AGENDA

HOUSING AND COMMUNITY DEVELOPMENT (HCD) COMMISSION SPECIAL MEETING

TUESDAY, MARCH 19, 2024
6:00 P.M.
VALLEJO ROOM
LOWER LEVEL OF THE JFK LIBRARY
505 SANTA CLARA STREET
VALLEJO, CA 94590

Jared Bunde
Jose Carrizales
S. Bre Jackson, Chair
Cassandra James
Tonia Lediju, Vice Chair
Dennis Patrick
Amelia Shoulders

Members of the public will be able to participate in person or remotely via Zoom. The Vallejo Room will be open to members of the public 30 minutes prior to the start of the meeting.

IMPORTANT NOTICE REGARDING THE MARCH 19, 2024 HCD COMMISSION MEETING

This AGENDA contains a brief general description of each item to be considered. The posting of the recommended actions does not indicate what action may be taken. If comments come to the Housing and Community Development Commission without prior notice and are not listed on the AGENDA, no specific answers or response should be expected at this meeting per State law.

Pursuant to Government Code Section 54954.3 (The Brown Act), members of the public shall be afforded the opportunity to speak on any agenda item of interest to them provided they are first recognized by the Presiding Officer. Members of the public wishing to be so recognized are requested to submit a completed speaker card to the Secretary of the Commission prior to the consideration of the item.

Members of the public have the right to speak on any item on this agenda. Those wishing to address the Housing and Community Development Commission on an Action Calendar item are limited to five minutes pursuant to Vallejo Municipal Code Section 2.02.420.

PUBLIC COMMENT: Members of the Public may provide public comments during the Housing and Community Development Commission. Hybrid options are available for members of the public to participate.

- In person
- https://zoom.us/my/vallejoeoc
  Password: 131313
  From the Zoom App: (Join by Computer, Smartphone, or iPad)
  -Selection JOIN
  -Meeting ID: 851 502 7190
  -Password: 131313
- Phone (voice only):
  Dial (669) 900-6833
  Enter Meeting ID: 851 502 7190#
  You may be asked to enter a password: 131313.
  Press *6 to unmute yourself and *9 to digitally raise your hand from the phone if you wish to speak.

In-person speakers will be recognized first. For additional instructions on how to speak remotely during public comment, please visit www.cityofvallejo.net/publiccomment.

VIEW THE MEETING: There are four different ways you can view this public meeting:

- In person
- Watch Vallejo local channel 28
- Stream from the City website: www.cityofvallejo.net/Streaming
- Join the Zoom webinar: https://zoom.us/my/vallejoeoc

Notice of Availability of Public Records: All public records relating to an open session item, which are not exempt from disclosure pursuant to the Public Records Act, that are distributed to a majority of the Housing and Community Development Commission, will be available for public inspection at the Housing and Community Development Department, 200 Georgia Street, Vallejo, CA 94590 at the same time that the public records are distributed or made available to the Housing and Community Development Commission. Such documents may also be available on the City of Vallejo website subject to staff's ability to post the documents prior to the meeting. Information may be obtained by calling (707) 648-4507, TDD (800) 735-2929.

ADDITIONAL CITY INFORMATION
Members of the public can:
Like us on Facebook and Instagram (@cityofvallejo)
LinkedIn: Linkedin.com/company/city-of-vallejo
Sign up to receive City Communications via e-mail (www.cityofvallejo.net/subscribe)
Sign up for emergency alerts at: alertsolano.com

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at dawn.abrahamson@cityofvallejo.net Notification at least 48 hours prior to a meeting will enable the City to make reasonable arrangements to ensure accessibility to that meeting. [28 CFR.35.102.35.104 ADA Title II]. The Vallejo Housing and Community Development Department may be contacted as follows: Tel: (707) 553-7204, Fax: (707) 648-5249, or e-mail: chari.francisco@cityofvallejo.net. The hearing impaired may call the California Relay Service at (800) 735-2922 without a TTY/TDD, or (800) 735-2929 with a TTY/TDD.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PRESENTATIONS

5. APPROVAL OF MINUTES

6. WRITTEN COMMUNICATIONS

7. REPORT OF THE SECRETARY

8. REPORT OF THE CHAIR AND MEMBERS OF THE HOUSING AND COMMUNITY DEVELOPMENT COMMISSION, AND LIAISON REPORT

A. Report of the Chair and Members of the Housing and Community Development Commission

B. Report of City Council Liaison to the Housing and Community Development Commission

9. COMMUNITY FORUM

The Community Forum is an opportunity for residents to discuss items not on the agenda that are within the purview of the Commission. The Commission may not discuss or act on these items but may require they be placed on a future agenda. If an item is not within the purview of the Commission, the person may be referred to the appropriate party.

Members of the public wishing to address the Commission may do so by submitting a completed speaker's card to the Secretary or via teleconference. Each speaker participating under the Community Forum shall be limited to a maximum of three minutes pursuant to Vallejo Municipal Code Section 2.02.300.

Any interested members of the public desiring to communicate with the Commission as part of the Community Forum may do so via:

- In person
- Zoom: https://zoom.us/my/vallejoeoc
  Password: 131313
  From the Zoom App: (Join by Computer, Smartphone, or iPad)
  -Selection JOIN
  -Meeting ID: 851 502 7190
  -Password: 131313

- Phone (voice only):
  Dial (669) 900-6833
  Enter Meeting ID: 851 502 7190#
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In-person speakers will be recognized first. For additional instructions on how to speak during public comment, please visit www.cityofvallejo.net/publiccomment.

10. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS

Members of the public wishing to address the Commission on Consent Calendar items may do so by submitting a completed speaker's card to the Secretary or via teleconference. Each speaker is limited to three minutes pursuant to Vallejo Municipal Code Section 2.02.310.

Requests for removal of Consent Items received from the public are subject to approval by a majority vote of the Commission. Items removed from the Consent Calendar will be heard immediately after approval of the Consent Calendar and the Agenda.

Any interested members of the public desiring to communicate with the Commission on Consent Calendar Items may do so via:

- In person
- Zoom: https://zoom.us/my/vallejoeoc
  Password: 131313
  From the Zoom App: (Join by Computer, Smartphone, or iPad)
  -Selection JOIN
  -Meeting ID: 851 502 7190
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In-person speakers will be recognized first. For additional instructions on how to speak during public comment, please visit www.cityofvallejo.net/publiccomment.

11. CONSENT CALENDAR AND APPROVAL OF THE AGENDA

12. ACTION CALENDAR

Members of the public wishing to address the Commission on Action Calendar items may do so by submitting a completed speaker's card to the Secretary or via teleconference. Each speaker is limited to five minutes pursuant to Vallejo Municipal Code Section 2.02.420.

Any interested members of the public desiring to communicate with the Commission on the Action Calendar may do so via:

- In person
- Zoom: https://zoom.us/my/vallejoeoc
  Password: 131313
  From the Zoom App: (Join by Computer, Smartphone, or iPad)
  -Selection JOIN
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In-person speakers will be recognized first. For additional instructions on how to speak during public comment, please visit www.cityofvallejo.net/publiccomment.

A. Adopt a resolution recommending approval by the Ho using Authority of the City of Vallejo (HACV) Board for a Fiscal Year 2023-24 budget amendment, and approval and authorization by the HACV Board of the Executive Director to execute an Amended and Restated Loan Agreement using Low- and Moderate-Income Housing Asset Fund by and between the Housing Successor Agency and Firm Foundation Community Housing, and an affordable housing agreement for the development and construction of permanent supportive housing units at 2441 Broadway Street

   For more information, a Staff Report is enclosed with the agenda packet.

   Recommendation: Acceptance by the Housing Authority of the City of Vallejo (HACV) Board of Directors of a budget amendment for Fiscal Year (FY) 2023-24 and approving an Amended and Restated Loan Agreement for $3,300,000 in Low-and Moderate-Income Housing Asset Fund (LMIHAF); approving and authorizing the Executive Director of the HACV to execute the Amended and Restated LMIHAF Loan Agreement and Affordable Housing Agreement by and between the Housing Successor Agency of the City of Vallejo and Firm Foundation Community Housing ("Firm Foundation") for the development and construction of permanent supportive housing units at 2441 Broadway Street for the Broadway Village Project ("Broadway Project").

13. ADJOURNMENT

AFFIDAVIT OF POSTING

I, Chari Francisco, do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the City of Vallejo Housing and Community Development Commission, at the time and in the manner prescribed by law and that this agenda was posted at Vallejo City Hall, 555 Santa Clara Street, Vallejo, California at 4:00 p.m. on March 18, 2024.

Dated 3/18/2024 Chari Francisco, Secretary Chari Francisco

City of VALLEJO California

ACTION CALENDAR 12.A.

DATE: March 19, 2024

TO: Chair and Commissioners
Housing and Community Development Commission

FROM: Alicia Jones, Housing Director

SUBJECT: **ADOPT A RESOLUTION RECOMMENDING APPROVAL BY THE HOUSING AUTHORITY OF THE CITY OF VALLEJO (HACV) BOARD FOR A FISCAL YEAR 2023-24 BUDGET AMENDMENT, AND APPROVAL AND AUTHORIZATION BY THE HACV BOARD OF THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDED AND RESTATED LOAN AGREEMENT USING LOW- AND MODERATE-INCOME HOUSING ASSET FUND BY AND BETWEEN THE HOUSING SUCCESSOR AGENCY AND FIRM FOUNDATION COMMUNITY HOUSING, AND AN AFFORDABLE HOUSING AGREEMENT FOR THE DEVELOPMENT AND CONSTRUCTION OF PERMANENT SUPPORTIVE HOUSING UNITS AT 2441 BROADWAY STREET**

RECOMMENDATION

Acceptance by the Housing Authority of the City of Vallejo (HACV) Board of Directors of a budget amendment for Fiscal Year (FY) 2023-24 and approving an Amended and Restated Loan Agreement for $3,300,000 in Low-and Moderate-Income Housing Asset Fund (LMIHAF); approving and authorizing the Executive Director of the HACV to execute the Amended and Restated LMIHAF Loan Agreement and Affordable Housing Agreement by and between the Housing Successor Agency of the City of Vallejo and Firm Foundation Community Housing (“Firm Foundation”) for the development and construction of permanent supportive housing units at 2441 Broadway Street for the Broadway Village Project (“Broadway Project”).

