financial contribution to the Project, donations or below-market-rate sale or leasing of land and the waiver of city development or impact fees shall be counted with appropriate documentation of fair market value and third-party statement of the waived fees. Prior to approving any award of AHF funds to a Project in an incorporated City with its own live-work preference, DOH will require acknowledgment by the developer and the City of the foregoing County policy limiting the impact of any City-imposed live-work preference.

11. Enforcement of Homeowner Resale Restrictions. In the case of a First-Time Home Ownership Project, DOH shall in lieu of a Regulatory Agreement have the right to review and approve the terms of a thirty-year re-sale restriction proposed to be included in the conveyance of homes to first-time homebuyers to ensure continued affordability of the home to the approved percentage of Area Median Income not to exceed Moderate Income households for at least 30 years. Draft homebuyer legal documents shall be submitted to DOH for its review and approval prior to any disbursement of funds. DOH shall have the right to enforce homebuyer resale restrictions if it determines that the Applicant has ceased operations or no longer monitors and enforces the re-sale restrictions.

IV. UNDERWRITING POLICIES

1. Purpose. DOH has adopted the following underwriting policies for affordable rental Projects and may apply different policies for First-Time Home Ownership Projects. The proposed sources and uses of funds, operating expense budget, and 30-year cash flow projections submitted by the Applicant for the Project under the AHF NOFA shall conform to these underwriting policies.

2. Market Feasibility. The rent levels proposed in the 30-year cash flow projections, even if otherwise allowed by AHF threshold and competitive scoring criteria, shall be supported by evidence of effective demand by the specific target population in a specific location. In general, proposed rents should be at least 10% less than market rents in the vicinity of the project. Effective demand shall be demonstrated in a market feasibility study not older than 12 months from the application submission date and updated from time to time at the request of DOH, unless DOH in its sole and absolute discretion accepts an alternative method of establishing effective demand. Evidence of effective demand is particularly important for:

- a. Supportive Housing Units with rent higher than rent that is affordable to households with incomes of 20% of Area Median Income;
- b. Senior Units with rent higher than rent that is affordable to households with incomes of 50% of Area Median Income; or
- c. Large Family Units with rent higher than rent that is affordable to households with incomes of 60% of Area Median Income.

3. Availability of Rental Subsidies. Any assumptions made by the Borrower about the availability of Project-Based Vouchers or tenant-based vouchers for the targeted units shall be supported by a letter confirming the same from the Housing Authority of the County of San Mateo (HACSM). Assumptions made about other rental or operating subsidies from a source other than HACSM shall also be supported by a commitment letter showing the funding source, the amount of subsidy per Unit, and other similar conditions.

4. Tax Credit Investment Ratio. The expected investment for each dollar of tax credit investment shall be reasonable in DOH's judgment, but not less than \$.80 per dollar of credit or more than \$.85 per dollar of credit unless supported by a binding commitment letter from a tax credit investor in effect for at least six months and subject only to conditions not within the control of the Applicant (or Borrower) or the tax credit investor.

5. Debt Service Coverage Ratio of 1.15. The Project must, in its first year of operations, demonstrate annual net operating income after payment of operating expenses that equals or exceeds 115% of debt service on all debt that requires fixed payments of principal and interest (not payable from Residual Receipts). After the first year, the Project must demonstrate sufficient net operating income to cover all required debt service, unless an exception is made for a Permanent Supportive Housing project with an approved Capitalized Operating Subsidy Reserve.

6. Availability of Sources. The Project must be financially feasible using sources of funding that are (a) sufficient in total to cover reasonably budgeted uses and (b) committed in writing to the Project. Sources that are uncommitted must be demonstrated to be funded by a third party for projects of this type, available to receive applications on the schedule proposed by the Project. This can be demonstrated by a conditional letter of funding commitment or by published program guidelines of a public entity that show the funding availability and application timeline. In evaluating whether highly competitive third party sources, such as state HCD programs or Low-Income Housing Tax Credits, are available, consideration shall be given to the total amount budgeted for the program in the applicable round and the project's self-score for such competitive funding source compared to the published scores of similar projects most recently awarded that source.

7. Vacancy Rate. The Project must be financially feasible assuming a vacancy rate of 5%, which may be increased depending on the percentage of Supportive Housing Units in the Project but in no event more than 10% for a Project which is 100% Supportive Housing Units.