REASONS FOR RECOMMENDATION

Affordable housing developers typically rely on a variety of County, State, Federal and local funding sources. Affordable housing projects often fall short of the necessary financing due to the competitiveness of these grants. Funding sources for the acquisition, development, and construction of the Broadway Project come from several sources; however, there is still a gap in funding.

As of the end of FY 2022-23 (June 30, 2023), Vallejo’s LMIHA Fund had available and unencumbered funds of $3,534,099. On August 29, 2023, the Housing Successor Agency, which manages LMIHA funds, and Firm Foundation entered into an LMIHAF loan agreement for $1.3M for the development and construction of 47 permanent supportive housing units and one manager unit at the Broadway Project. The enclosed Amended and Restated Loan Agreement supersedes and replaces the original agreement to provide an additional loan of $2M for a total of $3.3M.

BACKGROUND AND DISCUSSION

Low-and Moderate-Income Housing Asset Funds could be spent on the development of housing affordable to and occupied by households earning 80 percent or less of the area median income (AMI). At least 30 percent of these funds expended for the development of rental housing must be affordable to and occupied by households earning 30 percent or less of the AMI (Extremely Low-Income). No more than 20 percent of these funds expended for the development of housing must be affordable to and occupied by households earning between 60 and 80 percent of the AMI. Using Low Moderate Housing Asset Funds in projects or activities that will assist households with the most need as well as supporting non-City owned private affordable housing development projects that provide extremely low-income housing units assist the City in ensuring that LMIHA Funds are invested for allowable uses in a timely and deliberate manner.

On May 10, 2022, the City of Vallejo, Firm Foundation, and Shelter Inc. have been designated a California Department of Housing and Community Development Homekey Program ("Homekey") Round 2 Grant of $11,621,866 to develop and build a permanent supportive housing project to house chronically homeless individuals. On June 7, 2022, the Council accepted the grant and amended the City's budget to receive the grant. On June 14, 2022, the Council approved a resolution to appropriate the Homekey Round 2 grant funding for the Broadway Project.

The Broadway Project is a permanent supportive modular housing project designed to house the chronically homeless. The estimated total cost of the project is $22.75M Construction began on September 19, 2022, and is anticipated to be completed in September 2024. Residents are expected to be moved in by February 2025. Firm Foundation owns the site and manages the project and its construction in compliance with Homekey deliverables and timeline regulations. The Broadway Project will include 48 modular housing units, a community room, a courtyard, and access to a rooftop deck. On-site wraparound supportive services will be provided to facilitate connections to benefits and community resources.

The existing and anticipated State, City, and Housing Authority funding amounts for the Broadway Project are summarized below:

FUNDING SOURCE	AMOUNT
State Homekey Round 2 Grant	$11,621,866
City American Rescue Plan (ARP) Act Grant Allocation	$190,000
Solano County	3,000,000
Infill Infrastructure Grant Program	2,559,656
Wells Fargo Grant	50,000
Line of Credit (via Shelter Inc.)	2,000,000
Philanthropic Giving	500,000
LMIHAF Loan	***$3,300,000***
TOTAL	**23,221,522**

The LMIHAF Loan, like the Homekey Round 2 grant award and standard agreement, requires an affordability agreement and covenant to be recorded against the Project for the benefit of the City restricting the use, operation, occupancy, and affordability of the Project for a period of 55 years.

FISCAL IMPACT

Beginning in 2014, when the State eliminated redevelopment agencies, the housing functions of the former Vallejo Redevelopment Agency were transferred to the HACV thereby serving as the Housing Successor Agency. Redevelopment agencies were required to set aside 20 percent of all tax increments generated through redevelopment to create, preserve, and improve housing for low- and moderate-income persons. This 20 percent set-aside funding was known as the Low- and Moderate-Income Housing Asset Fund (LMIHAF). The HACV, acting as the Housing Successor Agency, manages these assets and funding; therefore, the Housing Successor Agency of the City of Vallejo is considered the lender pursuant to this loan agreement.

Amending the FY 2023-24 HACV Budget by authorizing additional expenditure under the Affordable Housing Fund (#126) for $2M and approving the Amended and Restated LMIHAF Loan Agreement will encumber $2M in Affordable Housing Funds, which are former Redevelopment funds.

There is no fiscal impact to the City's General Fund associated with the LMIHAF Loan.

ENVIRONMENTAL REVIEW

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

ATTACHMENTS

1. Resolution
2. Amended and Restated Loan Agreement by and between the Housing Successor Agency of the City of Vallejo and Firm Foundation Community Housing for the Development and Construction of Permanent Supportive Housing at 2441 Broadway Street

CONTACT

Alicia Jones, Housing Director, (707) 648-4408, Alicia.Jones@cityofvallejo.net

RESOLUTION

WHEREAS, the issue of homelessness remains a high priority of the City of Vallejo; and

WHEREAS, on January 25, 2022, the City Council of the City of Vallejo approved Resolution No. 20-008 N.C. authorizing the City Manager to apply for the California Department of Housing and Community Development (HCD) Homekey Program (“Homekey”) Round 2 Grant with Firm Foundation Community Housing (“Firm Foundation”) and Shelter, Inc. as co-applicants for a permanent supportive housing project; and

WHEREAS, on May 10, 2022, the City of Vallejo, Firm Foundation and Shelter Inc. were designated a Homekey grant of $11,621,866 to develop and build 48 new dwelling units to provide 47 permanent supportive housing units to chronically homeless individuals; and

WHEREAS, On June 7, 2022, the Council approved Resolution No. 22-093 N.C. to accept and receive the Homekey grant and amend the budget; and

WHEREAS, on June 14, 2022, the Council approved Resolution No. 22-099 N.C. to appropriate the Homekey grant for costs associated with the development of the Broadway Village Project (“Broadway Project”); and

WHEREAS, Firm Foundation owns the project site at 2441 Broadway Street and manages the construction of Broadway Project; and

WHEREAS, funding sources for the acquisition, development, and construction of the Broadway Project come from several sources; however, there is still a gap in funding.

WHEREAS, Low- and Moderate-Income Housing Asset Fund (LMIHAF) is available to provide for development of projects to contribute toward the construction or other hard costs associated with the development of new permanent supportive housing units.

WHEREAS, on August 29, 2023, the Housing Successor Agency and Firm Foundation entered into an LMIHAF loan agreement for $1,300,000 for the development and construction of permanent supportive housing units at the Broadway Project.

NOW, THEREFORE, THE HOUSING AND COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF VALLEJO DOES HEREBY RECOMMEND AS FOLLOWS:

Section 1. Approval by the Board of Directors of the Housing Authority of the City of Vallejo of the amendment of the Budget for Fiscal Year 2023-24 to authorize expenditure under the Affordable Housing Fund (#126) for $2,000,000; and

Section 2. Approval and authorization by the Board of Directors of the Housing Authority of the City of Vallejo of the Executive Director, or his designee, to execute an Amended and Restated Loan Agreement by and between the Housing Successor Agency of the City of Vallejo and Firm Foundation for the development and construction of permanent supportive housing units at 2441 Broadway Street in the amount of $3,300,000, and Affordable Housing Agreement and all associated documents, to provide funding for the construction of the Broadway Project with any modifications approved by the Executive Director and City Attorney.

AMENDED AND RESTATED LOAN AGREEMENT

by and between the

HOUSING SUCCESSOR AGENCY OF THE CITY OF VALLEJO

AND

FIRM FOUNDATION COMMUNITY HOUSING

for the

Development and
Construction of Permanent Supportive Housing

at

2441 Broadway Street

ATTACHMENTS

AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (the "Agreement") is entered into as of the _______ day of March, 2024, by and between the HOUSING SUCCESSOR AGENCY OF THE CITY OF VALLEJO (the "Agency") and FIRM FOUNDATION COMMUNITY HOUSING, a California nonprofit public benefit corporation (the "Borrower"). The Agency and the Borrower hereby agree as follows:

[§100] SUBJECT OF AGREEMENT

[§101] <u>Background and Purpose of This Agreement</u>.

The purpose of this Agreement is to effectuate the Permanent Supportive Housing ("PSH") project for 2441 Broadway Street (the "Project") by providing financial assistance to the Borrower to pay certain costs associated with the development and construction of the Project, consisting of approximately forty-seven (47) affordable and/or PSH units plus one unrestricted manager's unit that will be contained in the Project and are referred to herein as the "Housing Units."

Pursuant to this Agreement, the Borrower shall limit the rental of the Housing Units to Extremely Low Income Households defined as at or below 30 percent of the Area Median Income ("AMI"). One unit shall be an unrestricted manager's unit. The gross monthly rent for the restricted Housing Units (excluding any supplemental rental assistance from the State of California, the federal government or any other public agency to those tenants or on behalf of those units) shall not exceed the "affordable rent" as determined for extremely-low income households pursuant to federal low-income housing tax credit program requirements, the income eligibility levels, definition of AMI, rent limits, and all provisions under such program regarding income assumed household size and continued occupancy and rent requirements for households whose incomes exceed the eligible income limitations. The affordability restrictions as required by this Agreement shall remain in effect for 55 years, commencing upon recordation of the Affordability Agreement attached hereto as Attachment No. 5. In addition to the affordability restrictions as set forth herein, the Borrower shall work with the Agency and the City of Vallejo (the "City") to develop a program that will, to the extent permitted by applicable federal, state and local law, provide a preference to lease to tenants that demonstrate residency, either permanent or itinerant, within the City of Vallejo limits and that identify as homeless, either sheltered or unsheltered, as defined by the U.S. Department of Housing & Urban Development ("HUD") for purposes of the Point-in-Time Census. The Borrower shall work collaboratively with the Agency and the City to develop such a preference program, and the final program shall be subject to review and written approval by the City and Borrower. The use of the Site, defined in Section 103, below, pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, morals and welfare of its residents and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

The Project may receive Project Based Section 8 vouchers or other rental subsidies (the "Rental Subsidies") throughout the term of the Affordability Agreement. If, during the term of the Affordability Agreement, any change in federal law occurs or any action (or inaction) by

Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidies, such that the rental subsidy projected on the budget for the Project is reduced or no longer available, Borrower may increase the rents on one or more of the Extremely Low Income Units during the remainder of the Term up to 60 percent AMI, provided Borrower demonstrates to the satisfaction of the Agency that such rental increase is necessary to maintain the financial stability of the Project and no alternative rental subsidies are available.

Agency and Borrower entered into that certain Loan Agreement dated July 12, 2023 regarding the Project (the "Original Loan Agreement"). This Agreement amends and restates that Original Loan Agreement in its entirety. This Agreement hereby supersedes and replaces the Original Loan Agreement, and upon execution hereof, the Original Loan Agreement shall be of no further force or effect.

[§102] The Project Area.

The Project Area is located in the City of Vallejo, California, and the exact boundaries of the Project Area are specifically described as the lot located at: 2441 Broadway Street (the "Project Area"), and as described in Attachment 2.

[§103] The Site.

The site is located within the City and shown on the "map of the site," attached hereto as Attachment 1 and incorporated by reference herein, and as more particularly described in the "legal description of the site," attached hereto as Attachment 2 and incorporated herein by reference. The site is located within the boundaries of the project area.

[§104] The Term.

The Agency and Borrower desire by the execution of this Agreement to assure the Site remains affordable of fifty-five (55) years, following the date of the recordation of this Affordability Agreement (the "Term").

[§105] Parties to This Agreement.

[§105.1] The Agency. The Agency is a public body, corporate and politic, exercising governmental functions and powers and designated as the Housing Authority Successor Agency identified after the dissolution of Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.).

The principal office of the Agency is located at 200 Georgia Street, Vallejo, CA 94590.

"Agency," as used in this Agreement, includes the Housing Successor Agency of the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

The Agency shall exercise authority to implement this Agreement through the Agency's Executive Director (or their duly authorized representative). The Executive

Director shall have the authority to make approvals, issue interpretations, waive provisions, execute documents, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially change the uses or development permitted on the Project, or materially or substantially add to the obligations of the Agency as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in this Agreement and Attachments.

[§105.2] **<u>The Borrower</u>**. The Borrower is Firm Foundation Community Housing, a California nonprofit public benefit corporation ("Firm Foundation").

The principal address of the Borrower is 2845 Castro Valley Boulevard, Castro Valley, CA 94546. Whenever the term "Borrower" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Borrower are of particular concern to the Agency, and it is because of such qualifications and concerns that the Agency has entered into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the Agency except as otherwise permitted herein if there is any change (voluntary or involuntary) in the Borrower (except as otherwise permitted herein) prior to the completion of development of the Site as evidenced by the issuance of a Certificate of Completion.

[§200] METHOD OF FINANCING THE PROJECT

[§201] <u>Housing Successor Agency Low and Moderate Income Housing Asset Fund ("LMIHAF") Loan.</u>

Agency hereby agrees to make a loan to Borrower in the amount of THREE MILLION THREE HUNDRED THOUSAND DOLLARS ($3,300,000) (the "LMIHAF Loan"), subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the documents and instruments executed by the Borrower in connection with this transaction. The proceeds of the LMIHAF Loan will be funded from the Housing Authority Successor Agency's Low and Moderate Income Housing Fund. These funds were collected under the previous Redevelopment Agency and accumulated through the Low and Moderate Income Housing Fund. The Housing Authority Successor Agency has the authority to distribute these funds and they shall be disbursed by the Agency to Borrower under this Agreement to fund certain costs related to the Project as more specifically set forth herein.

[§202] <u>Repayment of the LMIHAF Loan</u>.

The LMIHAF Loan shall be due and payable in full fifty-five (55) years after the date the Project obtains its final certificate of occupancy (the "Maturity Date"). The LMIHAF Loan shall bear simple interest at the rate of three percent (3.0 %) per annum, based on the amount disbursed commencing upon the date of the LMIHAF Loan. The LMIHAF Loan shall be non-recourse to the Borrower.

[§203] <u>Individual Disbursements for the Project</u>.

Prior to each disbursement for costs of the Project, Borrower must satisfy the following conditions:

a. Borrower must have delivered to the Agency an "Expenditure Request" in form and substance satisfactory to the Agency, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The Agency may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the Agency.

b. The Project is being constructed in a good and workman-like manner by appropriate means substantially in accordance with the plans and specifications for the Project and all required inspections and approvals have been obtained as and when necessary or desirable.

c. With respect to any Disbursement Request that covers construction costs, Borrower must have certified to the Agency that the Project complies with the applicable labor standards required by the U.S. Department of Housing and Urban Development Office of Labor Relations and the Vallejo Municipal Code.

[§204] <u>Limitations on Approved Expenditures</u>.

The Agency may refuse to disburse funds for any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The Agency is not obligated to approve expenditure of the full amount of the LMIHAF Loan "Funding Amount" unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all funds disbursed to Borrower under this Agreement exceed the Funding Amount.

[§300] IMPROVEMENT OF THE SITE

[§301] <u>Improvement of the Site by the Borrower</u>.

The Borrower agrees to use the Funding Amount towards construction of the Project (the "Development Work").

[§301.1] <u>Cost of Development</u>. The cost of Development Work shall be borne by the Borrower subject to the terms of this Agreement.

[§301.2] <u>Bodily Injury and Property Damage Insurance; Indemnification</u>. Prior to the commencement of Development Work (or any work related thereto) upon the Site, the Borrower shall furnish, or cause to be furnished, to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least TWO MILLION DOLLARS ($2,000,000.00) for any person, THREE MILLION DOLLARS ($3,000,000.00) for any occurrence, FIVE MILLION DOLLARS ($5,000,000) annual aggregate and FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) property damage, naming the Agency and the City as additional insureds. The policy limits of such policies may be in lesser amounts if the Borrower shall provide the Agency with duplicate originals or appropriate certificates of a binder (approved by the Agency) which indemnifies and holds the Agency and the City of Vallejo harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person, or to the property of any person, which shall occur on or adjacent to the Site and which shall be directly or indirectly caused by any acts done thereon, or by any errors or omissions, of the Borrower and its agents, servants, employees and contractors, and which provides for the defense of the Agency and the City against all claims or causes of action arising therefrom. Such insurance policies shall be maintained and kept in force, and such obligation to indemnify shall continue, during periods of construction upon the Site and until the Agency has issued a Certificate of Completion for the entire Site.

[§301.3] **Rights of Access During Development Work**. Representatives of the Agency and the City shall have the reasonable right of access to the Site, without charges or fees, at normal work hours upon reasonable written notice to Borrower during the period of Development Work for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing improvements on the Site.

[§301.4] **Local, State, and Federal Laws**. The Borrower shall carry out the development of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards.

[§301.5] **Antidiscrimination**. The Borrower, for itself and its successors and assigns, agrees that on the Site provided for in this Agreement, the Borrower will not discriminate against any employee or applicant for employment on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and 12955.2 of the Government Code.

[§302] **Prohibition Against Transfer and Assignment of Agreement.**

[§302.1] **Prohibition**. The identity and qualifications of Borrower as an experienced and successful developer of affordable rental housing developments are of particular concern to the Agency. It is because of this identity and these qualifications that the Agency has entered into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Borrower make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Project without the prior written approval of the Agency pursuant to Section 302.3 hereof, except as expressly set forth herein, which approval shall not be unreasonably withheld.

[§302.2] **<u>Permitted Transfers</u>**. Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment or transfer of this Agreement, the LMIHAF Loan, the Affordability Agreement, or conveyance of the Project or any part thereof pursuant to Section 302.4 shall not be required in connection with any of the following (the "Permitted Transfers"):

a. The lease of Housing Units to qualified tenants.

b. Assignment for financing purposes, and any foreclosure thereunder, subject to such financing being considered and approved by the Agency pursuant to Section 201 hereof.

[§302.3] **<u>Transfers Requiring Agency Consent</u>.** Notwithstanding any other provision of this Agreement to the contrary, any other assignment or transfer of this Agreement, the LMIHAF Loan, the Affordability Agreement, or conveyance of the Project or any part thereof pursuant to Section 302 shall require Agency approval. In the event of an assignment by Borrower requiring the Agency's prior approval, Borrower shall give written notice to Agency of such assignment or transfer request. Agency shall respond within 60 days on approval of such transfer. Any other transfer, assignment, encumbrance or lease without the Agency's prior written consent will be voidable and, at the Agency's election, constitute an Event of Default under this Agreement.

[§302.4] **<u>Agency Consideration of Requested Transfer</u>**. The Agency agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 302, provided (a) the Borrower delivers written notice to the Agency requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability, and comparable net worth and resources, as the proposed transferor or assignor, and (c) the assignee or transferee assumes the obligations of the Borrower under this Agreement in a form which is reasonably acceptable to the Agency. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 302 and other criteria as reasonably determined by the Agency.

[§302.5] **<u>Successors and Assigns</u>**. This Agreement shall run with the land, and all of the terms, covenants, and conditions of this Agreement shall be binding upon the Borrower and the permitted successors and assigns of the Borrower. In the event of a transfer or assignment under this Section 302, all rights and obligations of the transferor Borrower shall be assumed by the transferee Borrower and the transferor Borrower shall have no further obligation or liability under this Agreement.