8. Wage Assumptions. All projects financed by the County of San Mateo from any source shall satisfy the San Mateo County Living Wage Ordinance. It is the sole responsibility of the Applicant (or Borrower) to determine the applicability of State prevailing wage rates to their Projects and any exemptions with advice of its own legal counsel. State prevailing wage rates shall be satisfied by any project receiving funds from sources that require compliance with state prevailing wage, except that, if higher than state prevailing wage rates or local Living Wage rates, Davis-Bacon wage rates shall apply to a Project if required by certain federal funding programs administered by DOH (for example, CDBG, HOME) or HACSM (for example, Project-Based Vouchers). When DOH is responsible by the terms of pass-through state or federal funding for ensuring the Applicant's (or Borrower's) compliance with state or federal prevailing wage requirements, the Applicant (or Borrower) shall before the start of construction provide evidence that it has retained an independent third-party labor compliance consultant to report findings to DOH in the form and on the schedule required by DOH.

9. Minimum Operating Expenses. The Project's operating expense assumptions must be reasonable and satisfy CTCAC minimum requirements based on type of Project. The operating expenses should include an expense category of at least \$500 Per Unit Per Annum (PUPA) for general resident services and at least \$1,000 PUPA for services supporting Supportive Housing units.

10. Operational Feasibility. The Project must be able to operate on a break-even basis for at least twenty years with any allowable Capitalized Operating Subsidy Reserve or available rent subsidies. The operational feasibility must also include the Minimum Operating Expenses as required above. If the Project's cash flow is projected to be negative at any point during the County's 55-year affordability period following the first twenty years of operation, the Applicant (or Borrower) must describe a specific plan of action for addressing the shortfall over time.

11. Lease-Up Expense and Marketing Expense. A reasonable expense for negative cash flow during the initial lease-up period of the Project should be included in the sources and uses of funds, with an explanation of the assumptions used to estimate this amount. Any balance remaining upon achieving Permanent Financing Conversion shall be included in construction cost savings that are subject to distribution as provided in Section D(5)(a). Marketing Expenses may be charged to County sources of funds up to a reasonable amount as determined by DOH in its sole discretion but should be documented in a separate line item and not used to calculate negative cash flow during lease-up.

12. Loan to Value Ratio. Loan proceeds from all sources shall not exceed 75% of current appraised value assuming completion of the planned improvements.

13. Developer Fees. Developer Fees for Low Income Housing Tax Credits (LIHTC) Projects shall consist of all fees defined by the California Tax Credit Allocation Committee (CTCAC) as developer fees, and shall be allowed by DOH in the amount permitted by CTCAC, except that, with respect to a 4% LIHTC Project, the amount of such developer fee that is greater than the maximum fee allowed for a 9% LIHTC Project shall either be contributed as equity to the Project or paid from the developer's share of Residual Receipts. Deferred developer fees, whether for a 4% or a 9% LIHTC Project, shall be allowed up to the period of deferral allowed by CTCAC but shall be paid solely from the developer's share of Residual Receipts except for any deferred amount that complies with the Developer Fee limits imposed by a 9% LIHTC Project ("priority deferred developer fee"). For example, a LIHTC Project may defer a portion of the Developer Fee up to the total Developer Fee limits imposed by the 9% LIHTC Program and receive payment of this Deferred Developer Fee prior to the distribution of Residual Receipts payments. However, any Deferred Developer Fee amounts that result in total Developer Fees that exceed the limits imposed by the 9% LIHTC Program must be repaid from the developer's share of Residual Receipts. Projects using the LIHTC program with more than 100 units may request approval, in DOH's sole and absolute discretion, of an additional developer fee equal to Twenty Thousand Dollars and zero cents (\$20,000.00) per every Unit above 100 units, but not to exceed a total maximum Developer Fee of Three Million Five Hundred Thousand Dollars and zero cents (\$3,500,000.00). For Projects not using the LIHTC program, the amount and timing of Developer Fees shall be reasonable in DOH's sole and absolute discretion based on comparison of the Project to similar Projects of that type and size.