[§303] **<u>Rights of Holders</u>.**

[§303.1] **<u>Holder Not Obligated to Construct</u>**. The holder of any mortgage, deed of trust or other security interest pertaining to the Site shall in no way be obligated by the provisions of this Agreement to construct, or complete such Development Work, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

[§303.2] **<u>Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure</u>**. Whenever the Agency shall deliver any notice or demand to the Borrower with respect to any breach or default by the Borrower in the completion of the Development Work, the Agency shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement (who has previously made a request therefor) a copy of such notice or demand. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option, within 30 days, or if the default cannot be cured within a 30-day period, Borrower will have 60 days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the Development Work, or the completion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Borrower's obligations to the Agency by written agreement satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the Development Work to which the lien or title of such holder relates, and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations.

[§304] **<u>Indemnity; Compliance with Laws</u>.**

Borrower agrees to defend, indemnify, protect, and hold harmless the Agency and the City and their officers, employees, and agents from, regarding and against any all liabilities, obligations, orders, claims, damages, fines, penalties, and expenses of any kind whatsoever, together with fees (including, without limitation, reasonable attorneys' fees), whenever arising or resulting from or in connection with the obligation to comply with all laws with respect to the construction of the Project, including, without limitation, all applicable federal and state labor laws and standards and all relocation requirements or that may incur as a direct or indirect consequence of: (i) the making of the Agency Note, subject to the nonrecourse provisions in the Agency Documents or (ii) any failure at any time of any of Borrower's covenants, representations or warranties to be true and correct in any material respect, or (iii) any act or omission by Borrower, any contractor, subcontractor or material supplier, engineer, architect or other person or entity with respect to its work at the Site or on the Project.

Borrower shall pay immediately upon Agency or City's demand any amounts owing under this indemnity together with interest from the date of demand until paid at the rate of interest, which shall be the highest rate then allowed by law. Borrower's duty to indemnify Agency shall survive repayment of the LMIHAF Note. The indemnity set forth herein shall not extend to losses, damages, liabilities, claims, actions, judgments, court costs, and legal or other expenses which Agency, its officers, employees, and agents, or any of them, incur to the extent that such are caused by any Agency's negligence or willful misconduct.

Notwithstanding anything to the contrary contained in this Agreement, no deficiency judgment may be obtained against the Borrower in connection with this Agreement or the LMIHAF Loan, except for actual or constructive fraud, material intentional misrepresentation, intentional bad faith waste of or on the Site, and such other matters as are referred to below. Consequently, no deficiency amount may be recovered from Borrower under the provisions hereof, except as may be provided herein. Notwithstanding the generality of the foregoing, however, Borrower shall indemnify, defend, protect, and hold the Agency harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense, including, without limitation, reasonable attorneys' fees and expenses incurred by the holder hereof, arising as a result of any (i) fraud or material intentional misrepresentation by the Borrower under or in connection with this Agreement; (ii) intentional bad faith waste of the real property encumbered by the Agency Deed of Trust; and (iii) losses resulting from the Borrower's failure to maintain insurance as required under the provisions of the Agency Deed of Trust. The Borrower's obligation to indemnify the Agency hereof as aforesaid shall be recourse obligations of the Borrower, and in the event of any breach of such obligations, the Agency shall have the right to proceed directly against the Borrower to recover any and all losses, damages, liability, costs, and expenses (including without limitation, reasonable attorney's fees and expenses) and may bring any action and institute any proceeding to obtain a deficiency judgment in or following foreclosure for any and all such losses, damages, liabilities, costs, and expenses resulting from such breach.

[§305] <u>Prevailing Wages</u>.

To the extent applicable, Borrower shall comply and cause its contractors and subcontractors to comply with Labor Code section 1720, *et seq.* and implementing regulations regarding the payment of prevailing wages ("Prevailing Wage Law") with regard to the Development Work. Borrower shall be solely responsible for effectuating compliance with the Prevailing Wage Law, and in the event that the Department of Industrial Relations or an appropriate court or other governmental body initiates an enforcement action due to a failure by Borrower to pay prevailing wages in compliance with state law, or undertakes proceedings to consider whether the Development Work constitutes a public work subject to prevailing wages and/or determines that the Development Work does constitute a public work subject to prevailing wages, Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractors, and subcontractors) to pay prevailing wages as required by the Prevailing Wage Law in connection with Development Work. The foregoing indemnity shall survive any termination of this Agreement.

[§306] <u>Environmental Indemnity</u>.

Borrower agrees, from and after the date of acquisition of the Site, to defend, indemnify, protect, and hold harmless the Agency and City and their officers, employees, agents, attorneys, representatives, legal successors, and assigns ("Indemnitees") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, expenses, Environmental Response Costs (as defined herein), or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' consultants' fees, all of which collectively are referred to as "Environmental Claims"), whenever arising, and whether or not caused in whole or in part by the Agency or City, resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration, and/or release (collectively, the "Management") of Hazardous Materials at, on, in, or beneath the Site, except for claims arising as a result of the gross negligence or willful misconduct of the Agency and except for any such Hazardous Materials that are customarily used in residential developments. The Borrower's defense, indemnification, protection, and hold harmless obligations herein shall include, without limitation, the duty to respond to any Environmental Claims at the Borrower's sole cost. At the request of Borrower, the Agency shall cooperate with the Borrower in its defense of any such claim, action, suit proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense, provided that the Agency shall not be obligated to incur any expense in connection with such cooperation. Agency's agreement to cooperate shall not be deemed to limit or otherwise modify Borrower's obligations under this indemnity. Borrower's indemnification as set forth herein shall survive Borrower's satisfaction of its obligations set forth in this Agreement or the earlier termination of this Agreement. Notwithstanding any contrary provision hereof, the indemnity provided in this Section 306 shall not apply to Environmental Claims arising in connection with or resulting from Hazardous Materials present on the Site prior to the date the Site is conveyed to the Borrower, except Environmental Claims resulting from or arising in connection with the negligent act or omission of Borrower.

Hazardous Materials means any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Materials includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls, and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the rehabilitation, operation or maintenance of developments similar to the Project will not be deemed Hazardous Materials for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

[§306.1] <u>Definitions</u>.

a. As used in this Agreement, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, engendered, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by the Borrower.

b. As used in this Agreement, the term "Environmental Response Costs" means any and all costs associated with Environmental Response Actions, including, without limitation, any and all fines, penalties, and damages.

c. As used in this Agreement, the term "Hazardous Materials" means any substance, material or waste that is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by California, federal or local government authority to be capable of posing a risk of injury to health safety or property.

[§306.2] **Materiality**.

The Borrower acknowledges and agrees that the defense, indemnification, protection, and hold harmless obligations of the Borrower for the benefit of the Agency set forth in this Agreement are a material element of the consideration to the Agency for the performance of its obligations under this Agreement and that the Agency would not have entered this Agreement unless the Borrower's obligations were as provided for herein.

[§400] MANAGEMENT AND MAINTENANCE OF THE PROJECT

[§401] Use of the Site.

The Borrower covenants and agrees that the Borrower shall for itself, its successors, its assigns, and every successor in interest devote the Site to an affordable PSH project as identified herein, in accordance with the terms of the Affordability Agreement and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the land.

[§402] Maintenance of the Site.

Borrower shall keep the Site in good condition, order, and repair and shall not commit waste or permit impairment, demolition or deterioration of the Site; shall comply with all applicable state and federal regulations addressing the physical condition of the Site and buildings located on the Site and all applicable standards of the Agency, including, but not limited to, selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs, and replacement of capital items. Borrower must maintain or cause to be maintained the Project, including the Housing Units, and common areas, in a safe and sanitary manner in accordance with local health, building, and housing codes, California Health and Safety Code 17920.10, and the applicable provisions of 24 CFR Part 35, building standards, planning regulations, and utilities code; shall complete or restore promptly and in good and worker-like manner any building which may be constructed, damaged or destroyed and to pay when due all claims for labor performed and materials furnished; shall maintain the buildings in a habitable condition; and do all other acts which from the character or use of the Site may be reasonably necessary. Agency shall have the right to inspect the Site during normal business hours, provided Borrower and the occupant are given at least 72 hours written notice prior to any such inspection.

[§403] Contracting With Management Agent.

Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in Section 402 or Section 405, subject to the Agency's prior written approval of both the management agent and, at the Agency's discretion, the management contract between Borrower and the management agent, *provided*, *however*, that the arrangement will not relieve Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing Borrower to terminate the contract for cause without penalty upon 30 days' notice.

[§404] Borrower Management.

The Agency will provide written notice to Borrower of any determination that Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, the Agency may require Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the Agency deems necessary to ensure performance of the functions required in Section 402 or Section 405.

[§405] Obligation for Tenant Supportive Services.

The Borrower agrees to contract directly with Shelter, Inc. or other agency, organization or other qualified entity, approved in writing by the Agency, for ongoing tenant supportive services, which may include but are not limited to: healthcare access and services, mental health care access and services, employment training and search services, benefit acquisition assistance, substance abuse counseling and treatment, and other social services required by tenants and as required in the HCD Homekey Regulatory Agreement, Affordability Agreement or in any other applicable documents.

[§406] Obligation to Refrain from Discrimination.

The Borrower covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, source of income, age, marital status, physical or mental handicap, medical condition, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Borrower itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

[§407] Form of Nondiscrimination and Non-Segregation Clause.

The Borrower shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, sexual orientation, source of income, age, marital status, physical or mental handicap, medical condition, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses. Agency understands that the wording of certain services agreements is not within the control of Borrower, and to such extent that Borrower does not have control of the wording, then Borrower is excused from complying with this section.

[§407.1] In deeds.

"The grantee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

[§407.2] In leases.

"The lessee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.""

[§407.3] In contracts.

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

[§408] <u>Rights of Access</u>.

For the purposes of assuring compliance with this Agreement, representatives of the Agency and the City shall have the reasonable right of access to the Site without charges or fees for the purpose of inspection of the Site as to maintenance of the improvements thereon. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency, or his/her designee.

[§409] <u>Effect and Duration of Covenants</u>.

The covenants contained in Sections 401 and 402 of this Agreement shall remain in effect for 55 years commencing with the date the Affordability Agreement is recorded on the Site. The covenants against discrimination contained in Sections 405 and 406 of this Agreement shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Borrower and any successors and assigns to the Site or any part thereof, and the tenants, lessees, sublessees, and occupants of the Site, for the benefit of and in favor of the Agency, its successors and assigns, the City, and any successor in interest thereto.

[§410] <u>Project Monitoring, Reports, Books, and Records</u>.

Borrower understands and agrees that it will be monitored by the Agency from time to time to assure compliance with all terms and conditions in this Agreement and all laws that are applicable to the Project. Borrower acknowledges that the Agency may also conduct periodic on-site inspections of the Project. Borrower must cooperate with the monitoring by the Agency and ensure full access to the Project and all information related to the Project as reasonably required by the Agency.

Borrower must keep and maintain books, records, and other documents relating to the receipt and use of all LMIHAF Loan funds, including all documents evidencing any Project Income and Project Expenses. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility, and condition of the Project. All financial reports must be prepared and maintained in accordance with Generally Accepted Accounting Principles (GAAP) as in effect at the time of performance.

For the period up until the completion of construction, Borrower must provide written notice of the replacement of its Project Manager or any equivalent position within 30 days after the effective date of such replacement.

[§411] <u>Bi-Monthly Reporting</u>.

Borrower must submit, every eight weeks, until all of the loan funds have been disbursed to Borrower, bi-monthly reports (the "Bi-Monthly Project Update") describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, consultants, and contractors, changes in scope, cost or schedule, financial documentation of the loan funds spent to date, and significant milestones achieved in the past month and expected to be achieved in the coming month. The Bi-Monthly Project Update must be submitted by email.

[§412] <u>Annual Reporting</u>.

Borrower must file with the Agency annual report forms (the "Annual Monitoring Report") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, line item statements of Project Expenses, Project Income, Project Fees (if any), Residual Receipts (as defined in the LMIHAF Note), and any Distributions (as defined in Section 416.3) made, evidence of required insurance, a rent roll, no later than 120 days after the end of Agency's fiscal year. Notwithstanding anything to the contrary contained herein, to the extent that the definitions in this Section 412 conflict with the definitions in the LMIHAF Note, the definitions in the LMIHAF Note shall control.

[§412.1] Borrower must deliver to Agency copies of any operating and financial reports provided to other lenders for the Project promptly after submittal to such other lenders.

[§412.2] "Project Expenses" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments, and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages, and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments, and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any junior or senior financing secured by the Site and used to finance the Project that has been approved by the City; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs, the fee of any managing agent, and any supportive services fees paid to the supportive service provider; and (e) any extraordinary expenses approved in advance by the City. Project Fees are not Project Expenses.

[§412.3] "Project Fees" means deferred developer fees and entitlement, building, and other relevant and required permit fees due to the City or other authorized jurisdiction.

[§412.4] "Project Income" means all income and receipts in any form received by Borrower from the operation of the Project, including rents, fees, deposits (other than tenant security deposits), any accrued interest disbursed from any reserve account for a purpose other than that for which the reserve account was established, reimbursements, and other charges paid to Borrower in connection with the Project. Interest accruing on any portion of the Funding Amount is not Project Income.

[§413] <u>Project Completion Report</u>.

Within the specific time periods set forth below after the completion of construction, lease-up, or permanent financing of the Project, as applicable, Borrower must provide to the City the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower shall provide to the Agency information or documents reasonably requested by the City to assist in the City's review and analysis of the submitted reports:

a. Within 120 days after completion of the Development Work, a draft project completion audit: identifying the sources and uses of all funds used for the Project including the LMIHAF Loan;

b. Within 60 days after 75 percent occupancy, and 100 percent occupancy, respectively, a report on the lease-up of the Housing Units including number of leases by race, ethnicity, and single-headed household by gender, also indicating the Housing Units by income category. If these occupancy milestones occur within 60 days of each other, Borrower may submit one report.

[§414] <u>Response to Inquiries</u>.

At the request of the Agency, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations, and condition of the Project, the status of any mortgage encumbering the Project, and any other requested information with respect to Borrower or the Project.

[§415] <u>Use of Income from Operations</u>.

Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "Project Operating Account") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with the Agency's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees. Withdrawals from the Project Operating Account (including accrued interest) for other purposes may be made only with the Agency's expressed prior written approval.

Borrower must keep accurate records indicating the amount of Project Income deposited into and withdrawn from the Project Operating Account and the use of Project Income. Borrower must provide copies of the records to the City upon request.

[§415.1] <u>Operating Reserve Account</u>.

a. Commencing no later than the date the Project permanent financing closes, or any other date the City designates in writing and approved by Borrower, Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "Operating Reserve Account") by depositing funds in an amount equal to at least 25 percent of the approved budget for Project Expenses for the first year of operation of the Project. The City may review the adequacy of deposits to the Operating Reserve Account periodically and require adjustments as it deems necessary.

b. On or before the fifteenth day of each month following establishment of the Operating Reserve Account, Borrower must make monthly deposits from Project Income into the Operating Reserve Account in an amount sufficient to accumulate three months of estimated operating expenses and debt service under stabilized occupancy. No less than annually after establishing the Operating Reserve Account, Borrower must make additional deposits, if necessary, to bring the balance in the Operating Reserve Account to an amount equal to three months estimated operating expenses, including debt service, of the prior year's actual Project Expenses.

c. Borrower may withdraw funds from the Operating Reserve Account solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies, and other expenses that vary seasonally or from month to month in the Project. Borrower may not withdraw funds (including any accrued interest) from the Operating Reserve Account for any other purpose without the Agency's prior written approval.

[§415.2] Distributions.

a. Definition. "Distributions" refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower or any party having a beneficial interest in the Project, but does not include reasonable payments for property management, asset management or other services performed in connection with the Project.

b. Conditions to Distributions. Distributions for a particular fiscal year may be made only following: (a) Agency approval of the Annual Monitoring Report submitted for that year; (b) the Agency's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City of Vallejo for the Project; and (c) the Agency's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The Agency will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless the Agency delivers its disapproval or request for more information to Borrower within 30 business days after the Agency's receipt of the request for approval.

c. Prohibited Distributions. No Distribution may be made in the following circumstances:

i. when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or

ii. when the Agency determines that Borrower or Borrower's management agent has failed to comply with this Agreement; or

iii. if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or

iv. if the Operating Reserve Account or any other reserve account required for the Project is not fully funded under this Agreement; or

v. if the LMIHAF Loan is to be repaid from Residual Receipts, Borrower failed to make a payment when due and the sum remains unpaid; or

vi. during the pendency of an uncured Event of Default (including Borrower's failure to provide its own funds at any time the Agency determines the LMIHAF Loan is out of balance) under any Agency Agreement.

[§500] DEFAULTS AND REMEDIES

[§501] Defaults.

Subject to the extensions of time set forth in Section 604, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The non-defaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure same within 30 days of receipt of the notice of default, or if a cure cannot be effected within such time, the non-defaulting party must commence the cure within 30 days of receipt of the notice of default and proceed to prosecute diligently said cure within a reasonable time. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

[§502] Legal Actions.

In addition to any other rights or remedies, and except as otherwise expressly set forth herein, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Solano, State of California, or in any other appropriate court in that county.

The non-defaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the non-defaulting party may file legal action to require the defaulting party specifically to perform the terms and conditions of this Agreement.

[§503] Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

[§504] Acceptance of Service of Process.

In the event that any legal action is commenced by the Borrower against the Agency, service of process on the Agency shall be made by personal service upon the City Clerk of the City or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Borrower, service of process on the Borrower shall be made by personal service upon the individual named as Borrower's agent for service of process with the California Secretary of State, or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

[§505] <u>Rights and Remedies Are Cumulative</u>.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by the other party.

[§506] <u>Damages</u>.

If the Borrower or the Agency defaults with regard to any of the provisions of this Agreement, and the default is not cured or commenced to be cured by the defaulting party in accordance with the requirements of Section 501, subject to Section 304 hereof, the defaulting party shall be liable to the other party for any damages caused by such default.

[§507] <u>Specific Performance</u>.

If the Borrower or the Agency defaults under any of the provisions of this Agreement, and the default is not cured or commenced to be cured by the defaulting party in accordance with the requirements of Section 501, the non-defaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

[§508] <u>Remedies and Rights of Termination</u>.

[§508.1] <u>Termination by the Borrower</u>. Prior to the disbursement of the LMIHAF Loan, in the event that the Borrower is unable to obtain financing for the development of the Site pursuant to this Agreement then this Agreement may, at the option of the Borrower, be terminated by written notice thereof to the Agency. Upon termination pursuant to this Section 508.1, neither the Agency nor the Borrower shall have any further rights against or liability to the other under this Agreement.

[§508.2] <u>Termination by the Agency</u>.

a. The Agency may terminate this Agreement by written notice to the Borrower upon the following events:

i. The Borrower transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement; or

ii. There is any significant change in the ownership or identity of the Borrower or the parties in control of the Borrower contrary to the provisions of Section 302 hereof; or

iii. Borrower has not received commitments reasonably satisfactory to the Agency for the full project financing sources identified in Section 201 of this Agreement, or substitute sources reasonably acceptable to the Agency; or

iv. The Borrower fails to obtain any entitlements or conduct CEQA review or required permits that would allow for the lawful construction and development of the Project as identified herein and approved by the Agency; or

v. The Borrower is in breach or default with respect to any other obligation of the Borrower under this Agreement (subject to any applicable notice and cure period).