14. Partnership Management, Asset Management, and Similar Partner Fees. Partnership Management, investor Asset Management and any similar Partner Fees are allowed for rental Projects that are financed with Low Income Housing Tax Credits, but the amount of such fees must be reasonable in DOH's discretion considering the size of the Project and in any event may not exceed in the aggregate \$42,099 annually beginning in calendar year 2026 and increasing at a rate of 3.5% annually thereafter. Partnership Management, investor Asset Management and similar Partner Fees are payable from the current year's net cash flow remaining after payment of other operating expenses, deposits to reserves and debt service payments. Any amount that is unable to be paid in the current year shall accrue and be deferred for payment in a subsequent year solely from the Borrower's share of Residual Receipts. In no event shall an interest rate be applied to any accrued amounts. Any investor-required Asset Management fees, including any accrued and unpaid fees, shall terminate when the limited partner investor withdraws from the

partnership unless the Borrower establishes to DOH's reasonable satisfaction that continuing duties not related to tax credit compliance justify continued payment of the fee.

15. Property Management Fees. Property Management Fees are allowed for rental Projects and may not exceed HUD's most current published schedule (basic rate plus any applicable add-ons). DOH may approve a higher property management fee for Supportive Housing Projects, not to exceed the HUD maximum (24 CFR Part 990).

16. Annual Increases of Income and Operating Expenses. The Project must be financially feasible allowing for annual increases of income and operating expenses (not including reserves, debt service, deferred Developer Fees, Partnership Management Fees, Asset Management Fees, other incentive payments). In general, income is expected to increase at a rate of 2.5% annually, and operating expenses, including partner fees, are expected to increase at a rate of 3.5% annually.

17. Payment and Performance Bond. DOH requires a Payment and Performance Bond issued by a company acceptable to DOH in the amount of one hundred (100%) percent of the construction contract amount naming the Borrower and Lender as dual obligees; or a letter of credit issued by a bank acceptable to DOH in an amount equal to ten percent (10%) of the amount for which Contractor has agreed to complete the Project which shall not expire prior to the substantial completion of the Project. A Construction Completion Guaranty may be accepted in lieu of a Payment and Performance Bond if approved by DOH's Director of Housing in his or her sole discretion after review of the guarantor's liquidity, credit history and other factors.

18. Capitalized Operating Reserve (COR). All rental Projects shall provide for a Capitalized Operating Reserve equal to the sum of three months of operating expenses and three months of debt service unless the senior lender imposes a requirement for a higher Capitalized Operating Reserve.

19. Capitalized Operating Subsidy Reserve (COSR). In the case of a New Construction Rental Project which is otherwise financially feasible, DOH may approve in its sole and absolute discretion the use of AHF funds to create a Capitalized Operating Subsidy Reserve (COSR) to facilitate the creation of Farmworker Housing Units and Supportive Housing Units eligible for competitive points as Priority Needs. The COSR shall be in addition to the COR required of all rental Projects and shall be sized for a fifteen-year term, assuming rents that are feasible for the targeted population but not more than 30% of Area Median Income. The amount of the COSR shall be limited to the lesser of (a) the amount needed to cover the Project's total operating deficits and (b) the amount that solves for the net operating deficit of the specific Units which the COSR is intended to support, after including the operating costs and supportive services of those Units but excluding any share of permanent loan debt service payment, partnership fees, and deferred developer fees. The COSR funds shall in DOH's sole and absolute discretion be held in (a) a DOH-controlled account in which DOH has the right to approve annual COSR disbursements for the Project, or (b) an interest-bearing account in a reputable financial institution with interest re-invested in the COSR which grants DOH the right to approve annual requests to draw on the funds in the COSR. At the expiration of the COSR's term, any balance of a COSR funded by DOH shall be maintained solely for specific purposes

that benefit the Project or returned to DOH, in DOH's sole and absolute discretion. Under no circumstances shall any COSR balance be distributed to partners, including when the investor limited partner exits from the Project.

20. Capital Replacement Reserves. All rental Projects shall provide for a reserve for capital replacements of the Project improvements funded at the greater of \$250 per Unit per year or a higher amount per unit per year requested by another lender or investor and approved by DOH in writing. Replacement reserve deposit amounts for rehabilitation Projects must be based on a twenty-year physical needs assessment of the Project, after accounting for the balance of any existing reserves.