Upon termination pursuant to this Section 508.2(a), neither the Agency nor the Borrower shall have any further rights against or liability to the other under this Agreement.

b. In the event of any default under this Agreement by Borrower after execution by the Borrower of the LMIHAF Note, Agency Deed of Trust, and the disbursement of the LMIHAF Loan, then the Agreement may, at the option of the Agency, be terminated by written notice to the Borrower. In the event of such termination, the Agency's rights and remedies shall be as set forth in the LMIHAF Note and Agency Deed of Trust.

[§600] GENERAL PROVISIONS

[§601] Conflicts of Interest.

No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Borrower warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

[§602] Nonliability of Agency and Borrower Officials and Employees.

a. To the extent permitted by applicable law, no member, official or employee of the Agency or the City shall be personally liable to the Borrower in the event of any default or breach by the Agency or the City or for any amount which may become due to the Borrower or on any obligations under the terms of this Agreement.

b. To the extent permitted by applicable law, no member, board member, official or employee of the Borrower shall be personally liable to the Agency in the event of any default or breach by the Borrower or for any amount which may become due to the Agency or on any obligations under the terms of this Agreement.

[§603] Notices, Demands, and Communications Between the Parties.

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received upon personal delivery or upon delivery by facsimile to the party to whom the notice is directed or, if sent by mail, three business days following its deposit in the United States mail, postage prepaid, certified mail, return receipt requested, or, if sent by overnight air courier, on the next business day following dispatch, and in any of such events addressed to Agency or Borrower, as the case may be, at the addresses set forth below (or such other address as a party may specify by notice given pursuant to this Section 603):

Borrower: Firm Foundation Community Housing
2845 Castro Valley Blvd.
Castro Valley, CA 94546
Attn: Senior Project Manager

City: Housing Successor Agency of the City of Vallejo
200 Georgia Street
Vallejo, CA 94590
Attn.: Executive Director of the Housing Department

[§604] Enforced Delay: Extension of Times of Performance.

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; or unusually severe weather. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than 30 days after the commencement of the cause, the period shall commence to run only 30 days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Agency and the Borrower.

[§605] Relationship Between Agency and Borrower.

It is hereby acknowledged that the relationship between the Agency and the Borrower is not that of a partnership or joint venture and that the Agency and the Borrower shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. The Borrower agrees to indemnify, hold harmless, and defend the Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between the Agency and the Borrower with respect to the development, operation, maintenance or management of the Site or the Project.

[§606] Agency Approvals and Actions.

Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Executive Director of the Agency or his or her designee is authorized to act on behalf of the Agency unless specifically provided otherwise or the context should require otherwise.

[§607] Counterparts.

This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in two originals, each of which is deemed to be an original.

[§608] Integration.

This Agreement comprises pages 1 through 26, inclusive, and Attachments 1 through 5, and contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. Any prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement constitutes the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

[§609] Titles and Captions.

Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

[§610] Interpretation.

As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

[§611] No Waiver.

A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party must be in writing and signed by the appropriate authorities of the Agency and Borrower and shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

[§612] Modifications.

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

[§613] Severability.

If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

[§614] Computation of Time.

The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

[§615] Legal Advice.

Each party represents and warrants to the other the following: They have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

[§616] Time of Essence.

Time is expressly made of the essence with respect to the performance by the Agency and the Borrower of each and every obligation and condition of this Agreement.

[§617] Cooperation.

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

[§618] Governing Law.

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Solano County.

[§700] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Borrower and delivered to the Agency, must be authorized, executed, and delivered by the Agency within 30 days after the date of signature by the Borrower or this Agreement shall be void, except to the extent that the Borrower and the Agency may consent in writing to further extensions of time for the authorization, execution, and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

[SIGNATURE BLOCK ON NEXT PAGE]

FIRM FOUNDATION COMMUNITY HOUSING, a California public benefit corporation

By: ___________________________

NAME: ________________________

TITLE: ________________________

DATE: ______________________

(City Seal)

HOUSING SUCCESSOR AGENCY OF THE CITY OF VALLEJO

By: _________________________
Michael Malone
Executive Director

DATE: ______________________

ATTEST:

By: _________________________
Dawn Abrahamson
City Clerk

APPROVED AS TO CONTENT:

____
Gillian Hayes
Assistant City Manager

APPROVED AS TO FORM:

____
Veronica A. F. Nebb
City Attorney

ACKNOWLEDGMENT

State of California

County of____________________

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

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

WITNESS my hand and official seal.

Signature__________________________________

ACKNOWLEDGMENT

State of California

County of____________________

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

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

WITNESS my hand and official seal.

Signature_________________________________

ATTACHMENT NO. 1

MAP OF THE SITE

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

APN: 0067-140-150

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

Parcel "B" as shown on that certain Parcel Map entitled: "Parcel Map, Portion of Sec. 36, T.4.N., R4W. M.D.B.&M., City of Vallejo, Solano County, California", filed for record in the office of the County Recorder of Solano County, on August 24, 1982 in Book 23 of Parcel Maps, at Page 79.

EXCEPTING THEREFROM a life estate as to an undivided one fifth (1/5) right, title, and interest in and to all mineral rights and all minerals of every kind and nature beneath the above-described land as granted in the Deed from Henry A. Mini, et al, to Virginia C. Mini, dated November 5, 1954, recorded January 14, 1955, in Book 748 of Official Records, at Page 313, Instrument No. 678.

LMIHAF NOTE
(Broadway Street Permanent Supportive Housing)

Principal Sum Not to Exceed
$3,300,000.00

March _____, 2024
Vallejo, California

FOR VALUE RECEIVED, FIRM FOUNDATION COMMUNITY HOUSING, a California public benefit corporation (the "Maker" or "Borrower"), having an address at 2845 Castro Valley Blvd., Castro Valley, CA 94546, promises to pay THE HOUSING SUCCESSOR AGENCY OF THE CITY OF VALLEJO ("Payee" or "Agency"), the principal sum not to exceed THREE MILLION THREE HUNDRED THOUSAND DOLLARS ($3,300,000), or so much of such principal as may be advanced, with interest at the rate of three percent (3%) per annum. Interest shall be simple interest only.

1. Purpose. This Note is made and delivered pursuant to and in implementation of that certain Loan Agreement entered into between Agency and Borrower, dated March _______, 2024 (the "Loan Agreement"), which provides for construction by the Maker of the " Project" described in Section 3 below.

2. Security. Payment of this Note shall be secured by a deed of trust and assignment of rents (the "Agency Deed of Trust"), from Maker to Payee, which Agency Deed of Trust shall be executed and recorded against the Site.

3. Housing Project. Maker will plan, develop, and construct a 47 unit permanent supportive housing community, plus one manager's unit, on the Site (the "Project"). The 47 units (plus one manager's unit) that are contained in the Project are referred to herein as the "Housing Units." The Project shall be maintained and operated in accordance with that certain Affordability Agreement by and between Agency and Borrower, dated March _____, 2024, and recorded concurrently with the Agency Deed of Trust.

4. Maturity Date. This Note shall be due and payable in full at the earlier of (i) sale of the Project by Borrower (except as otherwise permitted under the Loan Agreement); or (ii) 55 years after the date the Project obtains its final certificate of occupancy (the "Maturity Date").

5. Payment Location. Payment shall be made in lawful money of the United States to Payee in care of the Housing Successor Agency of the City of Vallejo, 200 Georgia Street, Vallejo, CA 94590. The place of payment may be changed from time to time as the Payee may from time to time designate in writing.

6. Default. The occurrence of any of the following shall constitute an event of default under this Note:

a. Maker fails to pay any amount due hereunder within 30 days of its due date; or

b. Any default by Maker under this Note, the Agency Deed of Trust, the Loan Agreement or the Affordability Agreement recorded against the Site after the expiration of all applicable cure periods; or

c. Any default by Maker under any other obligation of Maker recorded against the Site after the expiration of all applicable cure periods; or

Maker shall not be considered in default under this Note until the expiration of all notice and cure periods provided to Maker. Any cure of any default made or tendered by one or more of Maker's Limited Partners, as approved by the Agency, shall be deemed to be a cure by Maker and shall be accepted or rejected on the same basis as if made or tendered by Maker.

Upon the occurrence of any uncured event of default, or at any time thereafter, at the option of the Payee hereof, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Payee's option. Payee's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Payee's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. Default Interest Rate. At all times when Maker is in default hereunder by reason of Maker's failure to pay principal due under this Note within applicable cure periods, the interest rate on the sums as to which Maker is in default (including principal, if Payee has elected to declare it immediately due and payable), shall be the highest rate then allowed by law as of the date of the default, or ten percent, whichever is lower.

8. Waivers. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest, and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

9. Costs. Maker agrees to pay immediately upon demand all costs and expenses of Payee including reasonable attorneys' fees:

a. If after default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection,

b. If after a default hereunder or under the Agency Deed of Trust or Loan Agreement and after the expiration of all notice and cure periods Payee finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Agency Deed of Trust, the Loan Agreement or other loan document executed in connection with this Project, or

c. If Payee seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of the Agency Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

If Payee shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Site or the title thereto or the interest of the Payee under the Agency Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Payee shall be reimbursed by Maker immediately upon demand for all costs, charges, and reasonable attorneys' fees incurred by Payee in any such case, and the same shall be secured by the Agency Deed of Trust as a further charge and lien upon the Site.

10. Notices. Any notices provided for in this LMIHAF Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

11. Successors. This Note shall be binding upon Maker, its successors, and assigns.

12. California Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

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

14. Nonrecourse. This Note is a nonrecourse obligation of Maker. Neither Maker nor any of its officers, directors or general and limited partners shall have any personal liability for repaying the principal or interest of the Note. In any action brought to enforce the obligations of Maker under this Note, the Agency Deed of Trust or any other instrument or agreement evidencing, securing or relating to the indebtedness evidenced by this Note, the judgment or decree shall be enforceable against Maker solely and only to the extent of its interest in the property described in the Agency Deed of Trust or its interest in any other security loaned by Maker as security for this Note, and Payee shall not seek any deficiency judgment against the Maker. The foregoing provisions shall not prevent recourse to the collateral security for the loan or constitute a waiver, release or discharge of or otherwise affect the obligation to pay, any indebtedness evidenced by the loan documents executed in connection with this Project or limit the right of any person to name the Maker or any other person claiming an interest in or right to such collateral as party or a defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the loan documents executed in connection with this Project so long as no deficiency judgment shall be sought against the Maker.

The foregoing limitation shall not apply to any and all loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) to the extent incurred by Payee as a result of any:

a. Fraud or material misrepresentation under or in connection with the loan or any loan document executed in connection with this Project;

b. Intentional bad faith waste of the Site by the Maker;

c. Losses resulting from Maker's failure to maintain insurance as required under the Deed of Trust; or

d. Misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security by the Maker.

If any of the events listed in the foregoing (a) through (d) occurs, Payee shall have the right to proceed directly against Maker at the time the event giving rise to the recourse liability occurred to recover any and all loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) incurred by Payee.

15. Nonliability of Maker and Payee Officials and Employees.

a. No member, official or employee of the Payee shall be personally liable to the Maker in the event of any default or breach by the City or on any obligations under the terms of this Note.

b. No member, official or employee of the Maker shall be personally liable to the Payee in the event of any default or breach by the Maker or for any amount which may become due to the Payee or on any obligations under the terms of this Note.

FIRM FOUNDATION COMMUNITY HOUSING, a California public benefit corporation

By:

By: ______________________________________

By: ______________________________________

Escrow No.:

RECORDING REQUESTED BY
City of Vallejo Housing Authority
When Recorded, Mail Document to:
City of Vallejo
200 Georgia Street
Vallejo, CA 94590

EXEMPT FROM RECORDING FEES
PURSUANT TO GOV. CODE § 227383

(Space above this line for Recorder's use only)

DEED OF TRUST

THIS DEED OF TRUST ("**Security Instrument**") is made on March 12, 2024. The Trustor is Firm Foundation Community Housing, a California public benefit corporation ("**Borrower**"). The Trustee is **North American Title Company**. The Beneficiary is the **City of Vallejo Housing Authority**, which is organized and existing under the laws of California, and whose address is 200 Georgia Street, Vallejo, CA 94590 ("**Lender**").

Borrower owes Lender the principal sum of Three Million Three Hundred Thousand Dollars (**$3,300,000.00**). This debt is evidenced by Borrower's Promissory Note dated the same date as this Security Instrument ("**Note**"), which provides for deferred monthly payments, with the full debt, if not paid earlier, due and payable ***55*** years from the date of this Security Instrument. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, and modifications; (b) the payment of all other sums, with interest advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale the following described property located in Solano County, California:

See Exhibit "A"

APN #: 0067-140-150

which has the address of **2441 Broadway Street, Vallejo, CA, 94589**

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock, and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "**Property**."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title lo the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest Prepayment and Late Charges**. Borrower shall promptly pay

when due the principal of and interest on the debt evidenced by the Note and prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance**. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payment s are due under the Note, until the Note is paid in full, a sum ("**Funds**") equal to one-twelfth of: (a) yearly taxes and assessments which may attain priority over this Security Instrument; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premiums; and (d) yearly mortgage insurance premiums, if any. These items are called "**Escrow Items**." Lender may estimate the Funds due on the basis of current data and reasonable estimates of future Escrow Items.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay the Escrow Items. Lender may not charge for holding and applying the Funds, analyzing the account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing that interest shall be paid on the Funds. Unless an agreement is made, or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the amount of the Funds held by Lender, together with the future monthly payments of Funds payable prior to the due dates of the Escrow Items, shall exceed the amount required to pay the Escrow Items when due, the excess shall be at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly payments of Funds. If the amount of the Funds held by Lender is not sufficient to pay the Escrow Items when due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as required by Lender.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund lo Borrower any Funds held by Lender. If under paragraph 19 the Property is sold or acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Security Instrument.

3. **Application of Payments**. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to late charges due under the Note; second, to prepayment charges due under the Note; third, to amounts payable under paragraph 2; fourth, to interest due; and last, to principal due.

4. **Charges; Liens**. Borrower shall pay all taxes, assessments, charges, lines, and impositions attributable to the Property, which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten days of the giving of notice.

5. **Hazard Insurance**. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower and subject to Lender's approval. which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 19 the Property is acquired by Lender, Borrower’s right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Preservation and Maintenance of Property; Leaseholds**. Borrower shall not destroy, damage, or substantially change the Property, or allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property; Mortgage Insurance**. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation, or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien, which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender’s written agreement or applicable law.

8. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. **Condemnation**. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

10. **Borrower Not Released**: **Forbearance by Lender Not a Waiver**. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers**. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant, and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear, or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

12. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

13. **Legislation Affecting Lender's Rights**. If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 19. If Lender exercises this option, Lender shall take the steps specified in the second paragraph of paragraph 17.

14. **Notices**. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property address, or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability**. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy**. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property a Beneficial Interest in Borrower**. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, Lender shall not exercise this option if federal law as of the date of this Security Instrument prohibits exercise.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period. Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate**. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) five days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument, or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note had no acceleration occurred, (b) cures any default of any other covenants or agreements, (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys· fees, and (d) takes such action as Lender may reasonably require to ensure that the lien of this Security Instrument, Lender's rights in the Property, and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraphs 13 or 17.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

19. **Acceleration; Remedies**. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraphs 13 and 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 19 including but not limited to reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee. without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

20. **Lender in Possession**. Upon acceleration under paragraph 19 or abandonment of the Property, Lender (in person. by agent. or by judicially appointed receiver) shall be entitled to enter upon, take possession of, and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to: receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.

21. **Reconveyance**. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

22. **Substitute Trustee**. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original

Lender, Trustee, and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers. and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

23. **Request for Notices**. Borrower requests that copies of the notices of default and sale be sent to Borrower's address. which is the Property Address.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument

and in any rider(s) executed by Borrower and recorded with it.

FIRM FOUNDATION COMMUNITY HOUSING, BORROWER

By: Taryn Sandulyak

(Space Below This Line for Acknowledgment)

EXHIBIT A
Legal Description

APN: 0067-140-150

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

Parcel "B" as shown on that certain Parcel Map entitled: "Parcel Map, Portion of Sec. 36, T.4.N., R4W. M.D.B.&M., City of Vallejo, Solano County, California", filed for record in the office of the County Recorder of Solano County, on August 24, 1982 in Book 23 of Parcel Maps, at Page 79.

EXCEPTING THEREFROM a life estate as to an undivided one fifth (1/5) right, title, and interest in and to all mineral rights and all minerals of every kind and nature beneath the above-described land as granted in the Deed from Henry A. Mini, et al, to Virginia C. Mini, dated November 5, 1954, recorded January 14, 1955, in Book 748 of Official Records, at Page 313, Instrument No. 678.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Housing Successor Agency
of the City of Vallejo
200 Georgia Street
Vallejo, CA 94590
Attn.: Executive Director

AFFORDABILITY AGREEMENT

This Agreement dated March____________, 2024, is between the HOUSING AUTHORITY OF THE CITY OF VALLEJO, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health & Safety Code Section 33000 et seq.) (the “Agency”) and FIRM FOUNDATION COMMUNITY HOUSING, a California public benefit corporation (“Borrower”).

RECITALS

A. Pursuant to the Loan Agreement between the Agency and Borrower executed concurrently herewith (the “Loan Agreement”), the Agency has made a loan to Borrower for the purpose of developing and constructing housing on the certain real property as described in Exhibit A attached hereto and incorporated herein by reference (the “Site”) for the purpose of providing 47 units plus one unrestricted manager’s unit (the “Housing Units”) to be available at an affordable rent to persons and families of extremely low income levels (the “ Project”). Under the Loan Agreement, the City has provided Borrower with a loan in the amount of THREE MILLION THREE HUNDRED THOUSAND DOLLARS ($3,300,000.00), (the “Agency Loan”). Borrower has executed a promissory note for the Agency Loan (the “Agency Note”), and a deed of trust recorded against the Site (the “Agency Deed of Trust”).

B. Pursuant to the Loan Agreement, in the event of any default under this Affordability Agreement and following the expiration of all applicable notice and cure periods, Borrower agrees to repay Agency all amounts owing under the Agency Note and the Agency Deed of Trust recorded against the Site.

C. The Agency and Borrower desire by the execution of this Agreement to assure the affordability covenant to last for a minimum of 55 years, following the date of recordation of this Affordability Agreement (the “Term”).

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE 1. ELIGIBLE HOUSEHOLDS

1.01. Households meeting the income restrictions as set forth in Section 2.01 shall be referred to as "Eligible Households."

ARTICLE 2. AFFORDABILITY REQUIREMENTS FOR HOUSING PROJECT

2.01. Rent and Income Restrictions. From the date of the recording of this Agreement and for 55 years thereafter, Borrower by and for itself and any successors in interest, hereby covenants and agrees that the Borrower shall limit the rental of 47 of the Housing Units to households which meet the income levels established for "extremely low income households," as defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations ("CFR"), the income eligibility levels, rent limits, and all provisions under such program regarding income assumed household size and continued occupancy and rent requirements for households whose incomes exceed the eligible income limitations. In addition, these 47 Housing Units shall have a preference for households that consist of "chronically homeless persons," as defined in Title 24 CFR Part 578.3. The remaining unit shall be an unrestricted manager's unit. The gross monthly rent for the Extremely-Low Income Units (excluding any supplemental rental assistance from the State of California, the federal government or any other public agency to those tenants or on behalf of those units) shall not exceed the "affordable rent" as determined for extremely-low income households.