21. Withdrawals from Reserves. Prior to the use of funds from any reserve account, Borrower must submit written request to withdraw funds from any reserve account if such withdrawal would exceed Five Thousand Dollars and Zero Cents (\$5,000.00).

22. Loan Origination Fee. DOH will charge a loan origination fee of one and one-half percent (1.5%) of the total amount of Measure K, Impact Fee, General Funds, and other local funding provided through the AHF loan which must be paid in full at the time of the construction loan closing. Any HACSM funds committed to the project will also be subject to this loan origination fee. When a federal or state financing source provides an administrative fee to DOH, those federal or state sources are not considered in calculating the amount of the loan origination fee.

23. Loan Servicing and Monitoring Fee. As described below, DOH will charge an annual loan servicing and monitoring fee after a project is placed in service.

24. DOH Legal Counsel Fees. DOH's legal counsel fees are an eligible Project expense which shall be paid from the Project construction loan closing proceeds and additional fees incurred after the construction loan closing shall be paid from the permanent loan closing. Such fees typically will not in the aggregate exceed \$50,000 up to the date of the construction loan closing, depending on the size and complexity of the Project and the number of financing sources provided by DOH. DOH will provide Borrower with an estimate of its legal counsel expenses upon request.

25. General Contractor General Conditions, Overhead, and Profit. The cost of General Conditions, Overhead, and Profit shall together not exceed more than 14% of the cost of construction as limited by CTCAC (Section 10327(c)(1)). In addition, if the general contractor for construction of the Project is a related entity to the Applicant or Borrower or any member of the Applicant Team, this relationship must be disclosed to DOH for DOH's assessment of the reasonableness of the budget for general conditions, overhead and profit and other terms and conditions.

26. Contingency. Funds for contingency may be budgeted as follows:

- a. **Hard Costs:** (i) For New Construction, a minimum of 5% and a maximum of 10% of hard costs. (ii) For rehabilitation, a minimum of 10% and a maximum of 15% of hard costs.

- b. Soft Costs:** A minimum of 3% and a maximum of 10% of other soft costs, with higher amounts allowed during the early stages of a Project, with the expectation that the contingency will decrease to not more than 5% of other soft costs as the timeline approaches construction loan closing.
- c. Excess Contingency:** Any balance of contingency funds remaining at the permanent loan conversion shall be included in the calculation of cost savings to be allocated among lenders as set forth in Section D.

27. Organizational and Project Management Capacity. Unless a specific exception is made for Emerging Developers, applicants for AHF funding must demonstrate organizational capacity that meets DOH requirements as well as the underwriting requirements of tax credit investors and other lenders.

- a.** Evidence of the financial condition of the developer, the property management company, and the supportive services provider, as well as their organizational good standing will be reviewed. Financial statements, certificates of compliance, and other evidence of financial capacity and organizational good standing provided for a special purpose entity formed specifically for the Project are not sufficient to satisfy this requirement.
- b.** DOH will also consider its actual prior experience with borrowers during construction period, monitoring and operation of properties in the DOH portfolio of funded projects. If there are outstanding concerns with regard to performance, compliance, or capacity, DOH may require corrective action as a condition of a new funding approval for the same or a new project.
- c.** Borrower will be required to document the experience and capacity of key staff, their workloads, and their tenure with the organization.
- d.** DOH will also consider the organization's asset management capacity to address the financial performance and capital needs of their existing portfolio.

V. REPORTING, COMPLIANCE MONITORING, AND LOAN SERVICING

1. Purpose. To ensure that the funded Project performs in accordance with loan terms, an award of AHF funds is subject to a detailed program of reporting, inspections, and compliance monitoring, including regular written reports, expenditure reports, financial statements, and onsite inspections of the Project and Project records.

2. Quarterly Progress Reports. Borrower shall submit quarterly progress reports from the date of the Borrower's acceptance of the Award Letter under this AHF NOFA until the completion of the new construction/rehabilitation work. DOH shall supply the reporting forms for such quarterly progress reports, which are expected to be completed in CDS unless approved to be submitted by email by the DOH project manager. This reporting is necessary for DOH to monitor progress and changes in the Project, and failure to comply with quarterly progress reporting is grounds for DOH to terminate its commitment. Reporting shall continue until Permanent Conversion, and the frequency may be increased or decreased at different stages of Project development with approval of DOH.