2.02. The Project may receive Project Based Section 8 vouchers or other rental subsidies (the "Rental Subsidies") throughout the Term. If, during the Term, any change in federal law occurs or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidies, such that the rental subsidy projected on the budget for the Project is reduced or is no longer available, Borrower may increase the rents on one or more of the Very Low Income Units during the remainder of the Term up to 60% AMI, if Borrower demonstrates to the satisfaction of the Agency that such rental increase is necessary to maintain the financial stability of the Project and no alternative rental subsidies are available.

2.03. Reporting Requirements. An annual report and annual income recertifications must be submitted to the Agency. The reports, at a minimum, shall include:

(a) The number of persons per unit;

(b) Tenant name and initial occupancy date;

(c) Gross income per year as certified by Borrower;

(d) Rent paid per month and percent of rent paid in relation to income.

Annual income recertifications shall also contain those documents used to certify eligibility. Agency may from time to time during the term of this Agreement request additional or different information and Borrower shall promptly supply such information in the reports required hereunder. Borrower shall maintain all necessary books and records, including property, personal, and financial records, in accordance with requirements prescribed by the Agency with respect to all matters covered by this Agreement. Borrower, at such time and in such forms as Agency may require, shall furnish to Agency statements, records, reports, data, and information pertaining to matters covered by this Agreement. Upon reasonable advance request for examination by Agency, Borrower, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Borrower shall permit Agency to audit, examine, and make excerpts or transcripts from these records at Agency's sole cost.

Agency shall have the right, but not the obligation, to monitor and enforce the covenants contained in this subsection. Borrower shall comply with any monitoring program set up by Agency to enforce said covenants.

ARTICLE 3. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY

3.01. Maintenance. During the duration of this Agreement, Borrower shall keep the Site in good condition, order, and repair and shall not commit waste or permit impairment, demolition or deterioration of the Site; shall comply with all applicable state and federal regulations addressing the physical condition of the Site and buildings located on the Site and all applicable standards of the City of Vallejo including but not limited to selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs, and replacement of capital items. Borrower must maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building, and housing codes, California Health and Safety Code 17920.10 and the applicable provisions of 24 CFR Part 35, building standards, planning regulations, and utilities code; shall complete or restore promptly and in good and workerlike manner any building which may be constructed, damaged or destroyed and to pay when due all claims for labor performed and materials furnished; shall maintain the buildings in a habitable condition; and do all other acts which from the character or use of the Site may be reasonably necessary. Agency shall have the right to inspect the Site during normal business hours, provided Borrower and the occupant are given reasonable notice prior to any such inspection.

ARTICLE 4. NO TRANSFER

4.01. Prohibition. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Borrower make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Site without the prior written approval of the Agency.

4.02. Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment or transfer of this Agreement, the Agency Loan, the Loan Agreement, or conveyance of the Site or any part thereof pursuant to Section 4.04 shall not be required in connection with any of the following (the "Permitted Transfers"):

A. The lease of Housing Units to qualified tenants.

B. Assignment for financing purposes, and any foreclosure thereunder, subject to such financing being considered and approved by the Agency pursuant to Section 302 of the Loan Agreement.

4.03. In the event of any other assignment by Borrower, it requires the Agency's prior approval pursuant to Section 302.3 of the Loan Agreement.

4.04. Agency Consideration of Requested Transfer. The Agency agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 4.04, provided (a) the Borrower delivers written notice to the Agency requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability, and comparable net worth and resources, as the proposed transferer or assigner, and (c) the assignee or transferee assumes the obligations of the Borrower under this Agreement in a form which is reasonably acceptable to the Agency. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 4.04 and other criteria as reasonably determined by the Agency. The Agency shall approve or disapprove the request within 35 days of its receipt of the Borrower's notice and all information and materials required herein. In no event, however, shall the Agency be obligated to approve the assignment or transfer of the Agency Loan, Promissory Note or Deed of Trust pursuant to this Section 4.04, except to an approved transferee or assignee of the Borrower's rights in and to the Project.

4.05. Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants, and conditions of this Agreement shall be binding upon the Borrower and the permitted successors and assigns of the Borrower. Whenever the term "Borrower" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided. In the event of a transfer or assignment under Section 4.04, all rights and obligations of the transferer Borrower shall be assumed by the transferee Borrower and the transferer Borrower shall have no further obligation or liability under this Agreement.

ARTICLE 5. NO DISCRIMINATION

Borrower covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Borrower itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Site.

ARTICLE 6. NONDISCRIMINATION CLAUSES

All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

1. In deeds: Borrower herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Borrower himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

2. In leases: The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

   That there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.

3. In contracts: There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land.

ARTICLE 7. NO IMPAIRMENT OF LIEN

No violation or breach of the covenants, conditions, restrictions, provisions or limitation contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted under the Loan Agreement and this Agreement; provided, however, that any successor of Borrower to the Site shall be bound by such covenants, conditions, restrictions, limitations, and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

ARTICLE 8. GENERAL

8.01. Notices to Agency. Notices required to be sent to the Agency hereunder shall be sent by certified mail, return receipt requested, to the following address as may change from time to time:

Housing Successor Agency of the City of Vallejo
200 Georgia Street, Vallejo CA 94590
Attn.: Executive Director

8.02. Notices to Borrower. Notices required to be sent to Borrower hereunder shall be sent by certified mail, return receipt requested, to the following address as may change from time to time:

Firm Foundation Community Housing
2845 Castro Valley Blvd., Castro Valley, CA 94546
Attn: Senior Project Manager

8.03. Duration. The covenants set forth in Articles 1, 2 and 3 herein shall be covenants running with the land until 55 years from the date of recordation of this Affordability Agreement against the Site. The covenants set forth in Articles 5 and 6 shall be covenants running with the land in perpetuity. All the covenants contained herein shall inure to the benefit of the Agency, the City of Vallejo, and their successors and assigns enforceable by the Agency, the City of Vallejo or their successors or assigns, without regard to whether the Agency is an owner of any land or interest to which such covenants relate. The Agency and such aforementioned parties, in the event of any breach of any such covenants contained herein, following the expiration of all applicable notice and cure periods, shall have the right to exercise all of its rights and remedies allowed by law and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants and agreements established in this Agreement, without regard to technical classification and designation, shall be binding upon all parties having any right, title, or interest in the Site, or any portion thereof and on their heirs, successors in interest and assigns until the covenants terminate. The parties agree that all future deeds or transfers of interest shall show the applicable restrictions of this Agreement and, during the duration of this Agreement, any transfer of the Site shall be subject to the terms and conditions of this Agreement.

8.04. Successors and Assigns.

A. Borrower, by and for itself and each successor to any interest in the Site, hereby specifically acknowledges and agrees to be bound by the covenants contained herein.

B. In the event the Agency is no longer in existence during the term of this Agreement, all right, title, and interest of the Agency shall inure to the benefit of the City of Vallejo.

8.05. Amendment. This Agreement may be amended only in writing by the Agency and the owner of the Site.

8.06. Non-Liability of Officials and Employees of the Agency and the Borrower. No member, official or employee of the Agency or the City shall be personally liable to the Borrower, or any successor in interest, in the event of any default or breach by the Agency (or the City) or for any amount which may become due to the Borrower or its successors, or on any obligations under the terms of this Agreement.

8.07. Relationship Between Agency and Borrower. It is hereby acknowledged that the relationship between the Agency and the Borrower is not that of a partnership or joint venture and that the Agency and the Borrower shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements. The Borrower agrees to indemnify, hold harmless, and defend the Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between the Agency and the Borrower with respect to the development, operation, maintenance or management of the Site or the Construction Work.

8.08. Agency Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Executive Director of the Agency or his or her designee is authorized to act on behalf of the Agency unless specifically provided otherwise or the context should require otherwise.

8.09. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three originals, each of which is deemed to be an original.

8.10. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

8.11. Interpretation**.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both parties.

8.12. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

8.13. Modifications**.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

8.14. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

8.15. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

8.16. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

8.17. Time of Essence. Time is expressly made of the essence with respect to the performance by the Agency, the Borrower of each and every obligation and condition of this Agreement.

8.18. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

8.19. Conflicts of Interest. No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

8.20. Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Solano County.

8.21. Date of Agreement. The date of this Agreement shall be the date set forth in the first paragraph hereof.

FIRM FOUNDATION COMMUNITY HOUSING,
a California public benefit corporation

By: ______________________
Taryn Sandulyak
Senior Project Manager

DATE: ___________________

By: ______________________________
NAME
TITLE

DATE: ____________________

(City Seal)

HOUSING SUCCESSOR AGENCY
OF THE CITY OF VALLEJO

By: ________________________
Michael Malone
Executive Director

DATE: ____________________

ATTEST:

By: ________________________
Dawn Abrahamson
City Clerk

APPROVED AS TO CONTENT:

____
Gillian Hayes
Assistant City Manager

APPROVED AS TO FORM:

____
Veronica A. F. Nebb
City Attorney

EXHIBIT A

Legal Description of Property

APN: 0067-140-150

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

Parcel "B" as shown on that certain Parcel Map entitled: "Parcel Map, Portion of Sec. 36, T.4.N., R4W. M.D.B.&M., City of Vallejo, Solano County, California", filed for record in the office of the County Recorder of Solano County, on August 24, 1982 in Book 23 of Parcel Maps, at Page 79.

EXCEPTING THEREFROM a life estate as to an undivided one fifth (1/5) right, title, and interest in and to all mineral rights and all minerals of every kind and nature beneath the above-described land as granted in the Deed from Henry A. Mini, et al, to Virginia C. Mini, dated November 5, 1954, recorded January 14, 1955, in Book 748 of Official Records, at Page 313, Instrument No. 678.

ACKNOWLEDGMENT

State of California

County of____________________

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

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

WITNESS my hand and official seal.

Signature_________________________________