3. Monitoring During Construction/Rehabilitation. From the start of construction:

- a. DOH shall receive by email a copy of all Owner-Architect-Contractor (OAC) meeting minutes during construction with photographs documenting progress of construction and reserves the right to undertake periodic monitoring of the Project during the construction/rehabilitation period for AHF program compliance, including site visits. Borrower shall be given adequate notice of any onsite monitoring.
- b. **Monitoring and Reporting for Labor-Related Compliance.** Unless waived by DOH in writing, the Borrower shall retain an independent labor compliance consultant to review and track its labor-related compliance and shall submit a copy of this contract to DOH for review and approval prior to start of construction. In order to (a) ensure compliance with state prevailing wage laws or federal Davis-Bacon requirements if applicable, and (b) to further DOH's goals to promote the consideration in contracting to the extent permitted by law of (1) MBE, WBE, DBE contractors, sub-contractors, and suppliers participating in the development of County-owned property and properties that benefit from County funding; and (2) promote the consideration in hiring of certain disadvantaged workers, the Borrower shall report on and DOH shall monitor compliance with prevailing wage requirements and efforts undertaken by Borrower to broaden the invitation(s) to contractors, subcontractors, and suppliers to submit bids for the Project so that invitation(s) are inclusive of MBEs, WBEs and DBEs, and to promote the consideration of disadvantaged workers (such as by advertisement of available job contracts at trade unions, non-profit organizations, public sites, including County public sites, job training sites, community college, etc.).
- c. **Monitoring and Reporting for NEPA Compliance.** When a Project has received a federal Authorization to Use Grant Funds based on a Request for Release of Funds submitted by DOH as Responsible Entity under the National Environmental Protection Act, Borrower shall provide DOH with evidence of implementation of and compliance with any agreed Mitigation Measures and a final Certificate of Compliance prepared by the Project's environmental consultant or other independent third party approved by DOH.
- d. **Monitoring and Reporting during Lease-Up.** The Borrower is required to submit for DOH's prior approval an updated Property Management Agreement, Property Management Plan, Marketing Plan, and Tenant Selection Plan at least six (6) months prior to the projected date of construction completion. The Marketing Plan shall include advertising the Project on the County's approved Doorway website, both to list the Project and to gather tenant applications for the Project, subject to any additional outreach and referral mechanisms necessary to serve the population targeted for the Supportive Housing Units. Any provision of the Tenant Selection Plan which implements a city-required resident preference is subject to DOH's prior review and approval of its Fair Housing impact. In addition, DOH will generally limit the application of any city-required residency preference to the greater of 51% OR a percentage of the Project's total Units equal to the city's percentage (including donated land value, loans of city funds, and city fee waivers) of the Project's total city and County funds. During the marketing and lease-up period and continuing after the Project's lease-up, DOH may request reports or ask to review Project records to verify compliance with these marketing and tenant selection requirements.

e. Monitoring and Reporting Prior to Permanent Loan Conversion. Prior to Permanent Loan Conversion, the Borrower shall submit to DOH:

- i. Final Certificate of Occupancy
- ii. Certified As-built Survey (ALTA), with a legal description confirming the title policy
- iii. Current rent schedule identifying maximum restricted rents, income limits, and actual rents charged
- iv. Current utility allowance schedule
- v. Current rent roll
- vi. Current operating budget for the first year of stabilized operations prepared by the Property Management service provider
- vii. Form of lease and written confirmation that the tenant selection and marketing were conducted in accordance with the plans approved by DOH
- viii. Property Management Plan
- ix. Draft audited accounting of actual sources and uses of funds, reporting on any construction cost savings that result from the permanent funding sources exceeding the final costs required to construct the project. This includes any savings in expenditure of the funds budgeted for negative cash flow during lease-up, any savings as a result of excess contingency funds, and any other construction cost savings. Such construction cost savings shall be distributed to DOH and other lenders in proportion to their share of Residual Receipts. DOH shall apply any construction cost savings to accrued interest before reducing the principal amount of its loan.
- x. Copy of the fully executed and dated Amended and Restated Limited Partnership Agreement of Borrower ("the LPA")
- xi. Certificates of Insurance evidencing Fire and Property Damage coverage
- xii. Evidence of Compliance with labor requirements, including State prevailing wage, Section 3, and Davis-Bacon and MBE/WBE (if applicable).
- xiii. Confirmation of compliance with environmental mitigation requirements, if federal funds are involved
- xiv. A Tenant Profile Report, including demographic and income information, in a form satisfactory to DOH.
- xv. A Project Completion Report in a form satisfactory to DOH.
- xvi. A Project Contact Form, in a form satisfactory to DOH.
- xvii. In addition, DOH shall be notified of the start of any Permanent Conversion meetings and shall be provided an opportunity to conduct an on-site monitoring visit prior to Permanent Conversion closing, which may be coordinated with the on-site monitoring required by any other lender or investor as a condition of Permanent Conversion.

f. Post Conversion Submission Requirements. Following Permanent Loan Conversion closing, the Borrower shall submit to DOH:

- i. Confirmation of submission of the Placed-in-Service (PIS) package to TCAC and a copy of the submitted PIS package, for LIHTC projects
- ii. Executed TCAC Regulatory Agreement, if applicable

- iii. Final TCAC-approved Cost Certification
- iv. IRS Form 8609 for each building, including Part II, and written confirmation of the first year of tax credit period, for LHTC projects
- v. Any additional documentation reasonably required by DOH to complete the permanent conversion project file and transition the project to long-term compliance monitoring.

g. Monitoring and Reporting During Operations. DOH will undertake periodic monitoring of the Project for AHF program compliance, and the Borrower shall be required to submit certain annual reports.

- i. Monitoring may consist of reviewing documents and records related to tenant income, occupancy of targeted Units by qualifying populations, funding for and delivery of on-site resident services and service coordination, ongoing compliance with the Marketing Plan and the Tenant Selection Plan, and information relevant to the financial condition of the Project to ensure long-term viability. The submitted documents must be sufficiently detailed for DOH to confirm whether the Project and the AHF-Restricted Units comply with the requirements of the Loan Agreement, the Promissory Note, the Deed of Trust, and the Regulatory Agreement.
- ii. The Borrower shall submit an annual compliance report to DOH that will include a tenant roster listing household size, income, and rent for each tenant and showing compliance with any required targeting to special populations in an AHF-Restricted Unit. Additional categories of reporting may result from the use of certain federal funds. DOH shall review reports for compliance with the AHF program requirements, shall require the Borrower to correct violations of those requirements, and may request additional documentation from the Borrower.
- iii. Annual financial reports shall be submitted based on an annual independent audit of the Project and showing the calculation of Residual Receipts. The independent Project audit shall clearly demonstrate the basis for calculating the amount of Residual Receipt payments due to each lender. Failure to provide an independent Project audit with information that enables DOH to verify the calculation of Residual Receipts is an event of default.

DOH may conduct periodic site visits to AHF Projects. During visits to rental housing projects, DOH representatives may interview the resident manager, review a sample of the on-site tenant files, inspect a sample of the Units of varying size and affordability, and tour the common areas and grounds of the Project.

h. DOH Loan Servicing and Monitoring Fee. After the Project is placed in service, DOH will assume all loan servicing tasks on behalf of the County and HACSM. DOH charges an annual loan servicing and monitoring fee of \$500 per AHF-Restricted Unit, capped at \$10,000 annually for each Project, for the provision of these services.

i. DOH Re-Subordination and Loan Re-structuring Fees. Should the Borrower request that DOH re-subordinate or re-structure its loan after the Project has been placed in service, DOH shall evaluate the impact of the request on the security of its Deed of Trust and the Borrower's ability to comply with the restrictions of the Regulatory Agreement and may grant or withhold its approval in the reasonable exercise of its discretion. In no event will DOH agree to any request that adversely affects

the lien position of its Regulatory Agreement or the ability of the Borrower to continue to meet the restrictions of the Regulatory Agreement. In no event will DOH agree to subordinate its Deed of Trust to the lien of a lender affiliated with, controlling, or controlled by the Borrower or any general partner or controlling person of the Borrower. Furthermore, as a condition of granting its approval, DOH may require that the remaining term of the Regulatory Agreement restrictions be extended for 55 years from the loan re-structuring closing. DOH shall charge Borrower a reasonable fee based on the size of the Project and the complexity of the request, but not less than \$1,000, to be paid through the loan re-structuring closing.